

NEW JERSEY AFFORDABLE HOUSING LEGISLATION

**P.L. 2024 CHAPTER 2
(A4 / S50)**

BOROUGH OF FREEHOLD



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- 1975 – Mount Laurel Doctrine created a constitutional obligation for NJ Municipalities to provide their fair share of their region’s need for affordable housing
- Borough has a **Mandatory** constitutional obligation to provide its fair share of Affordable Housing in the Region
- Borough is part of Region 4 – Mercer, Monmouth & Ocean Counties

WHAT IS AFFORDABLE HOUSING?

- Housing with a sales price or rent within the means of a very – low, low- or moderate- income household.

WHO QUALIFIES FOR AFFORDABLE HOUSING?

2024 INCOME LIMITS REGION 4 MERCER, MONMOUTH & OCEAN

FAMILY SIZE	1 PERSON	*1.5 PERSON	2 PERSON	*3 PERSON	4 PERSON	*4.5 PERSON	5 PERSON	6 PERSON	7 PERSON	8+ PERSON	Max Increase Rents** Sales***	Regional Asset Limit****
MEDIAN	\$91,038	\$97,540	\$104,043	\$117,048	\$130,054	\$135,256	\$140,458	\$150,862	\$161,267	\$171,671	5.2% 0%	\$244,635
MODERATE	\$72,830	\$78,032	\$83,234	\$93,639	\$104,043	\$108,205	\$112,367	\$120,690	\$129,013	\$137,337		
LOW	\$45,519	\$48,770	\$52,022	\$58,524	\$65,027	\$67,628	\$70,229	\$75,431	\$80,633	\$85,836		
VERY LOW	\$27,311	\$29,262	\$31,213	\$35,115	\$39,016	\$40,577	\$42,137	\$45,259	\$48,380	\$51,501		

Eligibility is determined by gross annual household income. To qualify, your income must be no more than 80% of median for moderate income or 50% of median for low income and 30% for very low income.

HOW IS THE BOROUGH'S AFFORDABLE HOUSING OBLIGATION DETERMINED?

- Based on a methodology that came out of a Mercer County case on March 8, 2018 before Judge Jacobson.
- **Judges** have relied on and applied the Jacobson methodology to calculate obligation numbers for its **municipalities**.
- Based upon the Jacobson methodology, the Borough's Third Round Obligation prospective need number (2015 – 2025) and GAP present need number was identified as **112 affordable units**

BOROUGH'S THIRD ROUND AFFORDABLE HOUSING OBLIGATIONS

Rehabilitation/Present Need Obligation (pursuant to Jacobson ¹)	287
Prior Round Obligation (per to <u>N.J.A.C. 5:93</u>)	188
Third Round (1999-2025) Obligation (pursuant to Jacobson decision)	112

¹ Jacobson Decision

- **Rehabilitation/Present Need Obligation.** The Borough's efforts to meet its 287 unit Present Need obligation include the following:
 - For more than 30 years, the Borough has been completing the RCA rehabilitation obligation, which has amounted to over 500 units, including 200 of which were used to rehabilitate the Rug Mill complex into a combination of affordable family and age-restricted apartments. There are 14 units remaining to complete the RCA units and three units are currently under construction, with three more under eligibility review. Once the RCA rehabs are complete, the Borough will continue accepting applications utilizing the same parameters as the RCA rehab program to address the Present Need Obligation.
- **Prior Round Obligation.** Freehold has a Prior Round obligation of 188 units which has been largely satisfied through the compliance mechanisms listed in Exhibit A, but which yielded a deficit of thirty (30) actual units, that are carried forward to the Third Round. .

THIRD ROUND OBLIGATION

- Third Round Obligation.** For purposes of this Agreement, the Borough’s Third Round Obligation of 112 units shall be deemed to include the Gap Period Present Need, which, as recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017), is a measure of households formed between 1999 and 2015 that need affordable housing, as well as the Prospective Need for the period from 2015 – 2025. The compliance mechanism to fulfill the Third Round Obligation include:

Compliance Mechanisms		Credits	Bonuses	Total
112 Unit Third Round Obligation (1999-2025)				
<i>Inclusionary Developments</i>				
Hometown Redevelopment (B:35/L:15-19, 26.02, 28-32)	Proposed	60	28	88
200 Park Avenue (B:117/L:21)	Proposed	9		9
500 Park Avenue (B:110/L:8, 8.01)	Proposed	28		28
2-6 Broad Street Redevelopment	Proposed	7		7
<i>Supportive Housing</i>				
Their Place (B:36/L:27) - 25 West Main Street (Disability Allies)	Proposed	18		18
Total		122	28	150
Total Required				112
Number applied to Prior Round				38
Surplus Credit				1
		Required		Provided
Maximum Senior - 25% of obligation		28		0
Min. Total Rental - 25% of obligation		28		105
Min. Total Family - 50% of obligation		56		105
Min. Very Low Required - 13% of units developed after 7/1/2008		16		16
Rental bonus maximum – not to exceed rental minimum		28		28

HIGHLIGHTS OF FOURTH ROUND

- ABOLISHES COAH
- ESTABLISHES NEW PROCESS & NEW PARTIES FOR CALCULATING AFFORDABLE HOUSING OBLIGATIONS FOR THE FOURTH ROUND COMMENCING **JULY 1, 2025**
- SETS SPECIFIC AND AGGRESSIVE TIMELINES FOR ACTIONS TO BE TAKEN BY THE BOROUGH
- IMPOSES CONSEQUENCES ON BOROUGH FOR FAILURE TO MEET TIMELINES

PARTIES IN AFFORDABLE HOUSING PROCESS - P.L. 2024 C.2

- **DEPARTMENT OF COMMUNITY AFFAIRS**
- **ADMINISTRATIVE OFFICE OF COURTS**
- **COUNTY LEVEL HOUSING JUDGES**
- **AFFORDABLE HOUSING DISPUTE RESOLUTION PROGRAM**

The Department of Community Affairs (“DCA”)

- Adopts rules and regulations to effectuate the provisions of the legislation – updates to UHAC, Trust Fund
- Calculates regional need and municipal obligations – calculations are not binding
- Maintains affordable housing-related information provided by municipalities on its website
- Has rulemaking authority relating to the collection of residential and non-residential development fees
- Regulates municipal affordable housing trust funds

Administrative Office of Courts (“AOC”)

- Oversees newly created Affordable Housing Dispute Resolution Program (the “Program”)
- * AOC Director designates the members to the Program and designates its Chair. The designated Members are: Hon. Thomas C. Miller (chair) Hon. Ronald E. Bookbinder, Hon. Thomas F. Brogan, Hon. Stephan C. Hansbury, Hon. Mary C. Jacobson, Hon. Julio L. Mendez and Hon. Paulette M. Sapp-Peterson (must be current or retired judges, or other qualified experts with expertise in alternative dispute resolution and relevant subject matter)

County Level Housing Judges

- The Chief Justice of Supreme Court shall designate a Superior Court Judge within the vicinage or a retired judge who served within the vicinage during their tenure to resolve disputes over compliance of fair share housing obligations, HEFSP and FHA.

The Program

- Takes on responsibilities similar to the functions of the COAH.
- Reviews HEFSP submitted by Borough. Will issue a Compliance Certification if HEFSP is approved and provide immunity from exclusionary zoning litigation (includes builders remedy lawsuits, which are site specific).
 - The HEFSP must include a Spending Plan for current funds in the Affordable Trust Fund and include projected funds towards the Fourth Round.
 - The HEFSP must also include an assessment of the degree to which the Borough has met its fair share obligation from the prior rounds of affordable housing obligations as established by prior approval and determine to what extent this obligation is unfulfilled or whether the Borough has credits in excess of prior round obligations.
 - If a prior round obligation remains unfulfilled, the Borough must address such unfulfilled prior round obligation in the HEFSP. Units included as part of the Borough's unfulfilled prior round obligation shall not count towards the cap on units in the Borough's prospective need obligation.
- Hears challenges to a municipality's fair share plan and handles disputes. Burden is on the challenger to provide basis for its challenge based on applicable law.
- Applies an objective standard to determine whether Borough's obligation determination, or HEFSP fails to comply with requirements of legislation.

- Establishes procedures to efficiently resolve disputes, and in each vicinage, a county level housing judge will be designated by the Chief Justice to handle disputes over compliance with fair share plans and housing elements, as well as ongoing compliance matters when disputes are not being resolved by the Program within the deadlines established in the legislation.
- May consult or employ special masters or staff to assist in rendering determinations and resolving disputes.
- May revoke immunity, adjust obligations, or affirm the municipality's determination.
- Issues Compliance Certifications conditioned on the municipality's commitment to revise the HEFSP upon resolution of a challenge.
- Provides a written report when a Compliance Certification is issued that sets forth the basis of the issuance of the Certification and shall be in a format developed and approved by the Administrative Director of the Courts.
- Determinations made on present and prospective need obligations or Compliance Certifications are considered final decisions, subject to Appellate review.

Methodology for Calculating Borough Fourth Round Obligation

- Methodology is based chiefly on the data sets and calculations found In re Application of Municipality of Princeton, also known as the “**Jacobson Opinion**” with changes to present need calculation and prospective need.

Determining municipal present and regional prospective needs for affordable housing involves the following steps:

1. Municipal Present Need

- Estimated by assessing deficient housing units occupied by low – and moderate-income households in the region
- Methodology is similar to that employed to determine the Third Round municipal Present Need
- Datasets from the federal decennial census and the American Community Survey are utilized for this estimation

2. Regional Prospective Need

- Regional prospective need for a 10-year round of low- and moderate-income housing obligations is determined using a similar calculation method to the municipal present need
- Projected household change in the region for a 10-year round is estimated by comparing household changes between the most recent federal decennial census and the second-most recent one
- If the household change is positive, it is divided by 2.5 to estimate the number of low- and moderate-income homes needed to address the change, thus determining the regional prospective need for affordable housing.

Methodology for Calculating Borough Fourth Round Obligation Contd.

A municipality's prospective fair share obligation of the regional prospective need for the upcoming 10-year round is to be determined as follows:

1. Exemption for Qualified Urban Aid Municipalities

- If a municipality qualifies as a qualified urban aid municipality, it is exempt from any fair share prospective need obligation for the upcoming 10 year round.

2. Equalized Nonresidential Valuation Factor

- Changes in nonresidential property valuations in the municipality since the preceding round are calculated
- The municipality's share of the regional change in nonresidential valuations is determined as the equalized nonresidential valuation factor

3. Income Capacity Factor

- The average of two measures is calculate:
 - The municipal share of the regional sum of the differences between the median municipal household income, according to the most recent decennial census, and an income floor of \$100 below the lowest average household income in the region; and
 - The municipal share of the regional sum of the differences between the median municipal household incomes and an income floor of \$100 below the lowest median household income in the region, weighted by the number of the households in the municipality.

Methodology for Calculating Borough Fourth Round Obligation Contd.

4. Land Capacity Factor

- The area of undeveloped land in the municipality and regional boundaries that may accommodate development is estimated.
- Undeveloped land is weighted based on planning area types
- The municipality's share of the region's undeveloped land is its land capacity factor.

5. Average Allocation Factor

- The equalized nonresidential valuation factor, income capacity factor, and land capacity factor are averaged to yield the municipality's average allocation factor
- The regional prospective need is multiplied by the average allocation factor to determine the municipality's gross prospective need for the 10-year round.

6. Adjustments for Secondary Sources of Supply and Demand

- Demolitions of low- and moderate-income housing and housing creation through residential conversions are calculated.
- The municipality's share of conversions is subtracted from the sum of each municipality's allocated share of gross prospective need and demolitions of low- and moderate-income housing.

NEXT STEPS AFTER OBLIGATIONS ARE ESTABLISHED

- DCA PUBLISHED ITS CALCULATIONS OF THE MUNICIPAL OBLIGATIONS
- Borough MAY ACCEPT DCA OBLIGATION NUMBER OR DIVERGE FROM IT SO LONG AS THE Borough ADHERES TO METHODOLOGY ESTABLISHED IN THE LEGISLATION

DCA CALCULATIONS FOR FOURTH ROUND

Present Need*

270

Prospective Need

49

*Present Need: the number substandard existing deficient housing units currently occupied by low and moderate income households. “Deficient housing units” are defined as housing that are over 50 years and overcrowded, that lacks complete plumbing, or that lacks complete kitchen facilities.

POTENTIAL MECHANISMS FOR ADJUSTMENTS TO ESTIMATED OBLIGATION

Vacant Land Adjustment

- If the Borough receives a **Vacant Land Adjustment** of its Prospective Need obligation for the Fourth Round based on a lack of vacant land, as part of its adopting and implementing HEFSP, the Borough must identify sufficient parcels likely to redevelop during the current round of obligations to address at least 25% of the Prospective Need obligation that has been adjusted, and the Borough must adopt realistic zoning that allows for such adjusted obligation, or demonstrate why the Borough is unable to do so.
- The Program shall confirm that land was correctly excluded as part of providing Compliance Certification.

POTENTIAL MECHANISMS FOR ADJUSTMENT TO ESTIMATED OBLIGATION

Affordable Housing Credits - P.L. 2024 C.2

TYPE OF LOW/MODERATE INCOME HOUSING	CREDITS	BONUS CREDITS
Low- or moderate-income rental housing	1	None
Special Needs/Permanent Supportive Housing	1	1
Housing created in partnership with non-profit housing developer	1	½
Housing located within a one-half mile radius of public transit stations	1	½
Age-restricted housing	1	½
Family housing with at least 3 bedrooms, above the minimum number required by the bedroom distribution requirement determined pursuant to the Uniform Housing Affordability Controls	1	½
Redevelopment of housing constructed on previously development land that is or was utilized for retail, office or commercial space	1	½
Existing rental housing with extended affordability controls and the municipality contributes funds for preservation	1	½
100 % affordable housing project where the municipality contributes no less than 3% of cost of project or contribution of land	1	1
Very low-income housing for families above the 13% required to be preserved for very low	1	½
Housing created by converting existing rental or ownership unit from market-rate to affordable (with certain municipal assurances required)	1	1

BONUS CREDIT LIMITATION & DISTRIBUTION REQUIREMENTS - P.L. 2024 C.2

Bonus Credit Limitation

- Borough is prohibited from using more than one type of Bonus Credit for any unit.
- Borough cannot satisfy more than 25% of its Prospective Need obligation through Bonus Credits
- Limit of 10% for age-restricted housing

Distribution Requirements

- The Borough cannot satisfy more than 30% of its obligation, exclusive of Bonus Credits, through the creation of age-restricted housing
- The Borough cannot count transitional housing units for more than 10% of its obligation
- At least 50% of the affordable housing units, exclusive of Bonus Credits, must be created for families with children, and 25% must be rental housing, with at least half of that available to families with children
- At least 13% of housing units designated for low-income and moderate-income households must be reserved for very low-income households, with at least half for families with children. Specific projects are not mandated to reserve a set percentage for very-low income housing, but municipalities will not receive bonus credits unless they exceed the 13% target for such housing.
- Developers receiving State funding for projects consisting of newly constructed residential units (including, but not limited to, transit villages designated by the Department of Transportation and units constructed on State-owned property) must reserve a minimum of 20% of these units for occupancy by low – or moderate – income households, with affordability controls.

OTHER CHANGES

- Clarifies that Borough is not required to fund infrastructure improvements for affordable housing projects beyond any commitments made in the HEFSP that has been provided with compliance certification
- Provides that a 100% affordable rental property would have a right to extinguish a deed restriction regardless of the original length, beginning 30 years following the start of the restriction, provided certain actions are taken for the purpose of affordability preservation, and a new deed restriction of at least 30 years is provided
- The 20-year period for grants and loans provided by the HMFA to low- and moderate-income affordable housing programs both newly-created rentals and for-sale units has been increased, requiring affordability controls for 40 years for rental units and a 30-year period for for-sale units.
- Now there is a minimum of 30 years of affordability controls for housing units that have their controls extended, provided the minimum extension term may be limited to no less than 20 years as long as the original and extended term combined total at least 60 years.
- Adjust restrictions on expenditures of development fee trust funds and specify that the restrictions would not apply to qualified urban aid municipalities
- Borough is prohibited from expending any development trust funds unless they have immunity from builder's remedy litigation at the time of the expenditure

OTHER CHANGES

- Development fees cannot be used to pay for: (i) administrative costs, attorney fees or court costs to obtain a judgment of repose (ii) to contest a determination of the Borough's fair share obligation, (iii) on costs of any challenger in connection to a challenge to the Borough's obligations, housing element, or fair share plan
- 20% cap on the use of trust funds for administrative purposes remains but what constitutes administrative purposes has been clarified and limited to: (i) actions and efforts reasonably related to the determination of the Borough's obligation and development of its housing element and fair share plan, and (ii) expenses that are reasonably necessary for compliance with the process of the Program, including but not limited to, the costs to the Borough of resolving a challenge under the Program.
- Development fees cannot be used to pay for the administrative costs associated with a judgment of repose, but they can be used (capped at 20%) for the administrative costs within the Program.
- 1000 Unit Maximum: A municipality may lower its prospective need obligation to the extent necessary to prevent establishing a prospective need obligation of more than 1,000 housing units, after the application of credits, or to prevent a prospective need obligation that exceeds 20% of the total number of households in a municipality. If subject to both, the reduction resulting in the lower obligation number is to be applied.

SCHEDULE OF DEADLINES FOR REQUIRED ACTIONS – P.L. 2024 C.2

- **May 1, 2024**: Director of AOC appoints members to Affordable Housing Dispute Resolution Program
- **June 18, 2024**: Borough to submit accounting of all non-residential fees collected and expended to DCA since Borough was to collect such fees
- **September 16, 2024**: Borough to submit accounting of all residential development fees collected and expended since Borough was authorized to collect such fees
- **September 16, 2024**: Borough to submit a unit and program monitoring report to DCA for all approved components addressed constitutional compliance to date.
- **October 20, 2024**: DCA to publish calculation of regional need and municipal Fourth Round obligations – not binding
- **January 31, 2025**: Borough to determine its present and prospective fair share obligation and adopt obligation via binding resolution. Borough may diverge from DCA's calculations so long as the Borough adheres to the methodology established in the legislation
- Borough to file action with the Program regarding the resolution within 48 hours following adoption and also post the resolution on its website.
- Failure to meet this deadline will result in the Borough losing its immunity from exclusionary zoning lawsuits until it comes into compliance.
- **February 28, 2025**: Deadline for challenge by Interested Parties to Borough's adopted obligation. The Challenge is filed through the Program. Challenge must state with particularity how the Borough's calculation fails to comply with methodology laid out in the legislation and must include Challenger's own calculation of Fair Share obligations. **The Borough's calculation has a presumption of validity.**
- **March 1, 2025**: Borough's obligations are established by default and immunity remains in effect if no challenges are filed.

SCHEDULE OF DEADLINES FOR REQUIRED ACTIONS – P.L. 2024 C.2

- **April 1, 2025**: Affordable Housing Dispute Resolution Program to settle any challenge(s) to Borough's obligations.
- **June 30, 2025**: Borough to adopt and endorse a HEFSP addressing the Borough's obligations for all affordable housing cycles which includes an analysis of consistency with State Development and Redevelopment Plan. Also include drafts of appropriate zoning and other ordinances and resolutions implementing its present and prospective obligation. Failure to meet this deadline will result in loss of immunity from building remedy litigation.
- **Within 48 hours or by June 30, 2025, of adopting HEFSP, or implementing ordinances and resolutions file same with the Program**
- **Failure to meet this deadline, Borough shall lose its immunity against exclusionary zoning litigation.**
- **July 1, 2025**: Fourth Round Begins
- **August 31, 2025**: Deadline for Interested Party to Challenge the validity of the Borough's HEFSP with the Program. Challenge can't merely claim site of interested party is a better site than a site in the HEFSP. If no challenge, the Program reviews the HEFSP for consistency with FHA.
- **December 31, 2025**: Borough to commit to revising its HEFSP in compliance with the changes requested in the challenge or provide an explanation as to why it will not make all of the requested changes, or both.
- **March 15, 2026**: Borough to amend its HEFSP and to adopt implementing ordinances to comport with the amended numbers and file with the Program.

Note: Compliance Certification does not ensure that the Borough is safe from attack. Developers may ask for the status of any site in the HEFSP at any point during the period of Compliance Certification. Additionally, any Interested Party could question any site in the Plan where no preliminary site plan approval had been obtained by the midpoint review. This sets the stage for FSHC or a developer to reopen the issue of Certification at any time and appears to undermine the concept of immunity for a fixed period.

NEXT STEPS

Planning is key to meet deadlines
Be Proactive

Create an Affordable Housing Subcommittee
Start gathering information needed to meet deadlines

Start to generate list of properties based on what is known now,
but it would likely need updating

Developers are being encouraged by their counsel to identify
potential sites now and reach out to municipalities