

SPECIAL MEETING – JANUARY 23, 2025

READ PUBLIC MEETINGS LAW ARTICLE

ROLL CALL

MOMENT OF SILENCE/PRAAYER

PLEDGE OF ALLEGIANCE

PUBLIC PORTION (Time Limit of 5 Minutes Limited to Agenda Items Only)

RESOLUTIONS

* #41-25: Committing to Fourth Round Present and Prospective Need Affordable Housing Obligations
(Business Administrator)

PUBLIC PORTION (Time Limit of 4 Minutes On Any Subject)

EXECUTIVE (CLOSED) SESSION

ADJOURNMENT

**NEXT REGULAR SCHEDULED MEETING OF THE MAYOR AND COUNCIL
WILL BE HELD ON FEBRUARY 6, 2025**

RESOLUTIONS

RESOLUTION NO. 41-25

COMMITTING TO FOURTH ROUND PRESENT AND PROSPECTIVE NEED AFFORDABLE HOUSING OBLIGATIONS

WHEREAS, the Borough of Roselle Park (hereinafter the “Borough” or Roselle Park”) 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 June 12, 2015, the Borough of Roselle Park 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, 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 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 Borough’s Fourth Round (2025-2035) obligations as follows: a Present Need (Rehabilitation) Obligation of 78 and a Prospective Need (New Construction) Obligation of 75; 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 Borough’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 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, 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 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 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, 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 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 Borough Council finds that it is in the best interest of the Borough to declare its obligations in accordance with this binding Resolution and in accordance with the Amended FHA; and,

NOW, THEREOFRE, BE IT RESOLVED that the Mayor and Council of the Borough of Roselle Park, County of Union, 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 Borough Council hereby commit to the DCA Fourth Round Present Need (Rehabilitation) Obligation of 78 and the DCA Fourth Round Prospective Need (New Construction) Obligation of 75 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 issued on December 19, 2024, the Borough 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 Borough's Fourth Round Housing Element and Fair Share Plan can be reviewed and approved.
4. This Resolution shall take effect immediately, according to law.