

## THE TOWNSHIP OF EWING

Municipal Complex  
2 Jake Garzio Drive  
Ewing, NJ 08628



Phone: (609) 883-2900  
Admin. Fax: (609) 538-0729  
Clerk Fax: (609) 771-0480  
Web Address: [www.ewingnj.org](http://www.ewingnj.org)

February 10, 2025

Charlie Kratovil  
Email: [opra+request-71715-7cb956f1@requests.opramachine.com](mailto:opra+request-71715-7cb956f1@requests.opramachine.com)

Mr. Kratovil

The Ewing Township Clerk's Office received your Open Public Records Act (OPRA) request on February 7, 2025. The official Records Custodian, Kim Macellaro, received your OPRA request on February 7, 2025. As such, the seven (7) business day deadline to respond to your request is February 19, 2025. This response is being provided to you on the 1<sup>st</sup> business day after the custodian's receipt of said request.

Your OPRA requested the following:

1. Copy of binding resolution adopting the municipality's "fourth round" affordable housing obligation numbers.

Please see the response from the Clerk's Office.

This response is being provided to you in its entirety with any necessary redactions according to N.J.S.A. 47:1A-1.1. These records are being transmitted via email as per your request. Pursuant to N.J.S.A. 47:1A-5.b., the cost associated with this request is zero dollars.

If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the Ewing Township Clerk's Office to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ, 08625, by e-mail at [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us), or at their web site at [www.state.nj.us/grc](http://www.state.nj.us/grc). The GRC can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Sincerely,

Susan Bate, Deputy Municipal Clerk  
Ewing Township  
Tel: 1 609 883 2900 ext. 7658



Outlook

Recall 2.19.2025

2.7.2025

Clerk

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**OPRA request - Affordable Housing Obligation**

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**From** Charlie Kratovil <opra+request-71715-7cb956f1@requests.opramachine.com>

**Date** Fri 2/7/2025 3:56 PM

**To** Kim Macellaro <kmacellaro@ewingnj.org>

[You don't often get email from opra+request-71715-7cb956f1@requests.opramachine.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification> ]

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear Ewing Township,

Please accept this electronic request for public records made under OPRA and the common law right of access. I am not required to fill out an official form or use a particular software platform to submit my request per NJSA 47:1A-5(f), which states that an email from a requestor including all of the information required on the adopted form shall suffice in place of a completed form as a valid government record request.

I HAVE NOT been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

I WILL NOT use the requested government records for a commercial purpose.

I AM NOT seeking records in connection with a legal proceeding.

Records requested:

Please provide a copy of the binding resolution adopting the municipality's "fourth round" affordable housing obligation numbers.

My preferred delivery method for response(s) to this request is by E-mail as an attachment. Please confirm you have received this request. If you are not the custodian of records, please forward my request to that person and provide their email address to me for future reference.

Yours faithfully,



Charlie Kratovil

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Please deliver records electronically via email to the below UNIQUE address for all replies to this request:

opra+request-71715-7cb956f1@requests.opramachine.com

Is kmacellaro@ewingnj.org the wrong address for OPRA requests to Ewing Township? If so, please contact us using this form:

[https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fopramachine.com%2Fchange\\_request%2Fnew%3Fbody%3Dewing\\_township&data=05%7C02%7Ckmacellaro%40ewingnj.org%7C5dd3535139354c5dd78708dd47b9e01b%7Cc04669056507453d92197b6952b5dd80%7C0%7C0%7C638745585961359510%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMilslkFOljo1TWVpbGlzIldUljoyfQ%3D%3D%7C40000%7C%7C%7C&sdata=yBuPn39eoJTGdnnAtr1T3fDasq5X2erTtR0GzsfazT0%3D&reserved=0](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fopramachine.com%2Fchange_request%2Fnew%3Fbody%3Dewing_township&data=05%7C02%7Ckmacellaro%40ewingnj.org%7C5dd3535139354c5dd78708dd47b9e01b%7Cc04669056507453d92197b6952b5dd80%7C0%7C0%7C638745585961359510%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMilslkFOljo1TWVpbGlzIldUljoyfQ%3D%3D%7C40000%7C%7C%7C&sdata=yBuPn39eoJTGdnnAtr1T3fDasq5X2erTtR0GzsfazT0%3D&reserved=0)

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<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fopramachine.com%2Fhelp%2Fofficers&data=05%7C02%7Ckmacellaro%40ewingnj.org%7C5dd3535139354c5dd78708dd47b9e01b%7Cc04669056507453d92197b6952b5dd80%7C0%7C0%7C638745585961382225%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMilslkFOljo1TWVpbGlzIldUljoyfQ%3D%3D%7C40000%7C%7C%7C&sdata=5tMUXCedltr%2FSe7l%2BZSBlqEC7fBR%2FGyULWgWjhNfot4%3D&reserved=0>

View this OPRA request & responses online:

[https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fopramachine.com%2Frequest%2Faffordable\\_housing\\_obligation\\_17&data=05%7C02%7Ckmace%40ewingnj.org%7C5dd3535139354c5dd78708dd47b9e01b%7Cc04669056507453d92197b6952b5dd80%7C0%7C0%7C638745585961393906%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMilslkFOljo1TWVpbGlzIldUljoyfQ%3D%3D%7C40000%7C%7C%7C&sdata=N%2FWJezqa7t8%2FAQrtJL7ApbrOvtNlnaH17Q1BdOcdSMU%3D&reserved=0](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fopramachine.com%2Frequest%2Faffordable_housing_obligation_17&data=05%7C02%7Ckmace%40ewingnj.org%7C5dd3535139354c5dd78708dd47b9e01b%7Cc04669056507453d92197b6952b5dd80%7C0%7C0%7C638745585961393906%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMilslkFOljo1TWVpbGlzIldUljoyfQ%3D%3D%7C40000%7C%7C%7C&sdata=N%2FWJezqa7t8%2FAQrtJL7ApbrOvtNlnaH17Q1BdOcdSMU%3D&reserved=0)

Please note that in some cases publication of requests and responses will be delayed.

If you find this service useful as an OPRA custodian, please ask your web manager to link to us from your organisation's website.

"OPRAmachine's mission is to give people easy and affordable access to New Jersey public records.

For more information, contact us at: (732) 707-1628 or PO Box 3180, New Brunswick, NJ 08903."

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**A RESOLUTION OF THE TOWNSHIP OF EWING CONFIRMING THE FOURTH ROUND OF AFFORDABLE HOUSING OBLIGATIONS PURSUANT TO P.L. 2024, c. 2 AND FAIR SHARE HOUSING ACT, N.J.S.A. 52:27D-302**

**Resolution #25R-38** WHEREAS, on March 20, 2024, Governor Murphy signed *P.L. 2024, c.2.* into law, amending the Fair Housing Act (hereinafter “Amended FHA”) and establishing a new framework for determining and enforcing municipalities’ affordable housing obligations under the New Jersey Supreme Court’s Mount Laurel doctrine; and

WHEREAS, the Amended FHA requires that the New Jersey Department of Community Affairs (“DCA”) perform a calculation of regional need, and municipal present and prospective affordable housing needs, in accordance with the formulas established in the law; and

WHEREAS, on October 18, 2024, the DCA released its “Affordable Housing Obligations For 2025-2035 (Fourth Round)” report (“DCA Report”), establishing the Fourth Round (2025-2035) fair share methodology and estimating non-binding calculations of low- and moderate-income housing obligations for New Jersey’s 564 municipalities; and

WHEREAS, the calculation and obligations for each municipality are presented in an Appendix at the end of the report; and

WHEREAS, the DCA report calculates the Township of Ewing’s Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 99 units and a Prospective Need or New Construction Obligation for Round 4 of 319 units; and

WHEREAS, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support a lower fair share calculation; and

**WHEREAS**, *P.L. 2024, c.2* further permits the Township of Ewing to diverge from the DCA's calculations in determining its obligations, in case local factors exist that make the calculations unreasonable, so long as the Township of Ewing adheres to the methodology set forth in *P.L. 2024, c.2*; and

**WHEREAS**, per *P.L. 2024, c.2*, in order for Township of Ewing to maintain immunity from exclusionary zoning litigation, it must determine its municipal present and prospective obligations in accordance with the formulas established in sections 6 and 7 of the law by binding resolution no later than January 31, 2025; and

**WHEREAS**, based on a review of the DCA Report and findings made by the Township Affordable Housing Planner, Chuck Latini, PP, AICP, of L&G Planning, LLC (the "Township Planner"), it is recommended that the Township Council adopt a binding resolution accepting the Present Need obligation of 99 units; and

**WHEREAS**, based on a review of the DCA Report and findings made by the Township Planner, it is recommended that the Township Council adopt a binding resolution determining an adjusted municipal Prospective Need obligation of 201 units, based on a recalculation of the Land Capacity Allocation Factor to account for DCA's methodological limitations; and

**WHEREAS**, the Township Planner has reviewed the Land Capacity Allocation Factor and has adjusted same from 331.4 developable acres to 40.7 developable acres, by removing the following land which was included as developable land in the DCA's calculation:

- (1) Land encumbered by environmental restrictions, such as wetland and flood plain;
- (2) Properties such as NJDOT, DOC, and State Police-owned parcels in operation;
- (3) Preserved land such as:
  - a. Open space/parkland properties with deed restrictions and/or on Recreation and Open Space Inventory (ROSI);
  - b. State Farmland or Open Space Preservation;
- (4) County-owned flight hazard areas as part of the Trenton Mercer Airport;

**WHEREAS**, upon updating and correcting the Land Capacity Allocation Factor, the Township's Prospective Need is 201 units, based on the approved Fourth Round Methodology; and

**WHEREAS**, 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 Act"; and

**WHEREAS**, the Township's calculation of need is entitled to a "presumption of validity" because it complies with Sections 6 and 7 of the Act; and

**WHEREAS**, within 48 hours of adoption of this resolution, the Clerk of the Township of Ewing shall file this resolution on its official website and with the Affordable Housing Dispute Resolution Program; and

**WHEREAS**, in addition to the above, the Acting Administrative Director of the Courts issued Directive #14-24, dated December 13, 2024; and

**WHEREAS**, pursuant to the Directive #14-24, a municipality seeking a certification in compliance with the FHA shall file an action in the form of a declaratory judgment complaint in the county in which the municipality is located within 48 hours after the adoption of the municipal resolution of the fair share obligations, or by February 3, 2025, whichever is sooner; and

**WHEREAS**, the Township of Ewing seeks a certification of compliance with the FHA and, therefore, directs its Affordable Housing Counsel to file a declaratory relief action within 48 hours of the adoption of this resolution in Mercer County.

**NOW, THEREFORE, BE IT RESOLVED** on this 28<sup>th</sup> day of January, 2025, by the Township Council of the Township of Ewing in the County of Mercer, and the State of New Jersey that, pursuant to *P.L.2024, c.2*:

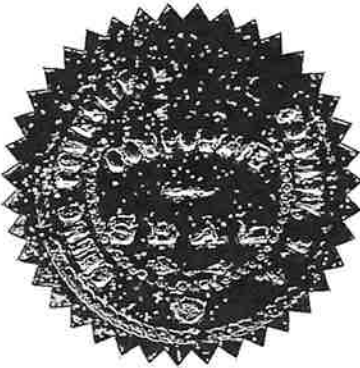
1. All of the Whereas Clauses set forth above are incorporated into the operative clauses of this resolution.
2. The Township Council of the Township of Ewing hereby accepts a Present Need obligation of 99 units and a Prospective Need obligation of 201 units as its Fourth Round (2025-2035) affordable housing obligation pursuant to P.L. 2024 c.2 and the Fair Housing Act, N.J.S.A. 52:27D-302 et. seq. These findings are to be documented in the Township of Ewing's housing element and fair share plan.
3. The Township Council of the Township of Ewing hereby directs its Affordable Housing Counsel to file a declaratory judgment attaching this resolution in Mercer County within 48 hours after adopting this resolution.
4. The Township of Ewing reserves its right to adjust its Fourth Round Affordable Housing obligation subject to any vacant land adjustments and other amendments as may be provided for by law.

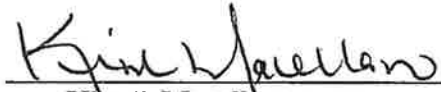
5. This resolution shall be posted on the Township's official website and with the Affordable Housing Dispute Resolution Program within 48 hours of adoption.
6. This resolution shall take effect immediately, according to law.

**IT IS SO RESOLVED.**

**Certification:**

**I, Kim J. Macellaro, Municipal Clerk of the Township of Ewing, hereby certify that the above is a true copy of a Resolution adopted by the Governing Body of the Township of Ewing at a Regular Meeting of the Municipal Council of the Township of Ewing, County of Mercer, State of New Jersey held on the 28<sup>th</sup> day of January 2025.**



  
Kim J. Macellaro, CMC  
Municipal Clerk





## EWING TOWNSHIP PLANNING & ZONING

MUNICIPAL COMPLEX

2 JAKE GARZIO DRIVE, EWING, NJ 08628

(609) 883-2900 Ext 7676

FAX (609) 406-1384

MEMO:

### FOURTH ROUND OF AFFORDABLE HOUSING OBLIGATIONS

To: Ewing Township Mayor Bert Steinmann

Ewing Township Council - President Jennifer Keyes Maloney

From: Township Planner Charles Latini, PP/AICP

cc: Township Attorney Maeve Cannon Esquire  
Special Affordable Housing Counsel Michael W. Herbert, Esquire  
Township Administrator Aaron Watson

Utilizing the **NJDCA Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background** and associated workbook provided to municipalities, we performed a cursory analysis of the land capacity factor to find 290.7059 acres of 331.484 acres of property identified through the DEP Land Use/Land Cover dataset as developable, to be land encumbered by wetlands or state property such DOT, DOC, and State Police, and/or under restriction such as preserved land and County-owned flight hazard areas as part of the Trenton Mercer Airport. Some parcels were also identified as undevelopable by size, zoning, orientation, or some combination thereof.

All told, this bring the Township's Land Capacity Factor in the methodology workbook to 0.37% (down from 2.9%) which, all else being equal to the NJDCA calculation, brings the Township's Prospective Need to provide new affordable housing units to **201** (from 319). Our obligation for Rehabilitation remains at 99.

While there may be additional adjustments the Township may be able to make based on valuation, we believe this to be a credible and achievable obligation to pursue in the Fourth Round regardless. Should Ms Mustafa and Ms Veyberman wish to take a look from the economic data in the workbook, please let us know and Mr Herbert and I will make ourselves available to discuss how their findings may or may not influence further this number.

The data can be found at [https://www.nj.gov/dca/dlps/4th\\_Round\\_Numbers.shtml](https://www.nj.gov/dca/dlps/4th_Round_Numbers.shtml)

Notwithstanding additional adjustments, the Township's ability to provide another 201 housing units is attainable. Given the townships track record providing affordable housing and the number of units currently on the books, and/or currently in the construction pipeline, we feel this is fair request for downward adjustment.

To support the adjustment to the Land Capacity Factor of the Affordable Housing Methodology utilized to determine each communities obligations, we performed the following analysis;

1. GIS and Tax Data Review

- A detailed review of Ewing Township's records to confirm the status of parcels classified as "developable" in the NJDCA dataset;

*Land Capacity Analysis for P.L. 2024, c.2*

*Vacant and Developable land analysis by Housing and Weighting regions used to inform the guidance provided to New Jersey Municipalities regarding non-binding 2025-2035 municipal affordable housing production targets. These layers are a combination of lands deemed developable by the DEP Land Use/Land Cover dataset, as constrained by tax parcel-based MOD-IV data, environmentally sensitive areas and preserved open space, parkland and farmland. Feature Layer (hosted) by NJDCA. GIS Last Modified: November 22, 2024*

- This was then be cross-referenced with GIS datasets to confirm parcel sizes and boundaries.

2. Environmental and Regulatory Exclusions

- Wetlands, floodplains, and steep slopes are identified and excluded using NJDEP GIS layers, FEMA floodplain maps, and topographical data.
- Additional regulatory exclusions include preserved farmland and parcels with easements or deed restrictions such as FAA encumbered lands.

3. Practical Constraints

- Smaller or irregularly shaped parcels, those without adequate access, or adjacent to incompatible land uses are also excluded.

The remaining acreage after applying all these constraints for affordable housing development is 40.7781 acres. The attached map represents the parcels in question.

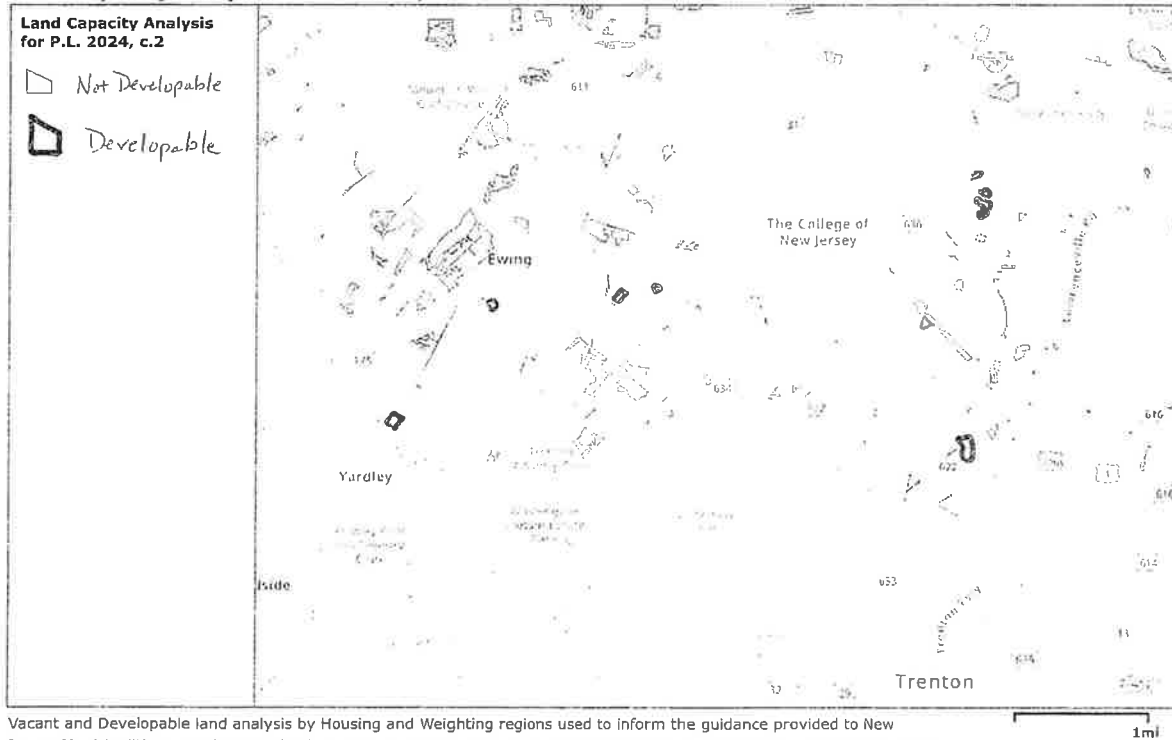
The Township has made great strides toward ensuring affordable is available in Ewing Township. Our efforts are well documented and this Mayor and Council is certainly to be commended for this.

Sincerely,



Charles Latini, PP/AICP

## Land Capacity Analysis for P.L. 2024, c.2



Vacant and Developable land analysis by Housing and Weighting regions used to inform the guidance provided to New Jersey Municipalities regarding non-binding 2025-2035 municipal affordable housing production targets. These layers are a combination of lands deemed developable by the DEP Land Use/Land Cover dataset, as constrained by tax parcel-based MOD-IV data, environmentally sensitive areas and preserved open space, parkland and farmland.

Esri, NASA, NGA, USGS, FEMA | Bucks County, PA, [data.pa.gov](https://data.pa.gov), New Jersey Office of GIS, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS

<https://gisfor.maps.arcgis.com/home/webview/print.html>



## Client Memorandum

**Date:** January 7, 2025  
**To:** Charles W. Latini, PP, AICP - L&G Planning  
**From:** Michael W. Herbert, Esq.  
**Subject:** Guidance on Implementing New Affordable Housing Legislation *P.L. 2024, c. 2*

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### I. Determining Fair Share Housing Obligation

As your municipality is aware, on October 18, 2024, the New Jersey Department of Community Affairs (“DCA”) issued its report, *Affordable Housing Obligations for 2025–2035 (Fourth Round)*, outlining the methodology and calculations for determining low- and moderate-income housing obligations across New Jersey’s 564 municipalities. The DCA’s calculation of affordable housing needs is nonbinding so it provides municipalities with flexibility in determining their specific obligations. Per the calculations, **Ewing Township has a present need of 99 units and a prospective need of 319 units, for a total of 418 units.**

Under the new affordable housing law, *P.L. 2024, c. 2*, municipalities seeking to preserve immunity from exclusionary zoning litigation must establish their current and future affordable housing obligations, by binding resolution, using the formulas provided in Sections 6 and 7 of the law. **This resolution must be adopted no later than January 31, 2025.** The new law permits municipalities **to diverge** from the DCA’s calculations in determining its obligations, in case local factors exist that make the calculations unreasonable, so long as a municipality adheres to the methodology set forth in *P.L. 2024, c. 2*. Our office has prepared two sample resolutions for determining a municipality’s present and prospective fair share obligations, which we have attached for your governing body’s review and adoption. The first resolution accepts the figures provided by the DCA, while the second resolution formalizes the number the municipality believes to be accurate, based on the municipal planner’s review.

Any adjustments to the DCA’s projected housing needs must be reflected in your municipality’s resolution. Within 48 hours of adopting this resolution, your municipality is required to file it both on its official website and with the **Affordable Housing Dispute Resolution Program** (the “Program”). Meeting the January 31 deadline will secure a presumption of validity for your municipality’s determination of its housing obligation, effective March 1, 2025.

Additionally, *P.L. 2024, c. 2* created a new process for municipalities to come into constitutional compliance with their affordable housing obligations under the Fair Housing Act (“FHA”). The new law abolished the Council on Affordable Housing (“COAH”) and established the Affordable Housing Dispute Resolution Program (the “Program”) within **the Judiciary** for the purpose of resolving disputes associated with the FHA. The program will include current or retired judges,

along with other qualified experts, and may hire special masters or staff to assist in making determinations and resolving disputes. A Superior Court judge in each vicinage will serve as the county-level housing judge, responsible for resolving disputes related to the compliance of fair share plans and housing elements, as well as ongoing compliance issues.

A municipality seeking a certification of compliance with the FHA must file an action in the form of a **declaratory judgment complaint** in a municipality's specific Superior Court vicinage via eCourts. This action must be filed **within 48 hours after adoption of the municipal resolution of fair share obligations**, or **by February 3, 2025**, whichever is sooner. A copy of the municipal resolution determining the affordable housing obligation must be included with the filing.

Interested parties must file a challenge to the municipality's calculation of its fair share obligation **no later than February 28, 2025**. The challenge is required to be filed **by way of an answer to the declaratory judgment action**, which must state how the municipal calculation fails to comply with N.J.S.A. 52:27D-304.2 and 304.3. The challenge must also include the challenger's own calculation of the fair share obligations. Any challenge after the February 28, 2025 statutory deadline will not be considered by the Program and will be referred to the vicinage's designated judge for dismissal.

If the challenge is filed on a timely basis, a settlement conference will likely take place between the municipality, interested parties, and a special adjudicator appointed by the Judiciary. This settlement conference must be a bona fide effort on the part of all to reach a settlement. If a settlement agreement is reached, the terms shall be reduced to writing and the case shall be referred to the appropriate judge in a municipality's specific Superior Court vicinage for review and entry of an order on fair share obligations. Upon entry of an order on the fair share obligations, the municipality shall proceed to adopt its Housing Element and Fair Share Plan.

Following a settlement conference, the Program will either issue an order on the municipality's fair share obligations, or, if the case does not resolve during the conference, **schedule a session** with the municipality, interested parties, and a special adjudicator. At the conclusion of this session, the Program will issue a decision **within 10 days, or by the statutory deadline of March 31, 2025, whichever occurs first**. Within 5 days of the Program's decision, it will be referred to the municipality's vicinage's housing judge for an entry of an order accepting, rejecting, or accepting in part/rejecting in part the Program's decision, thereby establishing the municipality's fair share obligation. Appeals of this order may be filed.

## II. Housing Element and Fair Share Plan

After the entry of an order determining present and prospective fair share obligations, the municipality must file its adopted housing element and fair share plan ("HEFSP") with the Program, **within 48 hours after adoption or by June 30, 2025, whichever is sooner**. This plan must include the required elements set forth by the Program (See Required Elements of Housing Element and Fair Share Plan, attached hereto). A municipality may apply prior to the expiration of the deadline to the vicinage's housing judge for a grace period pursuant to N.J.S.A. 52:27D-313.

A similar process is followed for any challenges to the municipality's HEFSP. Interested parties may file a challenge by **August 31, 2025**. Any challenge after the statutory deadline will not be considered by the Program and will be referred to the vicinage's designated judge for dismissal. Afterwards, a settlement conference will likely take place between a municipality, interested parties, and a special adjudicator appointed by the Judiciary. If a settlement agreement is reached, the terms shall be reduced to writing and the case shall be referred to the appropriate judge in a municipality's specific Superior Court vicinage for review and entry of certification of compliance.

Following a settlement conference, the Program will either issue a certification of compliance of the municipality's fair share obligations, or, if the case does not resolve during the conference, **schedule a session** with the municipality, interested parties, and a special adjudicator. At the conclusion of the session, the Program will issue a decision **within 10 days, or by the statutory deadline of December 31, 2025, whichever occurs first**. Within 5 days of the Program's decision, it will be referred to the municipality's vicinage's housing judge for an entry of an order accepting, rejecting, or accepting in part/rejecting in part the Program's decision on the HEFSP and Certificate of Compliance. Appeals of this order may be filed.

### III. Affordable Housing Monitoring System ("AHMS")

Further, per *P.L. 2024, c.2*, the DCA is charged with reporting on affordable housing data annually in accordance with the FHA. To do so, municipalities must provide periodic reporting of residential and non-residential development fees, as well as Affordable Housing Trust Fund data, to the DCA.

To facilitate this reporting, the DCA developed a new online reporting system that replaced the COAH Tracking & Monitoring (CTM) reporting system, previously used by COAH. The new system, the **Affordable Housing Monitoring System** ("AHMS"), is designed for use by municipal officials, administrative agents, and other municipally authorized users to enter data on affordable housing unit completions, as well as trust fund revenues and expenditures. The link to AHMS can be found here: [https://ahms.dca.nj.gov/NJDCA\\_FHS\\_LIVE/Default.aspx](https://ahms.dca.nj.gov/NJDCA_FHS_LIVE/Default.aspx)

Please ensure your municipality registers, or has registered, an account with AHMS. Municipalities only need to register once, only one email address per person is allowed. Failure to enter and reconcile the information into AHMS could subject your municipality to forfeiture of trust funds.

The recent amendments to the FHA require that every town appoint a Municipal Housing Liaison ("MHL") to report on affordable housing activity and submit the required data. Please ensure that your municipality appoints, or has appointed, a MHL and notify the DCA by way of resolution. Afterward, email the MHL's name and contact information to [ahms@dca.nj.gov](mailto:ahms@dca.nj.gov). As the February 15, 2025 deadline for reporting on all projects, units and trust fund information approaches, the DCA may contact your municipality's MHL.

### IV. Challenge to the New Affordable Housing Law

This correspondence serves to provide an update on the recently filed litigation contesting the Fourth-Round rules governing affordable housing obligations. On September 9, 2024, nine municipalities - Montvale, Denville, Florham Park, Hillsdale, Mannington, Millburn, Montville, Old Tappan, and Totowa – initiated a lawsuit in the New Jersey Superior Court challenging the fourth-round rules and the underlying legislation, *P.L. 2024, c. 2*. Subsequently, twelve additional municipalities later joined the litigation including Allendale, Westwood, Hanover, Wyckoff, Wharton, Mendham, Oradell, Closter, West Amwell, Washington, Norwood, Parsippany-Troy Hills, and Franklin Lakes. The municipalities assert various constitutional and legal challenges to the Fourth Round affordable housing law. Later, on October 29, 2024, they filed a motion seeking a preliminary injunction to stay enforcement of *P.L. 2024, c. 2*, pending the Court’s final judgment. If granted, this injunction would temporarily pause the obligations established under the legislation. New Jersey Superior Court Judge Robert Lougy held a virtual hearing for oral arguments on December 20, 2025. On January 2, 2025, Judge Lougy denied the motion for an injunction to halt the requirement for municipalities to declare their affordable housing numbers. He will decide on January 31, 2025, whether to dismiss the litigation, noting a balancing of the equities appears to favor the State.

This office has little confidence in the merits of the litigation and does not believe it will succeed in halting the affordable housing law. Typically, where the state legislature enacts legislation meant for the public good, based upon previous court rulings, the court is loath to disturb it. Accordingly, we recommend that your municipality proceed with compliance efforts to meet the statutory deadlines under *P.L. 2024, c. 2*.

#### V. NJILGA Proposed Fair Housing Act Amendment

Lastly, this is to inform you that the New Jersey Institute of Local Government Attorneys (“NJILGA”) has proposed legislation to amend the FHA, revising how fair share housing obligations are calculated for New Jersey municipalities in the Fourth Round. This amendment would base obligations on certificates of occupancy for new dwelling units, replacing the formulas and criteria established under *P.L. 2024, c. 2*. This change would significantly reduce the statewide affordable housing requirement. To facilitate municipal support for this initiative, NJILGA has prepared a model resolution that municipalities may adopt to endorse the proposed amendment. However, we again do not believe there will be success here. The legislature has already engaged with the municipalities with regard to the previous legislation, and most likely will not re-engage here. In speaking with key legislators, it is their belief that legislation regarding affordable housing is at an end.

## **REQUIRED ELEMENTS OF HOUSING ELEMENT AND FAIR SHARE PLAN**

A. The Housing Element and Fair Share Plan (HEFSP) will need to be prepared to reflect all of the terms of the applicable settlement agreement and to meet all of the statutory requirements for such documents as well as the following:

1. One of the requirements for a final HEFSP is the inclusion of detailed site suitability analyses, based on the best available data, for each of the un-built inclusionary or 100 percent affordable housing sites in the plan as well as an identification of each of the sites that were proposed for such development and rejected, along with the reasons for such rejection.
2. The concept plan for the development of each of the selected sites should be overlaid on the most up to date environmental constraints map for that site as part of its analysis. When the detailed analyses are completed, the municipality can see what changes will be needed (either to the selected sites or to their zoning) to ensure that all of the units required by the settlement agreement will actually be produced. If it becomes apparent that one (or more) of the sites in the plan does not have the capacity to accommodate all of the development proposed for it, the burden will be on the municipality either to adjust its zoning regulations (height, setbacks, etc.) so that the site will be able to yield the number of units and affordable units anticipated by the settlement agreement or to find other mechanisms or other sites as needed to address the likelihood of a shortfall.
3. The final HEFSP must fully document the creditworthiness of all of the existing affordable housing units in its HEFSP and to demonstrate that it has followed all of the applicable requirements for extending



expiring controls, including confirmation that all of the units on which the controls have been extended are code-compliant or have been rehabilitated to code-compliance, and that all extended controls cover a full 30-year period beginning with the end of the original control period. Documentation as to the start dates and lengths of affordability controls applicable to these units and applicable Affordable Housing Agreements and/or deed restrictions is also required. Additionally, the income and bedroom distributions and continued creditworthiness of all other existing affordable units in the HEFSP must be provided.

4. The HEFSP must include an analysis of how the HEFSP complies with or will comply with all of the terms of the executed settlement agreement.

Once the HEFSP has been prepared, it must be reviewed by Fair Share Housing Center and the Program's Special Adjudicator for compliance with the terms of the executed settlement agreement, the Fair Housing Act (FHA) and Uniform Housing Affordability Controls (UHAC) regulations. The HEFSP must be adopted by the Planning Board and the implementation components of the HEFSP must be adopted by the governing body.

B. The HEFSP must also include (in an Appendix) all of the adopted ordinances and resolutions needed to implement the HEFSP, including:

1. All zoning amendments (or redevelopment plans, if applicable).
2. An Affordable Housing Ordinance that includes, among other required regulations, its applicability to 100 percent affordable and tax credit projects, the monitoring and any reporting requirements set forth in the settlement

agreement, requirements regarding very low income housing and very low income affordability consistent with the FHA and the settlement agreement, provisions for calculating annual increases in income levels and sales prices and rent levels, and a clarification regarding the minimum length of the affordability controls (at least 30 years, until the municipality takes action to release the controls).

3. The adoption of the mandatory set aside ordinance, if any, and the repeal of the existing growth share provisions of the code.
4. An executed and updated Development Fee Ordinance that reflects the court's jurisdiction.
5. An Affirmative Marketing Plan adopted by resolution that contains specific directive to be followed by the Administrative Agent in affirmatively marketing affordable housing units, with an updated COAH form appended to the Affirmative Marketing Plan, and with both documents specifically reflecting the direct notification requirements set forth in the settlement agreement.
6. An updated and adopted Spending Plan indicating how the municipality intends to allocate development fees and other funds, and detailing (in mini manuals) how the municipality proposes to expend funds for affordability assistance, especially those funds earmarked for very low income affordability assistance.
7. A resolution of intent to fund any shortfall in the costs of the municipality's municipally sponsored affordable housing developments as well as its rehabilitation program, including by bonding if necessary.

8. Copies of the resolution(s) and/or contract(s) appointing one or more Administrative Agent(s) and of the adopted ordinance creating the position of, and resolution appointing, the Municipal Affordable Housing Liaison.
9. A resolution from the Planning Board adopting the HEFSP, and, if a final Judgment is sought before all of the implementing ordinances and resolutions can be adopted, a resolution of the governing body endorsing the HEFSP.

C. Consistent with N.J.A.C. 5: 93-5.5, any municipally sponsored 100 percent affordable housing development will be required to be shovel-ready within two (2) years of the deadlines set forth in the settlement agreement:

1. The municipality will be required to submit the identity of the project sponsor, a detailed pro forma of project costs, and documentation of available funding to the municipality and/or project sponsor, including any pending applications for funding, and a commitment to provide a stable alternative source, in the form of a resolution of intent to fund shortfall, including by bonding, if necessary, in the event that a pending application for outside funding has not yet been not approved.
2. Additionally, a construction schedule or timetable must be submitted setting forth each step in the development process, including preparation and approval of a site plan, applications for state and federal permits, selection of a contractor, and start of construction, such that construction can begin within two (2) years of the deadline set forth in the settlement agreement.



Outlook

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**Re: Affordable Housing resolution and Planning Report**

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From Kim Macellaro &lt;kmacellaro@ewingnj.org&gt;

Date Thu 1/30/2025 4:26 PM

To CWL &lt;cwl@latinigleitz.com&gt;; Cannon, Maeve E. &lt;meca@stevenslee.com&gt;

Cc Susan Bate &lt;sbate@ewingnj.org&gt;; Michael W. Herbert &lt;mherbert@parkermccay.com&gt;

1 attachment (211 KB)

4th round affordable housing \_001.pdf;

Good afternoon ~

Attached is the fourth round of affordable housing obligations resolution that was adopted at the Tuesday, January 28th, 2025 council meeting.

Please let me know if I can be of further assistance.

Best,  
Kim

*Kim Macellaro, RMC, CMC  
Ewing Municipal Clerk  
2 Jake Garzio Drive  
Ewing, New Jersey 08628  
Work: (609)538-7609  
Fax: (609)771-0480*

**Thank you for contacting Ewing Township. Please note that our office hours are 8:30 a.m. - 4:00 p.m. and the building is locked from 12:00 p.m. to 1:00 p.m.  
Be safe and healthy!**

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**From:** Charles Latini Jr <cwl@latinigleitz.com>**Sent:** Thursday, January 23, 2025 1:52 PM**To:** Cannon, Maeve E. <meca@stevenslee.com>**Cc:** Susan Bate <sbate@ewingnj.org>; Kim Macellaro <kmacellaro@ewingnj.org>; Michael W. Herbert <mherbert@parkermccay.com>**Subject:** Re: Affordable Housing resolution and Planning Report

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Sorry, these are the documents.

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