

**BOROUGH OF WOODLAND PARK
PASSAIC COUNTY, NEW JERSEY
RESOLUTION R25-055**

**MOTIONED BY: Council President Sica
SECONDED BY: Councilman DeCesare**

**RESOLUTION OF THE BOROUGH OF WOODLAND PARK
COMMITTING TO ROUND 4 PRESENT AND PROSPECTIVE NEED
AFFORDABLE HOUSING OBLIGATIONS**

WHEREAS, on March 20, 2024, Governor Murphy signed into law an Amendment to the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) (hereinafter “A4” or “Amended FHA”); and

WHEREAS, A4 calculates the size of the regional affordable housing need as follows “projected household change for the ten-year time parameter of 2025 to 2035 in this region shall be estimated by establishing the household change experienced in the region between the most recent federal decennial census, and the second-most recent federal decennial census. This household change, if positive, shall be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region, and to determine the regional prospective need for this relevant ten-year time parameter of low- and moderate-income housing obligations...”; and

WHEREAS, this means that the regional need equates to 40% of regional household growth; and

WHEREAS, the 1985 version of the Fair Housing Act and A4 both prohibit a result that would compel a municipality to spend its own money on compliance; and

WHEREAS, the theory which permits a municipality to meet its obligations without municipal subsidy is zoning for “inclusionary zoning”; and

WHEREAS, inclusionary zoning most typically requires a 15% or 20% set aside; and

WHEREAS, it is not clear how a regional need predicated upon 40% of anticipated growth can be met with 15-20% set asides and without municipal subsidy; and

WHEREAS, this is exacerbated by the fact that certain other municipalities in the region have an allocation of 0% of the prospective need (new construction obligation), irrespective of the growth in that particular municipality; and

WHEREAS, A4 yields a statewide new construction obligation of over 8,400 affordable units per year; and

WHEREAS, this is a substantially higher annual number than was imposed by COAH in the “Prior Round” or any iteration of its Round 3 regulations; and

WHEREAS, A4 determines the size of the regional need, but does not calculate allocation of the need to individual municipalities; and

WHEREAS, instead, A4 requires the Department of Community Affairs (“DCA”) to produce non-binding estimates of fair share obligations on or before October 20, 2024; and

WHEREAS, the DCA issued a report on October 18, 2024 (“DCA Report”) wherein it reported its estimate of the obligation for all municipalities based upon its interpretation of the standards in A4; and

WHEREAS, the DCA Report calculates the Borough of Woodland Park’s Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 153 units and a Prospective Need or New Construction Obligation of 346 units; and

WHEREAS, A4 provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that A4 would support lower calculations of Round 4 affordable housing obligations; and

WHEREAS, the Borough of Woodland Park accepts the conclusions in the DCA Report, except regarding the land capacity allocation factor; and

WHEREAS, as to the **Land Capacity Allocation Factor**, the Borough of Woodland Park 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 of Woodland Park 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 an 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 DCA maintains that the areas the DCA identified as developable are indeed overinclusive and, consequently, the Borough's Affordable Housing Planner, has prepared a report, demonstrating that the DCA's calculations are inaccurate and do not reflect the true dynamics of this Borough; and

WHEREAS, correcting the **Land Capacity Allocation Factor** results in the Borough's Round 4 Prospective Need Obligation being 211 units rather than the 346 units the DCA calculated; and

WHEREAS, Section 3 of A4 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 A4; and

WHEREAS, the Borough's calculation of need is entitled to a "presumption of validity" because it complies with Sections 6 and 7 of A4; and

WHEREAS, A4 further provides that "all parties shall be entitled to rely upon regulations on municipal credits, adjustments and compliance mechanisms adopted by the Council on Affordable Housing ("COAH") unless those regulations are contradicted by statute, including P.L. 2024, c.2, or binding court decisions" (N.J.S.A. 52:27D-311(m)); and

WHEREAS, COAH regulations authorize vacant land adjustments as well as durational adjustments; and

WHEREAS, the Borough of Woodland Park specifically reserves the right to adjust the Round 4 obligations based on one or any of the foregoing adjustments: 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 Regional Master Plan and its build out, the Pinelands or Meadowlands regulations and planning document; and

WHEREAS, the Borough of Woodland Park reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

WHEREAS, the Borough of Woodland Park has agreed to be a plaintiff in the litigation captioned as Borough of Montvale v. State of New Jersey, Superior Court of New Jersey, Docket No. MER-L-1778-24 ("Litigation"), and will be added as a named party to this litigation, which among other things asserts constitutional and legal challenges to numerous provisions of A4; and

WHEREAS, the actions contained in this Resolution are taken under protest and are intended to comply with A4 while the Borough of Woodland Park continues to dispute its validity, such that the Borough of Woodland Park does not waive any legal rights or claims that it possesses relating to A4 as set forth in the lawsuit by virtue of the adoption of the instant Resolution, and the Borough of Woodland Park further reserves the right to alter its position contained in this Resolution based upon any rulings in the litigation or in any other similar proceedings by a court of competent jurisdiction; and

WHEREAS, in the event that a third party challenges the calculations provided for in this Resolution, the Borough of Woodland Park reserves the right to take such position as it deems appropriate in response thereto, including that its Round 4 Prospective Need obligation should be lower than described herein; and

WHEREAS, in light of the above, the Borough of Woodland Park Mayor and Council finds that it is in the best interest of the Borough of Woodland Park to declare its obligations in accordance with this binding Resolution, subject to the reservations set forth herein; 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, nothing in this Resolution shall be interpreted as an acknowledgment of the legal validity of the AOC Directive and the Borough of Woodland Park reserves any and all rights and remedies in relation to the AOC Directive; and

WHEREAS, the Borough of Woodland Park seeks a certification of compliance with the Act and, therefore, directs its Affordable Housing Counsel to file a declaratory relief action within 48 hours of the adoption of this Resolution; and

NOW, THEREFORE, BE IT RESOLVED, on this 29th day of January 2025, by the Mayor and Council of the Borough of Woodland Park in the County of Passaic and State of New Jersey, as follows:

1. All of the above WHEREAS sections are incorporated into the operative clauses of this Resolution;
2. The Borough of Woodland Park hereby commits to the DCA’s Round 4 Present Need Obligation of 153 units and the Round 4 Prospective Need Obligation of 211 units, as explained above and by the Borough of Woodland Park’s Affordable Housing Planner in her professional report, which is subject to revisions, and includes the following:
 - a. The right to adjust the number based on a windshield survey, lack of land, sewer, water, regional planning inputs, or any combination thereof;
 - b. As described in the WHEREAS section, all rights to revoke or amend this Resolution in the event of a successful legal challenge, or legislative change, to A4;
 - c. All rights to take any contrary position in the event of a third-party challenge to the obligations.
3. The Borough of Woodland Park authorizes its Affordable Housing Counsel to file a declaratory judgment complaint within 48 hours, or as soon as reasonably possible or required - after adoption of this Resolution.
4. The Borough of Woodland Park hereby directs that this Resolution be published on the municipal website within 48 hours of its passage, pursuant to A4, and the filing of this Resolution with the DCA and Affordable Housing Counsel will be performed by the Borough’s Attorney/Affordable Housing Counsel.
5. This Resolution shall take effect immediately, according to law.

Record of Mayor and Council Vote on Passage

	AYE	NAY	Abstain	Absent		AYE	NAY	Abstain	Absent
Chaabane	✓				Tiseo	✓			
DeCesare	✓				Torres	✓			
Gatti	✓				Mayor Kallert	✓			
Sica	✓								

This resolution was approved by the Mayor and Council of the Borough of Woodland Park at a regular scheduled meeting held on the 29th day of January, 2025. Signed and sealed before me.



Sandra Olivola, Municipal Clerk

January 29, 2025

Dated