
PART 2: FAIR SHARE PLAN

INTRODUCTION

The following Fair Share Plan ("Plan") details the Borough's Prior Round (1987-1999), Third Round (1999-2025), and Fourth Round (2025-2035) Prospective Need obligations, as well as East Newark's Fourth Round Present Need. This Plan proposes mechanisms by which the Borough can realistically provide opportunities for affordable housing for those moderate-, low-, and very low- income households.

Prior Round Obligation	2
Third Round Obligation	21
Fourth Round Prospective Need	22
Fourth Round Present Need / Rehabilitation Obligation	31

CURRENT STANDARDS

The amended Fair Housing Act includes a number of changes associated with the application of various categories of credits. The below walks through the current standards applicable to the Borough's Fourth Round obligation.

Age-Restricted Housing

A municipality may not satisfy more than 30% of the affordable units, exclusive of bonus credits, to address its prospective need affordable housing through the creation of age-restricted housing.

Transitional Housing

Transitional housing units, which will be affordable for persons of low- and moderate-income, were not previously categorized by the Fair Housing Act as a standalone housing type. The amended legislation includes such transitional housing units as a new category which may be included in the HEFSP and credited towards the fulfillment of a municipality's fair share obligations. This is limited to a maximum of 10% of the municipality's obligations, however.

Veterans Housing

Up to 50% of the affordable units in any particular project may be prioritized for low- and moderate-income veterans.

Families with Children

A minimum of 50% of a municipality's actual affordable housing units, exclusive of bonus credits, must be made available to families with children.

Rental Units

A minimum of 25% of a municipality's actual affordable housing units, exclusive of bonus credits, shall be satisfied through rental units. At least half of that number shall be available to families with children.

Low/Moderate Income Split

At least 50% of the units addressing the Borough's obligation shall be affordable to very-low income and low-income households, and the remaining may be affordable to moderate-income households.

Very-Low Income Requirement

At least 13% of the housing units made available for occupancy by low-income and moderate-income houses shall be reserved for low-income households earning 30% or less of the median income pursuant to the Fair Share Housing Act, N.J.S.A. 52:27D-301, et seq. Half of the very low-income units will be made available to families with children.

Affordability Controls

Newly created rental units shall remain affordable to low-and moderate-income households for a period of not less than 40 years, 30 years for for-sale units, and 30 years for housing units for which affordability controls are extended for a new term of affordability, provided that the minimum extension term may be limited to no less than 20 years as long as the original and extended terms, in combination, total at least 60 years.

Affirmative Marketing

The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law, to include the community and regional organizations identified in the agreement as well as the posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law.

Uniform Housing Affordability Controls (UHAC)

All affordable units created through the provisions of this Plan shall be developed in conformance with the Uniform Housing Affordability Controls (UHAC) pursuant to N.J.A.C. 5:80-26.1 et seq. as amended.

Unit Adaptability

All new construction units shall be adaptable in conformance with P.L.2005, c.250/N.J.S.A. 52:27D-311a and -311b and all other applicable laws.

Construction of the affordable units in inclusionary developments shall be phased in compliance with N.J.A.C. 5:80-26(b)4. All inclusionary developments shall be subject to the most recent version of UHAC standards.

Bonus Credits

Bonus credits shall not exceed 25% of a municipality's prospective need obligation, nor shall a municipality receive more than one type of bonus credit for any one unit. Bonus credits may be granted on the following schedule:

Unit Type	Unit Credit	Bonus Credit
Each unit of low- or moderate-income housing for individuals with special needs or permanent supportive housing, as those terms are defined in section 2 of P.L. 2004, c.70 (C.34:1B-21.24).	1	1
Each low- or moderate-income ownership unit created in partnership sponsorship with a non-profit housing developer.	1	0.5
Each unit of low- or moderate-income housing located within a one-half mile radius, or one-mile radius for projects located in a Garden State Growth Zone, as defined in section 2 of P.L.2011, c.149 (C.34:1B-243), surrounding a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations. ¹	1	0.5
A unit of age-restricted housing, provided that a bonus credit for age-restricted housing shall not be applied to more than 10 percent of the units of age-restricted housing constructed in compliance with the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency in a municipality that count towards the municipality's affordable housing obligation for any single 10-year round of affordable housing obligations.	1	0.5
A unit of low- or moderate-income housing constructed on land that is or was previously developed and utilized for retail, office, or commercial space.	1	0.5
Each existing low- or moderate-income rental housing unit for which affordability controls are extended for a new term of affordability, in compliance with the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency, and the municipality contributes funding towards the costs necessary for this preservation.	1	0.5
Each unit of low- or moderate-income housing in a 100 percent affordable housing project for which the municipality contributes toward the costs of the project. ²	1	1
Each unit of very low-income housing for families above the 13 percent of units required to be reserved for very low-income housing pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1).	1	0.5
Each unit of low- or moderate-income housing created by transforming an existing rental or ownership unit from a market rate unit to an affordable housing unit. ³	1	1

¹ The distance from the bus, rail, or ferry station to a housing unit shall be measured from the closest point on the outer perimeter of the station, including any associated park-and-ride lot, to the closest point of the housing project property.

² This contribution may consist of: (a) real property donations that enable siting and construction of the project or (b) contributions from the municipal affordable housing trust fund in support of the project, if the contribution consists of no less than three percent of the project cost.

³ A municipality may only rely on this bonus credit as part of its fair share plan and housing element if the municipality demonstrates that a commitment to follow through with this market to affordable agreement has been made and: (a) this agreement has been signed by the property owner; or (b) the municipality has obtained ownership of the property.

EAST NEWARK'S AFFORDABLE HOUSING OBLIGATIONS

The Borough's affordable housing obligations are as follows:

Prior Round Obligation	2
Third Round Obligation	21
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Fourth Round Present Need / Rehabilitation Obligation	31

REVIEW OF PREVIOUS ROUND COMPLIANCE

As part of any Housing Element and Fair Share Plan, a municipality shall include an assessment of the degree to which the municipality has met its fair share obligation from the previous rounds of affordable housing obligations as established by prior court approval or approval by COAH and determine to what extent this obligation is unfulfilled or whether the municipality has credits in excess of its previous round obligations. If a previous round obligation remains unfulfilled, or a municipality never received an approval from the court or COAH for any previous round, the municipality shall address such unfulfilled previous round obligation in its Housing Element and Fair Share Plan.

In addressing previous round obligations, the municipality shall retain any sites that, in furtherance of the previous round obligation, are the subject of a contractual agreement with a developer, or for which the developer has filed a complete application seeking subdivision or site plan approval prior to the date by which the Housing Element and Fair Share Plan are required to be submitted, and shall demonstrate how any sites that were not built in the previous rounds continue to present a realistic opportunity.

Because the Borough of East Newark has not participated in previous affordable housing rounds, this Plan will address the obligations comprehensively. There is therefore nothing to review as part of the previous rounds' compliance.

The Borough proposes to meet its combined Prior and Third Round obligation of 23 units through the development proposed at 900 Passaic Avenue in the Borough's Thread Mill District of its designated East Newark Redevelopment Area. As was the standard during the Prior and Third Rounds, the Borough will apply 6 age-restricted units, 11 non age-restricted, and 6 units of bonus credit to the Prior and Third Round obligation. Refer to the Fourth Round Obligation section of this Plan for further information about this development.

FOURTH ROUND OBLIGATION

On October 20, 2024, the New Jersey Department of Community Affairs ("DCA") released a report outlining the Fourth Round (2025-2035) Fair Share methodology and its calculations of low- and moderate-income obligations for each of the State's municipalities. The obligations were calculated in alignment with the

formulas and criteria found in P.L.2024, c.2. The DCA determined a Present Need obligation of 31 units and a Prospective Need of 22 units for the Borough of East Newark.

The amended Fair Housing Act affirms that the DCA report is not binding on any municipality and that “a municipality shall determine its present and prospective fair share obligation for affordable housing in accordance with the formulas established in sections 6 and 7 of P.L.2024, c.2...by resolution...” The 15-25 resolution adopted by the Borough determined a Rehabilitation Obligation of 31 and a Prospective Need of 22, the same as the obligations determined by the DCA. On January 30, 2025, the Borough adopted Resolution 15-25 accepting their Fourth Round Prospective Need obligation of 22 units and a Present Need obligation of 31 units.

Fourth Round Present Need / Rehabilitation Obligation

Present Need was previously determined in N.J.A.C. 5:93-1.3 to be the sum of a municipality’s indigenous need, the deficient housing units occupied by low- and moderate-income households, and the reallocated present need, which is the portion of a housing region’s present need that is redistributed throughout the housing region. Under the Second Round rules, evidence for deficient housing included: year structure was built, persons per room, plumbing facilities, kitchen facilities, heating fuel, sewer service, and water supply. (N.J.A.C. 5:92).

The Third Round Rules (N.J.A.C. 5:97-1.1 et seq.) reduced the number of criteria of evidence of deficient housing to three: pre-1960 over-crowded units, which are units that have more than 1.0 persons per room; incomplete plumbing, and incomplete kitchen facilities. (N.J.A.C. 5:97). This reduction in the number of criteria was found to be by the Appellate Division to be within the Council’s discretion and was upheld in the Supreme Court’s decision in Mount Laurel IV.

The previously discussed Mount Laurel IV decision found that the reallocated need is no longer a component in the determination of Present Need. Therefore, the Present Need now equates to indigenous need, which means the obligation is based on deficient housing as determined by pre-1960 over-crowded units, incomplete plumbing, and incomplete kitchen facilities.

The Borough intends to address its 31-unit Fourth Round Rehabilitation Obligation through the following mechanisms:

The HOME Investment Partnership Program (HOME)

The HOME Investment Partnership Program (HOME) works with communities to provide assistance in funding a wide range of affordable housing projects. The Hudson County Consortium (the “Consortium”) for the HOME Program is comprised of eleven municipalities within Hudson County including the Borough of East Newark.

Community Development Block Grant (CDBG) Program

Hudson County, along with seven of its municipalities, including East Newark, receives CDBG funds on an entitlement basis as an Urban County Consortium member. The County administers the program, which provides funding to communities, non-profits, and public agencies to help address a range of development needs, mainly involving affordable housing projects and developments.

Borough-Wide Housing Rehabilitation Program

East Newark will also establish a Borough-wide rehabilitation program which will be funded by the Affordable Housing Trust Fund, once sufficient funds are available within the account. The Borough will select a qualified administrative agent to establish and administer the rehabilitation program on East Newark's behalf. Once sufficient funds have been collected into the Trust Fund, the initiative will then be actively marketed, posted on the Borough's website, and shared through community spaces such as the East Newark Senior Center and the Community Resource Center.

Fourth Round Prospective Need Obligation

The Borough has a Fourth Round Prospective Need obligation of 22 units and proposes to meet it through the following mechanisms:

Proposed Inclusionary Development

The property at 900 Passaic Avenue is within the Thread Mill District of the Borough's Redevelopment Plan and is proposed to be redeveloped into a mixed-use campus consisting of 683 residential units as well as retail space, commercial office space, and a parking garage. The site plan was initially approved via Planning Board resolution PB15-19, which was adopted December 5, 2019 (Appendix D). It was later amended to include the addition of 67 affordable housing units via Planning Board Resolution 24-02 (Appendix D).

The Borough and redeveloper are in the process of negotiating the redevelopment agreement for the site, which will include the final breakdown of age-restricted and non age-restricted for the affordable units. As of the writing of this Plan, it is expected that 33 of the affordable units will be non age-restricted and 34 will be age-restricted, but negotiations are ongoing. As previously discussed, the Borough will apply 6 age-restricted and 11 non-age restricted to the combined Prior/Third Round obligation of 23 units.

Because the 900 Passaic Avenue project is proposed on land that was previously utilized for commercial purposes, the affordable units qualify for 0.5 bonus credit for every unit up to 25% of the Prospective Need obligation.

Borough will apply 7 units of age-restricted, 9 units of non-age restricted, and 6 bonus credits to the Fourth Round obligation.

The site meets the suitability criteria as follows:

- **Available:** The site has a clear title, free of encumbrances which preclude development for low- and moderate-income housing.
- **Approvable:** The site may be developed for low- and moderate-income housing in a manner consistent with the rules or regulations of agencies with jurisdiction over the site. The inclusionary development is permitted within the Thread Mill District, and the site plan has been approved by the Borough Planning Board.
- **Developable:** The site has access to appropriate water and sewer infrastructure as all of East Newark is within a sewer service area. As part of East Newark's urban fabric, the Thread Mill District has access to all necessary infrastructure.
- **Suitable:** The site is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4. The blocks surrounding the Thread Mill District contain a mix of commercial and residential uses that complement the proposed project. The site also has direct access onto public rights-of-way.



Borough-Wide Mandatory Affordable Set-Aside

The Borough will adopt a Borough-wide mandatory affordable set-aside ordinance that requires any development producing 5 units or more within the Borough to include a 20% set-aside for affordable housing. A draft set-aside ordinance can be found in Appendix E.

Fourth Round Summary

The inclusionary development proposed at 900 Passaic Avenue is expected to provide 67 market-rate units which is enough to cover East Newark's Prior Round, Third Round, and Fourth Round Prospective Obligations. The new Borough-wide mandatory set-aside ordinance is also expected to produce affordable housing units.

Additional Mechanisms***Affordable Housing Ordinance***

An Affordable Housing Ordinance establishing the criteria for implementing affordable housing units in conformance with the Uniform Housing Affordability Controls (UHAC) has not yet been adopted by the Borough of East Newark. While this Plan acknowledges that an amendment to the UHAC was released on an emergency basis in December 2024, those rules are set to expire in December 2025. It is also the understanding that the Housing Mortgage and Finance Agency (HMFA), the entity currently responsible for the UHAC regulations, is in the process of establishing further amendments to those rules. Because of the uncertainty with the UHAC regulations, the Borough will refrain from adopting an ordinance until such rules are finalized, acknowledging that the December 2024 UHAC rules adopted under emergency measures are the current governing regulations.

Development Fee Ordinance and Affordable Housing Trust Fund (AHTF)

East Newark will implement a development fee ordinance to collect fees from development projects and to establish an Affordable Housing Trust Fund. A draft development fee ordinance is available in Appendix F. In response to any forthcoming subsequent changes to the substantive rules, East Newark will amend its development fee ordinance if necessary to ensure it meets current standards.

A Spending Plan will be prepared in accordance with the provisions of the amended Fair Housing Act. A municipality may not spend or commit to spend any affordable housing development fees, including Statewide non-residential fees collected and deposited into the municipal affordable housing trust fund, without first obtaining the approval of the expenditure as part of its compliance certification. Such a Spending Plan will be prepared for the Borough and adopted by the Council at their June 2025 hearing. A draft version of the spending plan can be found in Appendix G.

Municipal Housing Liaison and Administrative Agent

The Borough will continue to ensure that it annually appoints an Administrative Agent to conduct monitoring activities and administer future housing affordability programs. Additionally, the Borough will

ensure that a municipal employee is designated as the Municipal Housing Liaison in accordance with the Fair Housing Act.

CONSISTENCY WITH STATE PLANNING REQUIREMENTS

State Plan

In accordance with the amended Fair Housing Act, Housing Elements and Fair Share Plans shall provide an analysis of consistency with the State Development and Redevelopment Plan (SDRP), including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.

Sites that are located in the Metropolitan Planning Area 1 or Suburban Planning Area 2 of the SDRP, or are located in an existing sewer service area, are the preferred location for municipalities to address their fair share obligation. East Newark is entirely within Planning Area 1- Metro.

The 2001 State Plan describes Planning Area 1 as "a variety of communities that range from large Urban Centers such as Newark, to 19th century towns shaped by commuter rail and post-war suburbs, such as Englewood and Cherry Hill. As the name implies, the communities in this Planning Area often have strong ties to, or are influenced by, major metropolitan centers" These communities often exhibit traits like mature settlement patterns, diminished supply of vacant land, infrastructure systems beyond or approaching their reasonable life expectancy; housing stock in need of rehabilitation; positioned for redevelopment, and the need for regionalized services.

Planning Area 1 is delineated in the 2024 Preliminary State Plan by:

- Density of more than 1,000 people per square mile.
- Existing public water and sewer systems, or physical accessibility to those systems, and access to public transit systems.
- Land area greater than one (1) square mile.
- A population of not less than 25,000 people.

A draft SDRP was approved by the New Jersey State Planning Commission December 4, 2024. This draft does not include mapping alterations. Instead, the Planning Commission is relying on municipalities to propose where Planning Areas should change. The Planning Commission has final say on whether to accept the proposed changes.

East Newark is entirely within Planning Area 1 due to its intensive urban development. Consequently, all possible housing sites in the municipality are within a Planning Area that the State Plan deems preferable for development. Affordable housing units in East Newark are co-located with job opportunities, public transit, and social service providers. Further, established municipalities like East Newark already possess the infrastructure necessary to physically support additional housing. The proposed affordable housing

development will aid in redeveloping the Borough's underutilized industrial area, which is encouraged by the State Plan.

Multigenerational Family Housing

A previous amendment to the Fair Housing Act requires "an analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20)." As of the date of this Housing Plan there have been no recommendations by the Multigenerational Family Housing Continuity Commission in which to provide an analysis.

USE OF SURPLUS CREDITS

Any surplus credits generated would be applied to any future obligation that the Borough may have. It's noted that the Borough has applied 33 out of the 67 affordable units from the proposed development at 900 Passaic Avenue. The Borough reserves the right to carry those extra units forward to future round obligations.

CONSIDERATION OF LANDS OFFERED FOR INCLUSIONARY DEVELOPMENT

During the preparation of this Fourth Round Plan, there were no developers who expressed interest in putting forth a piece of land for affordable development, nor did any property owner offer a parcel.

SUMMARY OF FAIR SHARE COMPLIANCE

Summary of East Newark's Obligations	
	Total
Prior and Third Round Obligation	23
900 Passaic Avenue	17
<i>Rental Bonus</i>	6
Fourth Round Obligation	22
900 Passaic Avenue	16
<i>Rental Bonus</i>	6
Borough-Wide Mandatory Affordable Set-Aside	TBD
Fourth Round Present Need Obligation	31
HOME	TBD
CDBG	TBD
Borough Rehabilitation Program	TBD

TBD = To Be Determined