

# 2025 FOURTH ROUND HOUSING PLAN

HOUSING ELEMENT & FAIR SHARE PLAN  
JERSEY CITY  
HUDSON COUNTY  
NEW JERSEY

ADOPTED BY THE PLANNING BOARD

JUNE 24, 2025

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Prepared in collaboration with Jersey City's Department of Housing,  
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## TABLE OF CONTENTS

Introduction & Executive Summary .....	1
Affordable Housing in New Jersey.....	2
The Compliance Process.....	6
Affordability Requirements .....	8
Overview of Compliance Requirements.....	9
Affordable Housing in Jersey City.....	10
Consideration of Lands Most Appropriate for Affordable Housing.....	11
Opportunity for Multigenerational Housing .....	12
Demographic, Housing & Employment Analysis .....	12
Affordable Housing Obligation & Satisfaction.....	12
Rehabilitation Obligation .....	13
Satisfaction of the Rehabilitation Obligation .....	13
Consistency with the State Development and Redevelopment Plan .....	14
Affordable Housing Administration & Affirmative Marketing.....	14
Affordable Housing Trust Fund .....	15

### **Appendices**

1. Existing Affordable Homes
2. Housing, Demographic & Employment Analysis



## INTRODUCTION & EXECUTIVE SUMMARY

Since the 1975 New Jersey Supreme Court decision known as “Mount Laurel I,” New Jersey municipalities have had a constitutional obligation to provide opportunities for creation of low- and moderate-income homes. This 1975 decision led to a body of case law, legislative changes and rulemaking by a state agency that, collectively, is now referred to as the “Mount Laurel Doctrine”. Through these actions, New Jersey municipalities have been assigned a specific number of affordable homes that must be created or planned for creation to have “satisfied” their constitutional obligation, referred to as their affordable housing obligation. The purpose of this Housing Element and Fair Share Plan (hereinafter the “Plan”) is to present how Jersey City will satisfy its constitutional obligation.

Jersey City is a Qualified Urban Aid municipality, as defined by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.). Municipalities with this designation are exempt from the new construction obligation which is typically the affordable housing obligation leveraged by parties pursuing a builder’s remedy. Instead, Jersey City, like other Qualified Urban Aid municipalities, is only subject to the rehabilitation obligation.

Qualified Urban Aid municipalities often do not seek approval of their Housing Element and Fair Share Plans because the risks are low that developers will sue them for more lucrative zoning. However, Jersey City has provided a great deal of affordable housing and is confident that it could easily defend itself were a developer to sue it for the right to construct a high density inclusionary project. More importantly, the City anticipates collecting over 50 million dollars in its affordable housing trust fund and can only spend that money if its Spending Plan is approved. The City wishes to spend that money to rehabilitate deteriorated units occupied by low or moderate income households and/or to generate new affordable housing.

While the State has assigned a very substantial rehabilitation obligation to the City of 3,733, the City is free to address that obligation through a rehabilitation program, credits for affordable housing previously provided or credits for affordable housing that will be provided. The Spending Plan adopted in April spells out the current plans for spending an anticipated 53 million dollars to advance the interests of low and moderate income households. However, that plan is subject to change as the City considers its options and as opportunities emerge over Round 4, which runs for 10 years: from July 1, 2025 to June 30, 2035

Affordable housing in New Jersey is defined as homes which are reserved for households with incomes not more than 80% of the region’s median income. Each affordable home, depending on the age and type of housing, must remain reserved for low and moderate income households and it is typically enforced by a deed restriction. Each affordable home is eligible for one “credit” against the obligation and certain homes are eligible for “bonus credits,” which provide more than one credit per home. In addition to providing the minimum number of credits, municipalities must ensure diversity in the home type (at least half of the homes must be available to families and the remaining may be reserved for seniors and those



with special needs), diversity in the level of affordability (very low, low and moderate income homes), and diversity in the size of affordable homes (one, two and three bedroom homes).

Participation in this process, and therefore satisfaction of the affordable housing obligation, can be achieved voluntarily or involuntarily. However, voluntary compliance is heavily incentivized. Municipalities that do not successfully participate may be vulnerable to exclusionary zoning litigation, which is defined as litigation based on alleged noncompliance with the Fair Housing Act, or the Mount Laurel doctrine, and includes builder's remedies. A builder's remedy is a litigation tool that grants a developer the right to construct what is typically a multi-family development on land that was not zoned to permit the use or the residential density desired by the developer, provided a "substantial" percentage of the homes are reserved for low and moderate income households. Jersey City seeks to avoid this possibility and has already taken substantial steps to do so.

This Plan supersedes all previously adopted housing plans and will serve as the foundation for the City's application filing with the New Jersey Affordable Housing Dispute Resolution Program and the request for a Compliance Certification.

As detailed in this Plan, the Jersey City – like all Qualified Urban Aid municipalities – has only one component of its affordable housing obligation. The new construction obligations of the first and second rounds (cumulative obligation for 1987 through 1999), third round (1999 through 2025) and the fourth round (2025 through 2035) do not apply.

Jersey City has the following affordable housing obligation:

- **Rehabilitation Obligation: 3,733**

The rehabilitation obligation can be defined as an estimate of the number of deteriorated homes existing in Jersey City that are occupied by low- and moderate-income households for the years 2025 through 2035. This component is also referred to as the "present need".

The City fully satisfies the rehabilitation obligation with the affordable homes that exist today.

Adoption of this Housing Element and Fair Share Plan and complete implementation of the strategies described above to meet the affordable housing obligation will yield a Compliance Certification and protect the City from builder's remedy litigation through July 2035, the maximum time available.

## **AFFORDABLE HOUSING IN NEW JERSEY**

In its landmark 1975 decision, now referred to as "Mount Laurel I," the NJ Supreme Court ruled that developing municipalities have a constitutional obligation to provide variety and choice of housing types affordable to low- and moderate-income households. In its 1983 "Mount Laurel II" decision, the NJ Supreme Court extended the regional fair share obligation to all municipalities with any "growth area" as designated in the State Development Guide Plan (NJDC 1978) and determined that each municipality with any growth area would have to establish its fair share obligation and provide zoning strategies to



create a realistic opportunity for fulfilment of the fair share obligation. Mount Laurel II also gave developers, under appropriate circumstances, the opportunity to secure a builder's remedy. A builder's remedy is a litigation tool that grants a developer the right to develop what is typically a multi-family development on land that was not zoned to permit the use or the residential density desired by the developer, provided a "substantial" percentage of the homes are reserved for low and moderate income households and provided that the proposed project is not clearly contrary to sound land use planning. Jersey City seeks to avoid this possibility and has already taken substantial steps to do so.

In 1985, the Legislature enacted the Fair Housing Act in response to Mount Laurel II and the cases that implemented it. The Fair Housing Act created the Council on Affordable Housing (hereinafter "COAH") as an administrative alternative to compliance in a court proceeding. The Legislature conferred "primary jurisdiction" on COAH and charged COAH with promulgating regulations to establish housing regions, to estimate the state's low- and moderate-income housing needs, set criteria and guidelines for municipalities to determine and satisfy their affordable housing obligation, and to create a process for the review and approval of appropriate housing elements and fair share plans. Approval of a municipal housing element and fair share plan by COAH culminated in a grant of "substantive certification". Certifying a municipality's affordable housing plan provided the municipality protection from builder's remedy litigation during the period which the housing element and fair share plan addresses (i.e. the round).

COAH created the criteria and guidelines for municipalities to determine and address their respective affordable housing obligation. COAH originally established a formula for determining municipal affordable housing obligation for the six-year period between 1987 and 1993 (*N.J.A.C. 5:92-1 et seq.*), which became known as the "first round." These rules established the first round rehabilitation obligation and the first round new construction obligation. In accordance with the limitations in the Fair Housing Act, COAH exempted Qualified Urban Aid municipalities from a new construction obligation in Round 1. Instead, in Round 1 and thereafter, COAH only assigned a rehabilitation obligation to Qualified Urban Aid municipalities .

The first round formula was superseded by COAH regulations in 1994 (*N.J.A.C. 5:93-1.1 et seq.*) for the second round. The second round regulations imposed an obligation on municipalities that was cumulative for Rounds 1 and 2. The second round regulations recalculated a municipality's obligations for the first round spanning 1987 to 1993; and computed an additional municipal affordable housing obligation for the second round spanning 1993 to 1999. Consistent with the first round, Qualified Urban Aid municipalities were exempted from the second round new construction obligation, instead were only assigned a rehabilitation obligation. Under regulations adopted for the third round, the obligation of municipalities to create new affordable housing for the first and second rounds was referred to as the "prior round" obligation.

On December 20, 2004, COAH's first version of the third round rules became effective some five years after the end of the second round in 1999. At that time, the third round was defined as the time from 1999 to 2014 but condensed into an affordable housing delivery period from January 1, 2004 through



January 1, 2014. The third round rules marked a significant departure from the methods utilized in COAH's earlier rounds by creating a "growth share" approach that linked the production of affordable housing to residential and non-residential development within a municipality. In contrast to the regulations in the first and second round, COAH did not determine the regions, the need for affordable housing in each region and the fair share of the regional need each municipality should bear

In In re Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super. 1, a 2007 decision, the Court invalidated key elements of the first version of the third round rules, including the growth share approach. COAH adopted revised rules on June 2, 2008 (as well as a further rule revision effective on October 20, 2008). Included in the 2008 rules was a recalculation of the cumulative first and second rounds obligation to account for updated data addressing secondary sources (filtering, demolitions, and residential conversions). Just as COAH based the first version of its round 3 obligations on a growth share approach, it took the same approach in the second iteration of its Round 3 regulations. This precipitated challenges to the second iteration of COAH's third round regulations. On October 8, 2010, the Appellate Division issued its decision, In re Adoption of N.J.A.C. 5:96 and 5:97, 416 N.J. Super. 462, with respect to the challenge to the second iteration of COAH's third round regulations. The Appellate Division upheld the COAH regulations that assigned rehabilitation and first and second rounds obligations to each municipality but invalidated the regulations by which the agency assigned housing obligations in the third round, finding that the Agency continued to utilize a growth share approach, albeit an amended approach. In each iteration of third round rules, Qualified Urban Aid municipalities continued to be exempt from being assigned a new construction obligation, instead only being assigned a rehabilitation obligation.

COAH sought a stay from the NJ Supreme Court of the deadline to issue new third round housing rules set forth by the Appellate Division. Additionally, there were various challenges to the Appellate Division's 2010 decision. On September 26, 2013, the NJ Supreme Court upheld the Appellate Court decision in In re Adoption of N.J.A.C. 5:96 and 5:97 by New Jersey Council On Affordable Housing, 215 N.J. 578 (2013), and ordered COAH to prepare adopt new Round 3 rules in five months based upon the approach it took in Rounds 1 and 2 and not growth share.

COAH proposed regulations using the same approach it took in Rounds 1 and 2 and literally thousands of comments were filed in response to the proposed regulations. However, when it came time to vote on October 20, 2014, COAH deadlocked 3-3. More importantly, COAH failed to take any steps to break the deadlock. Consequently, Fair Share Housing Center (hereinafter "FSHC") filed a motion in aid of litigant's rights with the NJ Supreme Court.

On March 10, 2015, the NJ Supreme Court decided In re Adoption of N.J.A.C. 5:96 & 5:97, 221 NJ 1, aka "Mount Laurel IV") in response to FCHC's motion. This long-awaited decision provided a new direction for how New Jersey municipalities were to comply with the constitutional requirement to provide their fair share of affordable housing. The Court declared COAH to be "moribund" and transferred the responsibility to implement the Mount Laurel doctrine back to the courts. The Supreme Court also created a new process by which a municipality could comply in court since compliance at COAH was no longer an option. The Supreme Court provided that municipalities could secure immunity in the court proceedings. The



trial judges who presided over these cases, with the assistance of an appointed Special Adjudicators t, reviewed municipal plans much in the same manner as COAH previously did.

While the NJ Supreme Court's decision set a process in motion for towns to address their third round obligations, it did not assign those obligations. Instead, the task was completed by the trial courts. However, the NJ Supreme Court did direct that the method of determining municipal affordable housing obligations were to be "similar to" the methodologies used in the first and second round rules and municipalities should rely on COAH's 1993 second round rules (*N.J.A.C. 5:93*) and certain components of COAH's 2008 regulations that were specifically), as well as the Fair Housing Act (*N.J.S.A. 52:27D – 301 et seq.*), in their preparation of third round housing elements and fair share plans.

Litigation ensued over the correct fair share formula in a case over which judge Jacobson presided. That litigation resulted in Judge Jacobson embracing a fair share formula that cut the obligations advocated by FSHC roughly in half.

FSHC, a public interest advocacy organization in New Jersey devoted exclusively to promoting the production of housing affordable to low and moderate income households, was permitted to serve as an interested party in every municipal Declaratory Judgment Action. In this role, the organization calculated municipal affordable housing obligations and offered to settle with municipalities at greatly discounted rates from the figures its expert calculated. After Judge Jacobson issued her opinion, the parties tended to use the number generated by the Jacobson formula. The settlements identified the fair share obligations and the manner in which those obligations would be satisfied. Most municipalities that filed a Declaratory Judgment Action settled with FSHC, rather than bear the risk and considerable cost of protracted litigation.

In 2008, against the backdrop of litigation over the correct Round 3 regulations between 2007 and 2014, the Legislature amended the FHA in 2008 through Legislation commonly referred to as "the Roberts Bill." This bill included the Statewide Nonresidential Development Fee Act, which required the imposition of a nonresidential development fee of 2.5 percent of equalized assessed value on all nonresidential development-regardless of whether the subject municipality was complying with its affordable housing obligations or not. The Roberts Bill also prohibited new regional contribution agreements (hereinafter "RCAs"). It also required that 13% of all new affordable homes be restricted to very low income households (30% of median income) and added a requirement that municipalities had to commit to spend development fees within four (4) years of the date of collection.

In 2013, the Legislature also amended, the Fair Housing Act (P.L. 2013, c. 6) to permit municipalities to enter into an agreement with a developer or development owner to provide a preference for veterans who served in time of war or other emergency to occupy up to 50% of the affordable homes in a particular development. The preference is applicable to the first 90 of the 120 days of initial marketing and thereafter may on a special waiting list for future available affordable homes in the development. These amendments to the Fair Housing Act are not promulgated in any valid COAH regulations.





On March 20, 2024, Governor Murphy signed an amendment to the Fair Housing Act into law (P.L. 2024, c.2.). This amendment established a new procedure and approach to affordable housing for Round 4 and beyond. The Amendment abolished COAH and established a new process for municipalities to secure approval of their Housing Element and Fair Share Plans and to secure immunity from exclusionary zoning litigation while doing this. The Amendment created the Affordable Housing Dispute Resolution Program to try to resolve disputes over fair share obligations and plans to comply with fair share obligations amicably. The Amendment included a methodology for fair share determinations in Round 4 and beyond. The Amendment states that municipalities shall rely on rules adopted by COAH, unless contradicted by statute or binding court decisions, for municipal crediting, adjustments and compliance strategies. One notable example of contradiction is the generation of and use of bonus credits. See the sections that follow for additional information regarding this amendment to the Fair Housing Act. Notwithstanding the significant changes to the Fair Housing Act, it continued to exempt Qualified Urban Aid municipalities from a new construction obligation.

The Affordable Housing Dispute Resolution Program (hereinafter the “Program”) is a program within the judiciary made up of an odd number of Judges with a minimum of 3 and not to exceed 7. The Program, in its discretion and in accordance with Rules of Court, may consult or employ services of one or more special adjudicators or staff to assist it in rendering determinations, resolving disputes, and facilitating communication among municipalities and interested parties. The Program is responsible for reviewing municipal affordable housing obligations, housing plans, and conducting mediation. However, final determinations of compliance, disputes, and other issues, as well as Court orders may only be issued by a County-level housing judge.

In addition to changes addressing the compliance process and elimination of COAH, the amendment also revised minimum affordability controls for rental homes from 30 years to 40 years and those for extension of affordability controls from 30 years to as little as 20 years, provided the total control period is not less than 60 years. It also created new roles for the Department of Community Affairs (hereinafter “DCA”), including calculation of non-binding rehabilitation and prospective need affordable housing obligations, oversight and adoption of rules regulating municipal affordable housing trust funds, municipal housing liaisons and affordable housing administrative agents, as well as oversight of affordable home administration. The amendment also directed the New Jersey Housing and Mortgage agency to revise the Uniform Housing Affordability Control Rules (*N.J.A.C. 5:80-26.1 et seq.*) on an emergent basis by December 2024 and through the standard Administrative Procedures Act thereafter.

## **The Compliance Process**

The first step in a municipality’s compliance process is to establish the affordable housing obligation. The first, second and third round obligations are already established by COAH or Superior Court, as applicable. Only the rehabilitation obligation and current prospective need, the fourth round obligation, are subject to the determination.



The methodology and formulas each municipality must rely upon to determine its rehabilitation, and fourth round obligation (as well as subsequent round obligations) are set forth within *N.J.S.A. 52:27D-304.1 thru -304.3* of the Fair Housing Act. The March 8, 2018 decision *In re Mun. of Princeton*, 480 N.J. Super. 70 (Mar. 8, 2018) is also to be referenced as to datasets and methodologies that are not explicitly addressed in *N.J.S.A. 52:27D-304.3*. Notwithstanding the methodology set forth in the Fair Housing Act, the Act also required the DCA to release a non-binding report calculating obligations for each municipality in the State. Since the DCA report of the numbers it thought the legislation required were nonbinding, municipalities were free to assert that the correct application of the standards in the Act resulted in different number(s).

The following provides an overview of the process and deadlines associated with the fourth round.

- Establishing the Affordable Housing Obligation
  - October 20, 2024: DCA Regional and Municipal Fair Share Obligation Report Issued.
  - January 31, 2025: Deadline for municipalities to adopt a binding resolution committing to the affordable housing obligation and seeking a Compliance Certification through participation in the Program.
  - February 28, 2025: Deadline for an interested party to challenge the municipality's determination of its obligation to the Program. It shall apply "an objective assessment standard".
  - March 1, 2025: The municipality's determination of its obligation will be established by default if no challenge.
  - March 31, 2025: The Program must issue a decision on the obligation challenge.
- Obtaining a Compliance Certification
  - June 30, 2025: Municipality shall adopt a Housing Plan and propose drafts of ordinances and resolutions to implement the plan.
  - August 31, 2025: Deadline for an interested party to file a challenge of the Housing Plan with the Program. If no challenge by this date the Program will begin review of the Housing Plan for consistency with the FHA.
  - December 31, 2025: Deadline for a municipality to settle any challenge or provide an explanation as to why it will not make all, or some of the changes brought by the challenge.
  - March 15, 2026: Municipality to amend the Housing Plan and implement the agreed upon revisions resulting from a challenge and adopt all pertinent ordinances. If no agreement, the municipality must adopt what it believes to be appropriate, and litigation ensues. In either case, the Housing Plan and adopted ordinances shall be immediately filed with the Program.