

## Borough of Union Beach

### **RESOLUTION 2025-35:**

#### ***RESOLUTION COMMITTING TO DCA'S FOURTH ROUND AFFORDABLE HOUSING PRESENT NEED AND PROSPECTIVE NEED NUMBERS AS MODIFIED***

**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 "Amended FHA"); and

**WHEREAS**, the Amended FHA 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 Borough of Union Beach ("the Borough") is characterized in its Master Plan as an older suburban single-family residential and predominately built out community of about 1.83 square miles in area, which contains approximately 3.8 miles of coastline fronting the Raritan Bay, borders two creeks, and has two creeks running north to south through the Borough; and,

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

**WHEREAS**, pursuant to N.J.S.A. 52:27D-304.3, a municipality's average allocation factor is comprised of the equalized nonresidential factor, income capacity factor, and land capacity factor and shall be averaged to yield the municipality's average allocation factor, and

**WHEREAS**, the Amended FHA further provides that "[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by 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 DCA issued a report on October 18, 2024 ("DCA Report") calculating Union Beach's affordable housing obligation estimate to be as follows: a Present Need or Rehabilitation Obligation of ZERO (0) units and a Prospective Need or New Construction Obligation of FORTY FIVE (45) units; and

**WHEREAS**, the imposition of a 45-unit affordable housing obligation upon the Borough would require construction of up to 200 additional residential units in the Borough, which is an unsustainable scale of development given the Borough's limited land availability, infrastructure challenges, and regulatory constraints; and

**WHEREAS**, the DCA has released a Geographic Information Systems spatial data representation of the Land Capacity Analysis for P.L. 2024, c.2 containing the Vacant and Developable land information that serves as the basis for calculating the land capacity factor; and

**WHEREAS**, the Borough has reviewed the prospective need calculation of 45 prospective units and found that even in the absence of vacant land to support such development, the DCA still allocates a 39-unit obligation based upon the Amended FHA calculation, which underscores the inherent irrationality of the methodology imposing an affordable housing obligation upon the Borough; and

**WHEREAS**, the DCA Report's calculations are fundamentally flawed, as they fail to adequately account for the Borough's unique circumstances, including the catastrophic and long-lasting impacts of Hurricane Sandy, which fundamentally alter the capacity for the Borough to absorb any new development; and

**WHEREAS**, the DCA affordable housing calculation methodology is flawed as to the Borough because it did not taken into account stringent state and federal regulations that severely restrict development in coastal zones, including areas designated within FEMA's Coastal VE (Wave Action), Coastal AE (Limited Wave Action), and AE Flood Zones; and

**WHEREAS**, the DCA affordable housing calculation methodology is flawed as to the Borough because it did not take into account the Borough's master plan and redevelopment plans which promote resilience and sustainable growth due to the Borough's coastal location, lack of vacant developable land, and stringent regulatory restrictions; and

**WHEREAS**, based upon its comprehensive review of the lands identified by the DCA for the land capacity factor, the Borough has determined that most of these lands are either unavailable, unsuitable, or infeasible for residential development due to environmental, logistical, or regulatory barriers; and

**WHEREAS**, on October 29, 2012, Union Beach was devastated by Hurricane Sandy, with 85% of the Borough's home being damages or destroyed due to 90% of the Borough being inundated with flood waters ranging from 2 to 10 feet in depth; and

**WHEREAS**, following Hurricane Sandy, the Borough has more than 500 homes listed on the severe repetitive loss and repetitive loss list; and

**WHEREAS**, even prior to Hurricane Sandy, the Borough was subject to flooding from heavy precipitation, higher tides, and strong wave activity; and

**WHEREAS**, following Hurricane Sandy, the flooding of the Borough has worsened during tidal costal storms because of its location on low-lying land, numerous small creeks bordering the Borough and running through the town, increased urbanization in and around the area, and coastal erosion; and

**WHEREAS**, roughly 90% of the Borough's land is located in a flood hazard area, and the entire Borough is in a Coastal Area Facility Review Act Zone, which significantly impairs development; and

**WHEREAS**, any future development in the Borough is constrained by the Borough's obligation to conform with the Multi-Jurisdictional All Hazard Mitigation Plan, which prioritizes resilience and sustainable growth; and

**WHEREAS**, the Borough's existing redevelopment plans and flood mitigation plans underscore the challenges to develop in the Borough, which would only be exacerbated if the Borough now had to accommodate the density requirement imposed by DCA's prospective need calculation; and

**WHEREAS**, due to stringent federal and state environment rules, active remediation projects that are ongoing by the U.S. Army Corps of Engineers and the New Jersey Department of Environmental

Protection to mitigate flooding, the Borough is not able to commit to the density requirement imposed by DCA's prospective need calculation; and

**WHEREAS**, due to anticipated state environmental restrictions that will further restrict development of this magnitude along the coastline, which were not yet in effect when the Governor signed the Amended FHA, the Borough is not able to commit to the density requirement imposed by DCA's prospective need calculation; and

**WHEREAS**, the New Jersey Institute of Local Government Attorneys proposed an alternate, and more realistic, "prospective need" methodology to inform future affordable housing obligation for New Jersey municipalities, which when applied to Union Beach, would only recommend a prospective need calculation of TEN (10) units; and

**WHEREAS**, the aforementioned methodology proposed by the NJ Institute of Local Government Attorneys appears to be based upon a more accurate, objective, and reasonable methodology and provides a more realistic proposal to meet affordable housing demands; and,

**WHEREAS**, the law mandates the Borough adopt a resolution in response to the affordable housing unit obligations calculated by DCA, but also provides that the Borough may, by resolution, modify that number; and

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

**WHEREAS**, the Borough also reserves the right to adjust its position in the event of any rulings in the *Montvale* case (MER-L-1778-24) or any other such legal action that alters the deadlines and/or requirements of the Amended FHA; and

**WHEREAS**, if a third party challenges the calculations provided for in this Resolution, the Borough 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**, the Borough reserves the right to request a substantial reduction of the prospective need in any future court proceeding for the following reasons:

- Any development in the Borough is subject to significant challenges due to the damage caused to the Borough after Superstorm Sandy, and those challenges and proposals to support future growth in the Borough, are outlined in the Borough's most recent Master Plan Reexamination Report and Amendment (dated July 19, 2015), as well as the Strategic Recovery Planning Report of 2014 and all other flooding mitigation plans;
- Any development in the Borough is subject to significant challenges and an obligation to conform with the Multi-Jurisdictional All Hazard Mitigation Plan;
- Any development in the Borough is subject to significant state environment rules and regulations which severely restrict development due to its proximity to the shoreline, including the rules that are in effect now and those that are anticipated;
- Any development in the Borough is subject to significant federal environment rules and regulations which severely restrict development due to its proximity to the shoreline,

including the rules that are in effect now and those that will be forthcoming, because most of the Borough is located within the FEMA Flood Area which designates areas of the Borough to be located in Coastal VE (wave action), Coastal AE (limited wave action) and AE Zones; and

- Any development in the Borough is subject to significant challenges due to the ongoing work by the federal government and agencies along its shorelines, such as the Union Beach Coastal Flood Risk Reduction Project, which significantly reduces the ability to support development of the magnitude proposed by the affordable housing unit mandate established by DCA's calculation; and

**WHEREAS**, the Borough of Union Beach remains committed to meeting its fair share of affordable housing obligations in a manner that aligns with its unique environmental and regulatory circumstances while promoting sustainable development and resilience; and

**WHEREAS**, the Mayor and Council for the Borough of Union Beach agree and acknowledge the finding in the DCA Report that the Borough's present affordable housing need is ZERO; and

**WHEREAS**, the Mayor and Council for the Borough of Union Beach cannot commit to achieving a prospective need or new construction obligation of FORTY FIVE for the reasons set forth herein; and

**WHEREAS**, in accordance with AOC Directive #14-24 dated December 13, 2024, the Borough finds that, as a municipality seeking certification of compliance with the FHA, it is in the best interests of the Borough to direct the filing of an action in the form of a declaratory judgment complaint after the adoption of the within the resolution of fair share obligations, on or before February 3, 2025; and,

**NOW, THEREFORE, BE IT RESOLVED** on this 16th day of January 2025 the Borough Council of the Borough of Union Beach, County of Monmouth, State of New Jersey as follows:

1. All of the above recitals are incorporated into the operative clauses of this resolution.
2. The Borough of Union Beach commits to meeting its fair share of affordable housing obligations in a manner that aligns with its unique environmental and regulatory circumstances while also remaining committed to its land use development goals as set forth in its Master Plan Reexamination Report (July 19, 2015) and Strategic Recovery Planning Report (2014), both of which promote sustainable development and resilience.
3. The Borough of Union Beach commits to the DCA's Round 4 Present Need Obligation of ZERO units.
4. The Borough of Union Beach objects to the DCA's Round 4 Prospective Need Obligation Calculation of FORTY FIVE (45) units because the Borough cannot support the density that would be required to meet this mandate because of the Borough's existing land use development challenges, lack of available developable and/or vacant land, and existing stringent environmental rules and regulations that severely restricts development in the Borough.
5. The Borough of Union Beach further objects to the DCA's Round 4 Prospective Need Obligation calculation because its methodology is flawed, for the reasons set forth herein.

6. The Borough of Union Beach further objects to the DCA’s Round 4 Prospective Need Obligation Calculation of 45 units because it is inconsistent with the Borough’s existing Master Plan and redevelopment plans.
7. The Borough of Union Beach objects to the DCA’s Round 4 Prospective Need Obligation Calculation of 45 Units because the methodology fails to account for the efforts undertaken by the Borough in response to the devastation caused to the Borough by Hurricane Sandy and undermines the Borough’s land use development criteria to promote sustainable development and resilience to future storm and natural hazard events.
8. The Borough of Union Beach objects to the DCA’s Round 4 Prospective Need Obligation Calculation of 45 Units because it is arbitrary, inconsistent with the Borough’s actual development capacity, and incompatible with the principles of fairness and sustainability underlying the FHA.
9. The Borough is committed to incorporating affordable housing opportunities in future residential development but the density proposed by DCA fails to acknowledge the challenges to development in Borough to support approximately up to an additional 200 residential units being built in the Borough.
10. If the Borough was to commit to an affordable housing mandate, the calculation utilized by the New Jersey Institute of Local Government Attorneys seems to be more realistic and reflective of the Borough’s actual land availability, infrastructure limitations, and environmental challenges. To do so, however, would still pose a challenge in the Borough because it is likely that the Borough would need to approve the development of up to 40 new residential units to support a prospective need of 10 residential units.
11. The Borough hereby directs its attorney to file a declaratory judgment complaint in Monmouth County by January 31, 2025 and attach this resolution as an exhibit with supporting documents, as well as any other information that will inform the State and the Courts regarding the Borough’s challenges to meet the prospective affordable housing calculation established by DCA.
12. This resolution shall take effect immediately, according to law

	<b>Moved</b>	<b>Seconded</b>	<b>Ayes</b>	<b>Nays</b>	<b>Absent</b>	<b>Abstain</b>
Mr. Wicki			X			
Mr. Riccardi		X	X			
Mrs. Roche			X			
Mrs. Woodruff			X			
Mr. Andreuzzi	X		X			
Mr. Lewandowski					X	

**CERTIFICATION**

I, Alexandra Sweeney, Acting Municipal Clerk For The Borough Of Union Beach, In The County Of Monmouth, New Jersey, Do Hereby Certify That The Foregoing Resolution Is A True Copy Of The Original Resolution Duly Passed And Adopted By The Governing Body At Their Meeting Of January 16, 2025.

*Alexandra Sweeney*  
 Alexandra Sweeney, Acting Municipal Clerk

Witness my Hand and Seal of the  
 Borough of Union Beach  
 This 16th Day of January 2025