

NJ's New Affordable Housing Law

Assembly Bill 4/Senate Bill 50

July 2024



FAIR SHARE
HOUSING CENTER

Overview

In March 2024, Governor Murphy signed landmark legislation that sets a course for future enforcement of the Mount Laurel Doctrine, New Jersey's constitutional requirement for every town to provide its fair share of affordable housing. The new law is the strongest in the country, requiring every town to change its master plan and zoning to accommodate increased production and preservation of housing affordable to low- and moderate-income families. It streamlines the affordable housing development process for everyone involved, thereby making it easier for towns to ultimately comply with their obligation and create more affordable housing opportunities for New Jersey residents.

New Jersey's affordable housing model was first established through organizing and legal action by local NAACP branches and residents in South Jersey nearly 50 years ago.

Since enforcement was reinvigorated in 2015, the Mount Laurel Doctrine has led to the creation of nearly 70,000 new homes — including over 21,000 deed-restricted affordable homes — a record of housing production that far outpaces surrounding states, and will only be strengthened further by the new law.

Affordable housing obligations are based on population changes and growth in each region of the state each decade. The current round of affordable housing obligations go through 2025, at which point the Fourth Round of obligations will begin, which are governed by the new law.

Key Provisions

- **Streamlined Process.** The Department of Community Affairs will provide initial guidance numbers for affordable housing obligations. A new Affordable Housing Dispute Resolution Program will provide mediation opportunities to advocates, non-profit and for-profit developers, and municipalities to address concerns with the obligations and process. The new law includes clear timelines for each phase of the certification process — including identification of the affordable housing obligation, adoption of a fair share plan, and adoption of final municipal zoning ordinances.
- **Housing Element and Fair Share Plan (HEFSP).** Municipalities must adopt a HEFSP to outline how they plan to meet their obligations. This binding agreement between the municipality and the state governs how and where affordable housing will be built over a 10-year period.
- **Prevention of Delays.** To avoid delays in the implementation of affordable housing plans, municipalities risk losing immunity from exclusionary zoning lawsuits if they miss deadlines for adopting their affordable housing determination and HEFSP or block affordable housing in the HEFSP.

Key Provisions

- **Codification of Affordable Housing Obligation Methodology.** The new law includes a statewide method for each municipality to calculate their respective affordable housing obligation for the Fourth Round, based on the “Jacobson Methodology” adopted in 2018 that represented a middle ground between advocates and municipal positions. Codifying the methodology allows municipalities to more effectively and efficiently determine their obligation without prolonged judicial involvement, while reducing delays in building affordable housing and legal costs associated with the affordable housing process.
- **Department of Community Affairs (DCA) Oversight.** In addition to providing initial guidance numbers for affordable housing obligations, DCA will adopt rules for collecting and managing development fees and monitoring municipal spending of local housing trust funds. DCA is also authorized to approve expenditures for emergent housing opportunities.
- **Housing Affordability Controls.** Minimum affordability periods are set at 40 years for rental housing and 30 years for for-sale housing. These deed restrictions may also be renewed after the initial minimum affordability period. The New Jersey Housing and Mortgage Finance Agency will update controls, including construction and administration standards, income and bedroom distributions, and affirmative marketing requirements, by the end of 2024.
- **Bonus Credits and Age-Restricted Caps.** Municipalities can get bonus credits towards their obligation for some types of housing; the new law changes these credits to focus on certain types and locations of housing that reflect many of the greatest housing needs in the state. Credits will incentivize redeveloping existing developed land, placing affordable homes near transit, certain types of special needs housing, and very low-income housing. Bonuses would no longer be available simply for any rental housing. The law also changes the cap for age-restricted units to 30% of the affordable homes in the plan, exclusive of any bonuses.
- **Increased Transparency.** The new law requires more transparent information to be shared with the public at each stage of the process, from adoption of initial plans to what is built and what trust funds are available to non-profit developers to create and rehabilitate affordable housing.

Timelines for Compliance: Key Dates

The bill incentivizes municipalities to participate in the process, starting at the beginning of the Fourth Round on July 1, 2025, by continuing the immunity from litigation by developers they have from the third round if they participate in the new process. Municipalities must adopt the determination of their obligation by January 31, 2025. Any interested party may challenge the municipal determination by February 28, 2025, and a decision on the challenge will be issued no later than March 31, 2025. (Otherwise, a municipality's determination shall be established by default beginning on March 1, 2025.)

Municipal Housing Elements and Fair Share Plans, including proposed drafts of zoning and other ordinances and resolutions, are required to be adopted by June 30, 2025. Interested parties are permitted to file responses by August 31, 2025. Municipalities have until December 31, 2025 to address a challenge to its plan, and until March 15, 2026 to adopt a revised Housing Element and Fair Share Plan and change their zoning accordingly.

Fair Share Housing Center is a nonprofit advocacy organization that uses legal, policy, and community-building strategies to dismantle decades of racial and economic discrimination in New Jersey and nationally that excludes people from the opportunity to live in safe, healthy, and affordable housing.



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