

**BOROUGH OF EMERSON  
COUNTY OF BERGEN  
NOTICE OF ADOPTION**

**ORDINANCE NO 1567-18**

**Introduced:** August 14, 2018  
**Adopted:** September 4, 2018

**NOTICE IS HEREBY GIVEN** that the following ordinance was adopted on the second reading after a Public Hearing at the Regular Meeting of the Borough Council of the Borough of Emerson on the 4th day of September, 2018. A copy of Ordinance 1567-18 is on file in the Borough Clerk's Office in the Municipal Building, 1 Municipal Pl., Emerson, NJ 07630.

**AN ORDINANCE OF THE BOROUGH OF EMERSON,  
COUNTY OF BERGEN, STATE OF NEW JERSEY, REPEALING AND REPLACING CHAPTER 290  
"ZONING", ARTICLE XII "AFFORDABLE HOUSING REGULATIONS" OF THE REVISED  
GENERAL ORDINANCES OF THE BOROUGH OF EMERSON**

**WHEREAS**, the Borough of Emerson has a constitutional obligation to create a realistic opportunity for the construction of its fair share of the region's need for affordable housing; and

**WHEREAS**, the Borough voluntarily brought a timely declaratory judgment action pursuant to the procedures set forth by the Supreme Court in *In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015)* ("Mt. Laurel IV") seeking approval of a Housing Element and Fair Share Plan that satisfies the Borough's obligation to provide for its fair share of the regional need of low and moderate income housing; and

**WHEREAS**, after a Fairness Hearing held on June 20, 2018, by Order dated June 29, 2018, Honorable Gregg Padovano approved a settlement agreement between the Borough of Emerson and Fair Share Housing Center; and

**WHEREAS**, the 2018 Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., addresses the requirements of N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq. as amended and supplemented, and the New Jersey Fair Housing Act of 1985; and

**WHEREAS**, the Borough is desirous of amending and supplementing the Borough Code to implement the above-referenced Housing Element and Fair Share Plan, which has been endorsed by the Governing Body, and include provisions addressing Emerson's constitutional obligation to provide for its fair share of low and moderate income housing, as directed by the Superior Court and consistent with the Fair Housing Act (N.J.S.A. 52:27D-301, et seq.), Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1, et seq.), and applicable Affordable Housing Regulations adopted by COAH and the New Jersey Department of Community Affairs; and

**WHEREAS**, this Ordinance is intended to provide assurances that low and moderate income units ("affordable units") are created with controls on affordability over time and that low and moderate income households shall occupy those units.

**NOW, THEREFORE, BE IT ORDAINED**, by the Mayor and Council of the Borough of Emerson, County of Bergen, State of New Jersey, that:

**Section 1.** Chapter 290 "Zoning", Article XII "Affordable Housing Regulations" of the revised General Ordinances of the Borough is hereby repealed and replaced as follows:

## Article XII AFFORDABLE HOUSING REGULATIONS

### § 290-63 Purpose and Applicability.

1. Purpose. The purpose of this article is to provide a realistic opportunity for the construction of the borough's constitutional obligation to provide for its fair share of affordable housing for households with very low, low, and moderate incomes, as directed by the Superior Court and is consistent with the Fair Housing Act (N.J.S.A. 52:27D-301, et seq.), Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1, et seq.), except where modified by the terms of a Settlement Agreement between the Borough and Fair Share Housing Center (FSHC) such that the statutory requirement to provide very low-income units equal to 13 percent of affordable units approved and constructed after July 1, 2008, to be affordable to households at 30 percent of the regional median income, overrides the UHAC requirement that 10 percent of all low- and moderate-income units must be affordable at 35 percent of the regional median income, and the Borough's constitutional obligation to provide a fair share of affordable housing for low- and moderate-income households.
2. Applicability. The provisions of this Ordinance shall apply:
  - a. To all affordable housing developments and affordable housing units that currently exist within the Borough of Emerson.
  - b. To all affordable housing developments and affordable housing units that are proposed to be created pursuant to the Borough of Emerson's Housing Element and Fair Share Plan; and
  - c. To all other affordable housing developments and housing units that are created pursuant to actions by the Borough of Emerson or its Land Use Board, including projects that may be funded with Low Income Housing Tax Credit financing, or projects subject to the mandatory affordable housing set aside set forth in Section 13D of this Chapter, which shall comply with the income and bedroom distribution requirements of this Ordinance.

### § 290-63.1 Monitoring Requirements.

- a. On the first anniversary of the entry of the Order granting the Borough a Final Judgment of Compliance and Repose in IMO Application of the Borough of Emerson, Docket No.: BER-L-6300-15 and every anniversary thereafter through the end of 2025, the Borough shall provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
- b. On the first anniversary of the entry of the Order granting the Borough a Final Judgment of Compliance and Repose in IMO Application of the Borough of Emerson, Docket No.: BER-L-6300-15 and every anniversary thereafter through the end of 2025, the Borough shall provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website, with copies provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Court-appointed Special Master and Fair Share Housing Center. Such forms shall be provided to the Borough.
- c. For the midpoint realistic opportunity review, due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough shall post on its municipal website, with copies provided to Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with copies provided to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented.

- d. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of the entry of the Order granting the Borough a Final Judgment of Compliance and Repose in IMO Application of the Borough of Emerson, Docket No.: BER-L-6300-15, and every third year thereafter, the Borough will post on its municipal website, with copies provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced in the Settlement Agreement. Such posting shall invite any interested party to submit comments to the municipality, with copies provided to Fair Share Housing Center, on the issue of whether the municipality has complied with its very low income housing obligation under the terms of the Settlement Agreement.

#### **§ 290-63.2 Definitions.**

The following terms when used in this Ordinance shall have the meanings given in this Section:

##### **ACT**

The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

##### **ADAPTABLE**

Constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

##### **ADMINISTRATIVE AGENT**

The entity designated by the Borough to administer affordable units in accordance with this Ordinance, N.J.A.C. 5:93, and UHAC (N.J.A.C. 5:80-26).

##### **AFFIRMATIVE MARKETING**

A regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

##### **AFFORDABILITY AVERAGE**

The average percentage of median income at which new restricted units in an affordable housing development are affordable to low and moderate income households.

##### **AFFORDABLE**

A sales price or rent level that is within the means of a low or moderate income household as defined within N.J.A.C. 5:93-7.4, and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

##### **AFFORDABLE HOUSING DEVELOPMENT**

A development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Borough's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable housing development.

##### **AFFORDABLE HOUSING PROGRAM(S)**

Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

##### **AFFORDABLE UNIT**

A housing unit proposed or created pursuant to the Act and approved for crediting by the Court and/or funded through an affordable housing trust fund.

##### **AGENCY**

The New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

**AGE-RESTRICTED UNIT**

A housing unit designed to meet the needs of, and exclusively for, the residents of an age- restricted segment of the population such that: 1) all the residents of the development wherein the unit is situated are 62 years of age or older; or 2) at least 80 percent of the units are occupied by one person who is 55 years of age or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

**ALTERNATIVE LIVING ARRANGEMENTS**

A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to: transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

**ASSISTED LIVING RESIDENCE**

A facility that is licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

**CERTIFIED HOUSEHOLD**

A household that has been certified by an Administrative Agent as a low income household or moderate income household.

**COAH**

The Council on Affordable Housing, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq.), or any successor agency charged with the administration of the Act.

**COURT**

The Superior Court of New Jersey, Law Division, Somerset County.

**DCA**

The State of New Jersey Department of Community Affairs.

**DEFICIENT HOUSING UNIT**

A housing unit with health and safety code violations that requires the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

**DEVELOPER**

Any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land included in a proposed development including the holder of an option to contract to purchase, or other person having an enforceable proprietary interest in such land.

**DEVELOPMENT**

The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1, et seq.

**FAIR SHARE PLAN**

The plan that describes the mechanisms, strategies and the funding sources, if any, by which the Borough proposes to address its affordable housing obligation as established in the Housing Element, including the draft ordinances necessary to implement that plan, and addresses the requirements of N.J.A.C. 5:93-5.

## **HOUSING ELEMENT**

The portion of the Borough's Master Plan, required by the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-28b(3) and the Act, that includes the information required by N.J.A.C. 5:93-5.1 and establishes the Borough's fair share obligation.

## **INCLUSIONARY DEVELOPMENT**

A development containing both affordable units and market rate units. This term includes, but is not limited to: new construction, the conversion of a non-residential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

## **LOW INCOME HOUSEHOLD**

A household with a total gross annual household income equal to 50 percent or less of the regional median household income by household size.

## **LOW INCOME UNIT**

A restricted unit that is affordable to a low income household.

## **MAJOR SYSTEM**

The primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and load bearing structural systems.

## **MARKET-RATE UNITS**

Housing not restricted to low and moderate income households that may sell or rent at any price.

## **MEDIAN INCOME**

The median income by household size for the applicable housing region, as adopted annually by COAH or a successor entity approved by the Court.

## **MODERATE INCOME HOUSEHOLD**

A household with a total gross annual household income in excess of 50 percent but less than 80 percent of the regional median household income by household size.

## **MODERATE INCOME UNIT**

A restricted unit that is affordable to a moderate income household.

## **MUNICIPAL HOUSING LIAISON**

The employee charged by the governing body with the responsibility for oversight and administration of the affordable housing program for Emerson and such other duties as set forth in §57-59 of the Code of the Borough of Emerson.

## **NON-EXEMPT SALE**

Any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary and the transfer of ownership by court order.

## **RANDOM SELECTION PROCESS**

A process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

## **REGIONAL ASSET LIMIT**

The maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.

## **REHABILITATION**

The repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

## **RENT**

The gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

## **RESTRICTED UNIT**

A dwelling unit, whether a rental unit or an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

## **UHAC**

The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26, et seq.

## **VERY LOW INCOME HOUSEHOLD**

A household with a total gross annual household income equal to 30 percent or less of the regional median household income by household size.

## **VERY LOW INCOME UNIT**

A restricted unit that is affordable to a very low income household.

## **WEATHERIZATION**

Building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of a rehabilitation program.

### **§ 290-63.3 Applicability.**

- a. The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Borough of Emerson pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan.
- b. Moreover, this Ordinance shall apply to all developments that contain low and moderate income housing units, including any currently anticipated future developments that will provide low and moderate income housing units.

#### § 290-63.4 Rehabilitation program.

- a. Emerson's rehabilitation program shall be designed to renovate deficient housing units occupied by low and moderate income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
- b. Both owner-occupied and renter-occupied units shall be eligible for rehabilitation funds.
- c. All rehabilitated units shall remain affordable to low and moderate income households for a period of 10 years (the control period). For owner-occupied units the control period will be enforced with a lien and for renter-occupied units the control period will be enforced with a deed restriction.
- d. The Borough shall dedicate a minimum of \$10,000 in hard costs for each unit to be rehabilitated through this program.
- e. The Borough shall adopt a resolution committing to fund any shortfall in the rehabilitation program.
- f. The Borough shall designate, subject to the approval of the Court, one or more Administrative Agents to administer the rehabilitation program in accordance with N.J.A.C. 5:93. The Administrative Agent(s) shall provide a rehabilitation manual for the owner occupancy rehabilitation program and a rehabilitation manual for the rental occupancy rehabilitation program to be adopted by resolution of the governing body and subject to approval of the Court. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
- g. Units in a rehabilitation program shall be exempt from the Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:
  - i. If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low or moderate income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:93-11 and UHAC.
  - ii. If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to UHAC.
  - iii. Rents in rehabilitated units may increase annually based on the standards per this ordinance.
  - iv. Applicant and/or tenant households shall be certified as income-eligible in accordance with UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.

#### § 290-63.5 Alternative Living Arrangements.

- a. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:
  1. Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Court.
  2. Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).
- b. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30 year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Court.
  1. The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

**§ 290-64 Inclusionary Development.**

Purpose. This section sets forth the requirements applicable to low- and moderate-income housing units, where such units are required to be provided as part of either an inclusionary development in the R-MF-AH Zone, the MFRAH North Zone or the MFRAH South Zone; a 100% affordable senior housing project developed as a conditional use in the R-7.5 Zone; or a development subject to the Affordable Housing Overlay Zone Set Aside.

**§ 290-64 .1 Phasing Schedule for Inclusionary Zoning.**

- a. In inclusionary developments the following schedule shall be followed:

Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of Low and Moderate Income Units Completed
25	0
25+1	10
50	50
75	75
90	100

- b. No initial occupancy of a low- or moderate-income housing sales unit shall be permitted prior to issuance of a certificate of occupancy, and no certificate of occupancy for initial occupancy of a low- or moderate-income housing unit shall be issued unless there is a written determination by the Administrative Agent that the unit is to be controlled by a deed restriction and mortgage lien as required by UHAC.
- c. A certificate of reoccupancy for any occupancy of a low- or moderate-income housing sales unit resulting from a resale shall be required, and the Borough shall not issue such certificate unless there is a written determination by the Administrative Agent that the unit is to be controlled by a deed restriction and mortgage lien as required by UHAC.
- d. The certificate of reoccupancy shall not be required where there is a written determination by the Administrative Agent that controls are allowed to expire or that the repayment option is being exercised pursuant to N.J.A.C. 5:93-9.8-12.3

**§ 290-64.2 Fractional Units; Payment-in-Lieus.**

- a. Fractional Units. Inclusionary developments that result in an affordable housing obligation that is fractional shall either round up and provide the additional affordable unit or provide a payment-in-lieu for the fractional amount.
- b. Payment-in-lieu. The payment-in-lieu amount for Emerson shall be calculated based on pro formas on file. To calculate the payment-in-lieu the developer shall multiply the fraction by the payment.

**§ 290-64.3 New Construction.**

**a. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:**

1. The fair share obligation shall be divided equally between low and moderate income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit. At least 13 percent of all restricted rental units shall be very low income units (affordable to a household earning 30 percent or less of median income). The very low income units shall be counted as part of the required number of low income units within the development.
2. At least 25 percent of the obligation shall be met through rental units, including at least half in rental units available to families
3. A maximum of 25 percent of the Borough's obligation may be met with age restricted units. At least half of all affordable units in the Borough's Plan shall be non-restricted.
4. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low income units.
5. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
  - (a) The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low and moderate income units;
  - (b) At least 30 percent of all low and moderate income units shall be two bedroom units;
  - (c) At least 20 percent of all low and moderate income units shall be three bedroom units; and
  - (d) The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
6. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low and moderate income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

**b. Accessibility Requirements**

1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multi-story buildings shall be subject to the technical design standards of the Barrier Free SubCode, N.J.A.C. 5:23-7.
2. All restricted townhouse dwelling units and all restricted units in other multi-story buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
  - (a) An adaptable toilet and bathing facility on the first floor; and
  - (b) An adaptable kitchen on the first floor; and
  - (c) An interior accessible route of travel on the first floor; and
  - (d) An adaptable room that can be used as a bedroom, with a door or casing for the installation of a door, on the first floor; and
  - (e) If not all of the foregoing requirements in 2.(a) through 2.(d) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs 2.(a) through 2.(d) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and

- (f) An accessible entrance as set forth at P.L. 2005, c. 350 (S.A. 52:27D-311a, et seq.) and the Barrier Free SubCode, N.J.A.C. 5:23-7, or evidence that Emerson has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
- (1) Where a unit has been constructed with an adaptable entrance, upon the request of a person with disabilities who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
  - (2) To this end, the builder of restricted units shall deposit funds within the Borough of Emerson's Affordable Housing Trust Fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
  - (3) The funds deposited under paragraph (f)(2) above shall be used by the Borough of Emerson for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
  - (4) The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of the Borough of Emerson for the conversion of adaptable to accessible entrances.
  - (5) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free SubCode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough's Affordable Housing Trust Fund in care of the Borough Chief Financial Officer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.
  - (6) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free SubCode, N.J.A.C. 5:23-7.

c. Design.

1. In inclusionary developments, to the extent possible, low and moderate income units shall be integrated with the market units.
2. In inclusionary developments, low and moderate income units shall have access to all of the same common elements and facilities as the market units.

d. Maximum Rents and Sales Prices.

1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC and by the Superior Court, utilizing the regional income limits established.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52 percent of median income.
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low income and moderate income units, provided that at least 13 percent of all low and moderate income rental units shall be affordable to very low income households, earning 30 percent or less of the regional median household income, with such very low income units counted towards the low income housing requirement.

4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate income ownership units must be available for at least three different sales prices for each bedroom type, and low income ownership units must be available for at least two different sales prices for each bedroom type.
5. In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
  - (a) A studio shall be affordable to a one-person household;
  - (b) A one-bedroom unit shall be affordable to a one and one-half person household;
  - (c) A two-bedroom unit shall be affordable to a three-person household;
  - (d) A three-bedroom unit shall be affordable to a four and one-half person household; and
  - (e) A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
  - (a) A studio shall be affordable to a one-person household;
  - (b) A one-bedroom unit shall be affordable to a one and one-half person household; and
  - (c) A two-bedroom unit shall be affordable to a two-person household or two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate size household, including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
9. The price of owner-occupied low and moderate income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price. Income limits for all units for which income limits are not already established through a federal program exempted from UHAC pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Borough annually within 30 days of the publication of determinations of median income by HUD as follows:

- (a) Regional income limits shall be established for the Region 1 based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in Region 1. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low-income unit for a household of four shall be 30 percent of the regional weighted average median income for a family four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
- (b) The income limits calculated each year shall be the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for the relevant fiscal year, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
- (c) The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

10. The rent of very low, low and moderate income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the United States (Northeast Urban Area). This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.

#### **§290-64.4 Utilities.**

- a. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
- b. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by the U.S. Department of Housing and Urban Development for use in New Jersey.

## **§290-64.5 Occupancy Standards**

- a. In referring certified households to specific restricted units, the Administrative Agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:
  1. Provide an occupant for each bedroom;
  2. Provide children of different sexes with separate bedrooms;
  3. Provide separate bedrooms for parents and children; and
  4. Prevent more than two persons from occupying a single bedroom.
- b. Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

## **§290-65 Controls on Affordability; Affirmative Marketing**

Purpose. This section is intended to implement the provisions of Subchapter 9 of the COAH regulations, N.J.A.C. 5:93-9.17 and N.J.A.C. 5:80-26, which establish regulations designed to provide assurance that low- and moderate-income housing units will remain affordable over time; as well as Subchapter 11 of the COAH regulations, N.J.A.C. 5:93-11. It applies to all new developments in Emerson that contain proposed low- and moderate-income housing units

### **§290-65.1 Control Periods for Restricted Ownership Units and Enforcement Measures.**

- a. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance for a period of at least thirty (30) years, until the Borough takes action to release the unit from such requirements; prior to such action, a restricted ownership unit shall remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- b. Rehabilitated owner-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- c. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- d. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- e. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- f. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- g. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all Code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

**§290-65.2 Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.**

- a. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:
  1. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
  2. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
  3. The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low and moderate income purchasers and those paid by market purchasers
  4. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See §290-65.5.

**§290-65.3 Buyer Income Eligibility.**

- a. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
- b. Notwithstanding the foregoing, however, the Administrative Agent may, upon approval by the Mayor and Council, and subject to the Court's approval, permit moderate income purchasers to buy low income units in housing markets if the Administrative Agent determines that there are an insufficient number of eligible low income purchasers to permit prompt occupancy of the units. All such low income units to be sold to moderate income households shall retain the required pricing and pricing restrictions for low income units.
- c. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
- d. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low income household or a moderate income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's eligible monthly income.

**§290-65.4 Limitations on Indebtedness Secured by Ownership Unit; Subordination.**

- a. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
- b. With the exception of First Purchase Money Mortgages, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent of the maximum allowable resale price of the unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C.5:80-26.6(b).

#### **§290-65.5 Capital Improvements to Ownership Units.**

- a. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that adds an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.
- b. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (e.g. refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to 10-year, straight-line depreciation, and has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

#### **§290-65.6 Control Periods for Restricted Units.**

- a. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80- 26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least 30 years, until the Borough takes action to release the unit from such requirements. Prior to such action, a restricted rental unit shall remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
  1. Restricted rental units created as part of developments receiving nine percent (9%) Low Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period.
- b. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- c. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Bergen. The deed shall also identify each affordable unit by apartment number and/or address and whether that unit is designated as a very low, low or moderate income unit. Neither the unit nor its affordability designation shall change throughout the term of the deed restriction. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- d. A restricted rental unit shall remain subject to the affordability controls of this Ordinance despite the occurrence of any of the following events:
  1. Sublease or assignment of the lease of the unit;
  2. Sale or other voluntary transfer of the ownership of the unit; or
  3. The entry and enforcement of any judgement of foreclosure on the property containing the unit.

**§290-65.7 Rent Restrictions for Rental Units; Leases.**

- a. A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- b. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- c. Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.
- d. No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least 15 percent of the total number of dwelling units are restricted rental units in compliance with this Ordinance.

**§290-65.8 Tenant Income Eligibility.**

- a. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
  1. Very low income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of median income.
  2. Low income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.
  3. Moderate income rental units shall be reserved for households with a gross household income less than 80 percent of median income.
- b. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low income household, low income household or a moderate income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
  1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
  2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
  3. The household is currently in substandard or overcrowded living conditions;
  4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
  5. The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- c. The applicant shall file documentation sufficient to establish the existence of the circumstances in 1.a. through 2.e. above with the Administrative Agent, who shall counsel the household on budgeting.

§290-65.9 Administrative Agents

- a. The Borough shall designate by resolution of the Borough Council, one or more Administrative Agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:93 and UHAC.
- b. The Administrative Agent shall be an independent entity serving under contract to and reporting to the municipality. For new sale and rental developments, all of the fees of the Administrative Agent shall be paid by the owners of the affordable units for which the services of the Administrative Agent are required. For resales, single family homeowners and condominium homeowners shall be required to pay three percent of the sales price for services provided by the Administrative Agent related to the resale of their homes. That fee shall be collected at closing and paid directly to the Administrative Agent. The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which include:
  1. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough of Emerson and the provisions of N.J.A.C. 5:80-26.15; and
  2. Providing counseling or contracting to provide counseling services to low and moderate income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- c. Household Certification:
  1. Soliciting, scheduling, conducting and following up on interviews with interested households;
  2. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low or moderate income unit;
  3. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
  4. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;
  5. Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and
  6. Employing a random selection process as provided in the Affirmative Marketing Plan of the Borough of Emerson when referring households for certification to affordable units.
- d. Affordability Controls:
  1. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
  2. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
  3. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Bergen County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit;
  4. Communicating with lenders regarding foreclosures; and
  5. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

e. Sales and Rentals:

1. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or rental; and
2. Instituting and maintaining an effective means of communicating information to low and moderate income households regarding the availability of restricted units for resale or re-rental.

f. Processing Requests from Unit Owners:

1. Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Ordinance;
2. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;
3. Notifying the municipality of an owner's intent to sell a restricted unit; and
4. Making determinations on requests by owners of restricted units for hardship waivers.

g. Enforcement:

1. Securing annually from the municipality a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
2. Securing from all developers and sponsors, of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
3. The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;
4. Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
5. Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and
6. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Governing Body and the Court, setting forth procedures for administering the affordability controls.

h. Additional Responsibilities:

1. The Administrative Agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
2. The Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet any monitoring requirements and deadlines imposed by the Court.
3. The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

## **§290-65.10 Appeals.**

Appeals from all decisions of an Administrative Agent appointed pursuant to this Ordinance shall be filed in writing with the Court.

## **§290-65.11 Affirmative Marketing Requirements.**

- a. The Borough of Emerson shall adopt by resolution an Affirmative Marketing Plan, subject to the approval of the Court that is compliant with N.J.A.C. 5:80-25.15, as may be amended and supplemented.
- b. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. In addition, as a result of the Settlement Agreement with FSHC, the Affirmative Marketing Plan shall require the notification of the New Jersey State Conference of the NAACP, the FSHC, the Latino Action Network, the Bergen County Chapter of the NAACP and the Bergen County Urban League. It is a continuing program that directs marketing activities toward Housing Region 1 and is required to be followed throughout the period of restriction.
- c. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 1, comprised of Bergen, Hudson, Passaic and Sussex Counties.
- d. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the Borough of Emerson shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.
- e. In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to low and moderate income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- f. The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.
- g. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
- h. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

**§290-66 Enforcement of Affordable Housing Regulations.**

- a. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- b. After providing written notice of a violation to an Owner, Developer or Tenant of a low or moderate income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action(s) against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
  1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is adjudged by the Court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the Court:
    - (a) A fine of not more than \$500.00 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense. In the case of an Owner who has rented a low or moderate income unit in violation of the regulations governing affordable housing units, payment into the Borough of Emerson Affordable Housing Trust Fund of the gross amount of rent illegally collected;
    - (b) In the case of an Owner who has rented a low or moderate income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.
  2. The municipality may file a court action in the Superior Court seeking a judgment that would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low or moderate income unit:
    - (a) The judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low and moderate income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.
    - (b) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low and moderate income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

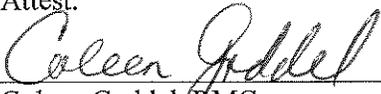
- (c) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low and moderate income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (d) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low and moderate income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (e) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- (f) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

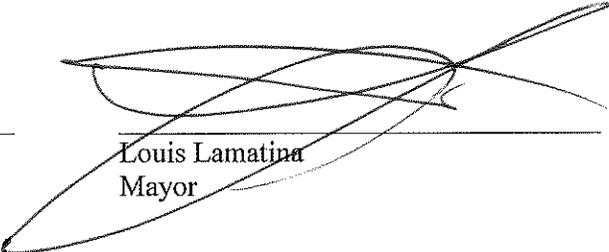
**Section 2.** This Ordinance shall be construed so as not to conflict with any provision of New Jersey or Federal law. The provisions of this Ordinance shall be cumulative with, and not in substitution for, all other applicable zoning, planning, and land use regulations. All other ordinances or other local requirements that are inconsistent or in conflict with this Ordinance are hereby repealed to the extent of any inconsistency or conflict, and the provisions of this Ordinance shall apply.

**Section 3.** If any provisions of this Ordinance shall be adjudged invalid, such adjudication shall not affect the validity of the remaining provisions, which shall be deemed severable therefrom.

**Section 4.** This Ordinance shall take effect immediately upon its adoption, passage and publication according to law.

Attest:

  
 Coleen Goddel, RMC  
 Deputy Clerk

  
 Louis Lamatina  
 Mayor

COUNCIL	M O V E D	S E C O N D E D	A Y E S	N A Y E S	A B S E N T	A B S T A I N
DiPaola			X			
Bayley			X			
Wolf			X			
Knoller	X		X			
Falotico			X			
Downing		X	X			

*I hereby certify that Ordinance No 1567-18 ordinance was duly adopted by the Borough of Emerson at a meeting held on September 4, 2018.*

Attest:

*Colleen J. Gaddel*  
Municipal Clerk