

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

ORDINANCE NO. 1571-18

Introduced: December 4, 2018

Adopted: December 18, 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 18th day of December, 2018. A copy of Ordinance 1571-18 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 AMENDING CHAPTER 138,
"DEVELOPMENT FEES" OF THE BOROUGH CODE**

WHEREAS, In Holmdel Builder's Association v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules; and

WHEREAS, Pursuant to P.L. 2008, c. 46, § 8 (N.J.S.A. 52:27D-329.2), and the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from nonresidential development;

BE IT ORDAINED, by the Mayor and Council of the Borough of Emerson, Bergen County, New Jersey, that the Borough Code Chapter 138 Development Fees be amended to include the following provisions regarding the collection and disposition of mandatory development fees to be used in connection with the Borough's affordable housing programs as directed by the Superior Court and consistent with N.J.S.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.:

Section 1. Chapter 138-2 – Basic requirements, is hereby amended as follows:

§ 138-2. Basic requirements.

A. This chapter shall not be effective until approved by the Court.

B. The Borough of Emerson shall not spend development fees until the Court has approved a plan for spending such (Spending Plan).

Section 2. Chapter 138-3 – Definitions, is hereby amended as follows:

§ 138-3. Definitions.

The following terms, as used in this chapter, shall have the following meanings:

AFFORDABLE HOUSING DEVELOPMENT

A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a one-hundred-percent affordable development.

COUNCIL ON AFFORDABLE HOUSING OR COAH

The New Jersey Council on Affordable Housing, established under the Fair Housing Act

DEMOLISHED

In the least act or process that renders more than 50% of a structure or building unsafe for human occupancy or use shall be considered demolished for the purposes of this chapter.

DEVELOPER

The legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

DEVELOPMENT FEE

Funds paid by any person for the improvement of property as authorized by Holmdel Builder's Association v. Holmdel Township, 121 N.J. 550 (1990) and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq., and regulated by applicable COAH Rules.

EQUALIZED ASSESSED VALUE

The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with §§ 1, 5 and 6 of P.L. 1973, c. 123 (N.J.S.A. 54:1-35a through 54:1-35c).

GREEN BUILDING STRATEGIES

Those strategies that minimize the impact of development on the environment and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

LIVING SPACE

All internal areas of a dwelling with a floor-to-ceiling height of greater than six feet, exclusive of garages which are not to be considered as living space.

NATURAL DISASTER

A catastrophic event, such as a hurricane, flood, earthquake, volcanic eruption, landslide, blizzard or other natural phenomena that causes extensive human casualties or property damage, or both.

Section 3. Chapter 138-7 – Affordable Housing Trust Fund, is hereby amended as follows:

§ 138-7. Affordable Housing Trust Fund.

C. In the event of a failure by the Borough of Emerson to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in *In re Tp. Of Monroe*, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Borough of Emerson, or, if not practicable, then within the County or Housing Region.

Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or remedy the non-compliant condition(s), and upon a finding of continuing and deliberate non-compliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.

D. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Court.

Section 4. Chapter 138-8 – Use of funds, is hereby amended as follows:

§ 138-8. Use of funds.

A. The expenditure of all funds shall conform to a spending plan approved by the Court. Funds deposited in the housing trust fund may be used for any activity approved by the Court to address the Borough's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable or regional housing partnership programs, conversion of existing nonresidential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, and/or any other activity as permitted by the Court and specified in the approved spending plan.

Section 5. Chapter 138-9 – Monitoring, is hereby amended as follows:

§ 138-9. Monitoring.

The Borough shall provide annual reporting of Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, or any 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 sources and amounts of funds collected and the amounts and purposes for which any funds have been expended.

Section 6. Chapter 138-10 – Ongoing Collection of fees, is hereby amended as follows:

§ 138-10. Ongoing collection of fees.

A. The ability for the Borough to impose, collect and expend development fees shall be permitted through the expiration of the repose period covered by its Judgment of Compliance and shall continue thereafter so long as the Borough has filed an adopted Housing Element and Fair Share Plan with the Court or with a designated State administrative agency, has petitioned for a Judgment of Compliance from the Court or for substantive certification or its equivalent from a State administrative agency authorized to approve and administer municipal affordable housing compliance and has received approval of its development fee ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan.

B. If the Borough fails to pursue its authorization to impose and collect development fees after the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the “New Jersey Affordable Housing Trust Fund”, established pursuant to § 20 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-320).

C. After the expiration of the Judgment of Compliance, if the Borough does not pursue or obtain continued authorization, the Borough shall not impose a residential development fee on a development that receives preliminary or final site plan approval, nor shall the Borough retroactively impose a development fee on such a development. The Borough will not expend development fees after the expiration of its substantive certification.

Section 7. All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

Section 8. Severability and Repealer.

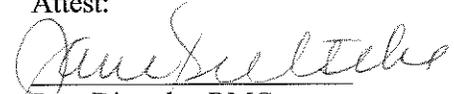
A. If any provision or portion of a provision of this ordinance is held to be unconstitutional, preempted by Federal or State law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.

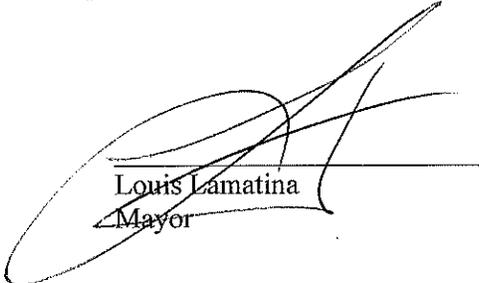
B. All ordinances or parts of ordinances, which are inconsistent with any provisions of this ordinance, are hereby repealed as to the extent of such inconsistencies.

Section 9. Effective Date.

This ordinance shall take effect immediately upon adoption and publication in accordance with the laws of the State of New Jersey.

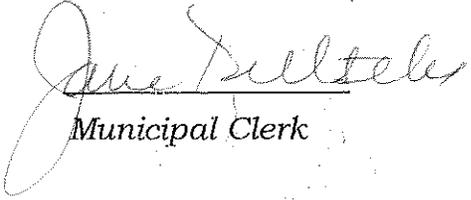
Attest:


 Jane Dietsche, RMC
 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	X			
Knoller	X		X			
Falotico					X	
Downing			X			

I hereby certify that the above Ordinance 1571-18 was duly adopted by the Borough of Emerson at a meeting held on December 18, 2018.

Attest: 
 Municipal Clerk