

**BOROUGH OF EMERSON
COUNTY OF BERGEN, NEW JERSEY**

No: 274-17

**RE: A RESOLUTION AUTHORIZING A SETTLEMENT AGREEMENT BY AND AMONG
THE BOROUGH OF EMERSON AND FAIR SHARE HOUSING CENTER TO RESOLVE THE
AFFORDABLE HOUSING ISSUES RAISED IN THE BOROUGH'S DECLARATORY
JUDGMENT ACTION**

WHEREAS, the New Jersey Supreme Court declared that the discriminatory use of zoning powers was illegal and provided, as a matter of constitutional law, that each developing municipality “must, by its land use regulations, make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there, of course including those of low and moderate income,” In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1, 6 (2015) (*Mount Laurel IV*), citing S. Burlington Cnty. NAACP v. Twp. of Mount Laurel (*Mount Laurel I*), 67 N.J. 151, 179, 187, appeal dismissed and cert. denied, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (1975), and that this constitutional obligation requires that towns must provide “a realistic opportunity for the construction of [their] fair share of the present and prospective regional need for low and moderate-income housing,” Ibid, citing S. Burlington Cnty. NAACP v. Twp. of Mount Laurel (*Mount Laurel II*), 92 N.J. 158, 205 (1983), (together with *Mount Laurel I*, the *Mount Laurel Doctrine*).

WHEREAS, the Borough of Emerson (“Borough”) has long engaged in the judicial process and the administrative process before the Council on Affordable Housing (COAH) established under the Fair Housing Act, N.J.S.A. 52:27D-1 et seq., to obtain approval of its affordable housing plan in compliance with its obligations under the *Mount Laurel Doctrine*; and

WHEREAS, the New Jersey Supreme Court, in *Mount Laurel IV* determined that “the administrative forum (“COAH”) is not capable of functioning as intended by the Fair Housing Act due to the lack of lawful Third Round Rules assigning constitutional obligations to municipalities,” and, consequently “the Courts may resume their role as the forum of first instance for evaluating municipal compliance with Mount Laurel obligations;” and

WHEREAS, *Mount Laurel IV* accordingly provided for a judicial mechanism for municipalities to seek a declaratory judgment that they have complied with the *Mount Laurel Doctrine* and are entitled to immunity from exclusionary zoning lawsuits; and

WHEREAS, on July 8, 2015, the Borough filed a declaratory judgment action under the procedures established by the Supreme Court in *Mount Laurel IV* encaptioned In the Matter of the Application of the Borough of Emerson, Bergen County, New Jersey for a Declaratory Judgment, Docket No. BER-L-6300-15 (“the Declaratory Judgment Action”) to address its *Mount Laurel Obligation*; and

WHEREAS, FAIR SHARE HOUSING CENTER (“FSHC”) is a Supreme Court-designated interested party in the Declaratory Judgment action and is a party to the settlement agreement and will be able to enforce the settlement agreement; and

WHEREAS, the settlement of *Mount Laurel* litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for low and moderate-income households; and

WHEREAS, the Borough of Emerson Land Use Board (“the Land Use Board”) will adopt a Housing Element and Fair Share Plan (HE/FSP) to provide for the Borough’s compliance with its *Mount Laurel Obligation* which will be provided to the Governing Body for review; and

WHEREAS, **Ordinances** will be presented to the Governing Body for introduction and adoption to implement the HE/FSP and provide mechanisms for the provision of affordable housing; and

WHEREAS, presented to the Governing Body for review and approval is a proposed Settlement Agreement with FSHC to resolve all disputes arising under the Borough’s Declaratory Judgment Action.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Emerson that:

1. The Governing Body will review Housing Element and Fair Share Plan and all of its constituent components to address and provide for the Borough’s *Mount Laurel Obligation*, upon the Court’s review and approval of same.

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2. The Governing Body will review the Ordinances to implement the Housing Element and Fair Share Plan which will be considered for adoption upon the Court's review and approval of same.
3. The Governing Body hereby approves and endorses the proposed Settlement Agreement with FSHC to resolve all disputes arising under the Borough's Declaratory Judgment Action, subject to the Court's review and determination. The Mayor is hereby authorized to execute the Settlement Agreement on behalf of the Borough substantially in the form as presented to the Governing Body and upon the advice of Borough Counsel.

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		
Falotico		X	X			
Lazar			X			
Knoller	X		X			
Downing			X			
Worthington					X	

I hereby certify that the above Resolution was duly adopted by the Borough of Emerson at a meeting held on November 21, 2017.

Attest: 
Municipal Clerk