

**CITY OF SEA ISLE CITY
NEW JERSEY**

ORDINANCE NO. 1627 (2018)

AN ORDINANCE TO AMEND THE REVISED GENERAL ORDINANCES OF THE CITY OF SEA ISLE CITY, COUNTY OF CAPE MAY, STATE OF NEW JERSEY, TO AMEND CHAPTER 26 ENTITLED “ZONING” TO CREATE AGE-RESTRICTED ZONE, ADD AN INCLUSIONARY HOUSING OVERLAY DISTRICT AND ADD A MANDATORY AFFORDABLE HOUSING SET ASIDE PROVISION

WHEREAS, the New Jersey Council on Affordable Housing (“COAH”) has promulgated rules, set forth at N.J.A.C. 5:93 and 5:91, concerning the substantive and procedural requirements for obtaining substantive certification of the City’s Housing Elements and Fair Share Plan; and

WHEREAS, it is the intent and purpose of the Municipal Land Use Law (the “MLUL”) to encourage municipal action to guide the appropriate use or development of all lands in the State, in a manner which will promote the public health, safety, morals, and general welfare; and

WHEREAS, the Municipal Land Use Law encourages senior citizen community housing construction; and

WHEREAS, on March 10, 2015, the Supreme Court transferred responsibility to review and approve housing elements and fair share plans from COAH to designated Mt. Laurel trial judges within the Superior Court; and

WHEREAS, on July 7, 2015, the City submitted a Declaratory Judgment Action to New Jersey Superior Court; and

WHEREAS, on November 14, 2017 the City entered into a Settlement Agreement with Fair Share Housing Center resolving the determination of City’s prior round, present, and third round obligation and setting forth the City’s preliminary compliance plan; and

WHEREAS, on December 1, 2017, the New Jersey Superior Court approved the Settlement Agreement between the City and Fair Share Housing Center; and

WHEREAS, conditions of the Court approved Settlement Agreement and Final Order of Fairness, Compliance and Repose dated August 28, 2018 require the City to update its affordable housing ordinances to be in compliance with current rules and to implement an R-3 Age-Restricted residential district within the City; and

WHEREAS, conditions of the Court approved Settlement Agreement require the City to update its affordable housing ordinances to be in compliance with current rules and to implement a City wide mandatory affordable housing set aside requirement for multiple unit residential or mixed residential commercial developments and an inclusionary zone; and

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Sea Isle City, County of Cape May and State of New Jersey as follows:

SECTION I. Chapter 26, Section 12.1 of the Revised General Ordinances of the City of Sea Isle City, entitled “Residential Districts” is hereby amended to delete this section in its entirety and replace same as follows:

DELETED SECTION:

26-12.1 Residential Districts.

- a. R-1 Single Family Residential District.
- b. R-2 Two Family Residential District.
- c. R-2A Two Family Residential District - Bay Area.

REPLACEMENT SECTION:

26-12.1 Residential Districts.

- a. R-1 Single Family Residential District.
- b. R-2 Two Family Residential District.
- c. R-2A Two Family Residential District - Bay Area.
- d. R-3 Age-Restricted Residential District.

SECTION II. Chapter 26, Section 12.2 of the Revised General Ordinances of the City of Sea Isle City, entitled “Commercial Districts” is hereby amended to delete the section in its entirety and replace same as follows:

DELETED SECTION:

26-12.2 Commercial Districts.

- a. C-1 General Business District.
- b. C-2 Neighborhood Business District.
- c. C-3 Marine Commercial/Industrial District.
- d. C-4 Beach Business District.
- e. C-5 Motel Business District.
- f. Yacht Club District.

REPLACEMENT SECTION:

26-12.2 Commercial Districts.

- a. C-1 General Business District.
- b. C-2 Neighborhood Business District.
- c. C-3 Marine Commercial/Industrial District.
- d. C-4 Beach Business District.
- e. C-5 Motel Business District.
- f. Yacht Club District.
- g. IZ Inclusionary Housing Overlay District comprising portions of the C-2 and C-3 Districts. Zoning

SECTION III. Chapter 26, Section 43.2 of the Revised General Ordinances of the City of Sea Isle City is hereby amended to create a new section entitled “MANDATORY AFFORDABLE HOUSING SET ASIDE” to add the following section in its entirety as follows:

ADDED SECTION:

26-43.2 MANDATORY AFFORDABLE HOUSING SET ASIDE

SECTION IV. Chapter 26, Section 43.2A of the Revised General Ordinances of the City of Sea Isle City is hereby amended to create a new section entitled “PURPOSE/HISTORY” to add the following section in its entirety as follows:

ADDED SECTION:

26-43.2A PURPOSE/HISTORY

1. The New Jersey Council on Affordable Housing (“COAH”) has promulgated rules, set forth at N.J.A.C. 5:93 and 5:91, concerning the substantive and procedural requirements for obtaining substantive certification of the City’s Housing Elements and Fair Share Plan; and
2. On March 10, 2015, the Supreme Court transferred responsibility to review and approve housing elements and fair share plans from COAH to designated Mt. Laurel trial judges within the Superior Court; and
3. On July 7, 2015, the City submitted a Declaratory Judgment Action to New Jersey Superior Court; and
4. On November 14, 2017 the City entered into a Settlement Agreement with Fair Share Housing Center resolving the determination of City’s prior round, present, and third round obligation and setting forth the City’s preliminary compliance plan; and
5. On December 1, 2017, the New Jersey Superior Court approved the Settlement Agreement between the City and Fair Share Housing Center; and
6. Conditions of the Court approved Settlement Agreement require the City to update its affordable housing ordinances to be in compliance with current rules and to implement a City wide mandatory affordable housing set aside requirement for multiple unit residential or mixed residential commercial developments; and

SECTION V. Chapter 26, Section 43.2B of the Revised General Ordinances of the City of Sea Isle City is hereby amended to create a new section entitled “REQUIREMENTS” to add the following section in its entirety as follows:

ADDED SECTION:

26-43.2B REQUIREMENTS

The City of Sea Isle City adds a Mandatory Affordable Housing Set Aside on future multifamily development of five (5) or more units in the City, as follows:

1. All multi family development of five (5) or more units in the City, other than such development permitted by the City's zoning as of the date of November 14, 2017, developed through Planning Board approval, Zoning Board approval, redevelopment or rehabilitation plan shall require that an appropriate percentage of the residential units be set aside for low- and moderate-income households.
2. This requirement shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five (5) or more.
3. For inclusionary projects in which the low and moderate units are to be offered for sale, the set aside percentage shall be 20 percent; for projects in which the low- and moderate-income units are to be offered for rent, the set-aside percentage should be 15 percent.
4. The developer shall provide that half of the low- and moderate-income units constructed be affordable by low-income households and that the remaining half be affordable by moderate-income households. At least 13 percent of all restricted 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.
5. All such affordable units including the required bedroom distribution, shall be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et seq. or any successor regulation, City Ordinances, and all other applicable law.
6. Subdivision and site plan approval shall be denied by the board unless the developer complies with the requirements to provide low- and moderate-income housing pursuant to the provisions of this section. A property shall not be permitted to be subdivided so as to avoid meeting this requirement. The board may impose any reasonable conditions to ensure such compliance.
7. Nothing in this paragraph precludes the City from imposing an affordable housing set aside in a development not required to have a set aside pursuant to this paragraph consistent with N.J.S.A. 52:27D-311(h) and other applicable law.
8. This requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project.
9. This requirement does not apply to any sites or specific zones otherwise identified in the Fair Share Plan, for which density and set aside standards shall be governed by the specific standards set forth therein.

SECTION VI. Chapter 26, Section 43.2C of the Revised General Ordinances of the City of Sea Isle City is hereby amended to create a new section entitled "Payment in Lieu of Unit Development" to add the following section in its entirety as follows:

ADDED SECTION:

26-43.2C Payment in Lieu of Unit Development

1. Developers unable to provide the appropriate percentage of affordable housing units on site will have the option of paying into the Affordable Housing Trust Fund an amount as established by this Ordinance for each unit which is not provided.
2. The payment in lieu amount shall be as recommended by the Council on Affordable Housing formulas, which in the past has resulted in an amount of \$182,859 per unit. This would require any developer who chooses not to, or is not able to provide all or part of the required affordable units to make a payment to the City in the amount of \$182,859 per unit, to be deposited into the City's Affordable Housing Trust Fund. The affordable housing requirement shall not be rounded.
3. Any fees collected herein shall be part of the City's Affordable Housing Trust Fund, and will be available for assistance with affordable housing programs, in accordance with the spending plan.

SECTION VII. Chapter 26, Section 43.3 of the Revised General Ordinances of the City of Sea Isle City is hereby amended to create a new section entitled “INCLUSIONARY OVERLAY DISTRICT” to add the following section in its entirety as follows:

ADDED SECTION:

26-43.3 INCLUSIONARY OVERLAY DISTRICT

SECTION VIII. Chapter 26, Section 43.3A of the Revised General Ordinances of the City of Sea Isle City is hereby amended to create a new section entitled “Procedural History” to add the following section in its entirety as follows:

ADDED SECTION:

26-43.3A Procedural History

The procedural history is set forth in Section 26-43.2 of this Chapter and incorporated by reference. In addition, the conditions of the Court-approved Settlement Agreement require the City to update its Ordinances to create an overlay affecting portions of C-3 - Marine Commercial/Industrial District and a portion of the C-2 - Neighborhood Business District that permits inclusionary zoning. The rules that follow shall pertain to all inclusionary developments, in addition to standards for the distribution of low- and moderate-income units; bedroom distribution; and establishing the rents and prices of low- and moderate-income units set forth elsewhere in this Chapter.

SECTION IX. Chapter 26, Section 43.3B of the Revised General Ordinances of the City of Sea Isle City is hereby amended to create a new section entitled “Applicability” to add the following section in its entirety as follows:

ADDED SECTION:

26-43.3B Applicability

This ordinance establishes a new Inclusionary Zoning Overlay District (IZ) to assist in meeting Sea Isle City’s affordable housing obligation. The district provides incentives to, but does not mandate, developers to incorporate affordable housing into developments within the district.

The regulations herein apply to all developments within the district which seek to develop otherwise than as permitted by the particular zone as of the date of November 14, 2017.

The Inclusionary Zoning Overlay District (IZ) requirements and/or incentive provisions apply in addition to the underlying zoning district regulations. Where these requirements conflict with the underlying district regulations or other provisions, the requirements of this Section shall be controlling.

The Inclusionary Zoning Overlay district (IZ) overlays on portions of the Commercial Zoning Districts C-2 Neighborhood Business District and C-3 Marine Commercial/Industrial District, as shown on the Zoning Map.

SECTION X. Chapter 26, Section 43.3C of the Revised General Ordinances of the City of Sea Isle City is hereby amended to create a new section entitled “Incentives for Affordable Housing Development” to add the following section in its entirety as follows:

ADDED SECTION:

26-43.3C Incentives for Affordable Housing Development.

1. For all mixed use/residential development, any developer seeking 5 units or more shall set aside 16.6% of the units (one affordable unit for every 5 market rate units by the developer) for development as affordable housing units. The developer shall be permitted an increase in density from the allocation of 4 upper story residential units per each 5,000 ft.² lot, as permitted as of November 14, 2017, to an increased density allowing 6 upper story residential units per each 5,000 ft.² lot.
2. Developers providing affordable units will receive tax relief in the form of a lower equalized assessed valuation (EAV) of the on-site affordable units in accord with the market valuation of the affordable units.

SECTION XI. Chapter 26, Section 43.3D of the Revised General Ordinances of the City of Sea Isle City is hereby amended to create a new section entitled “Payment in Lieu of Unit Development” to add the following section in its entirety as follows:

ADDED SECTION:

26-43.3D Payment in Lieu of Unit Development.

4. Developers unable to provide the appropriate percentage of affordable housing units on site will have the option of paying into the Affordable Housing Trust Fund an amount as established by this Ordinance for each unit which is not provided.
5. The payment in lieu amount shall be as recommended by the Council on Affordable Housing formulas, which in the past has resulted in an amount of \$182,859 per unit. This would require any developer who chooses not to, or is not able to provide all or part of the required affordable units to make a payment to the City in the amount of \$182,859 per unit, to be deposited into the City's Affordable Housing Trust Fund. The affordable housing requirement shall not be rounded.
6. Any fees collected herein shall be part of the City's Affordable Housing Trust Fund, and will be available for assistance with affordable housing programs, in accordance with the spending plan.

SECTION XII. Chapter 26, Section 43.3E of the Revised General Ordinances of the City of Sea Isle City is hereby amended to create a new section entitled “Bulk Requirements” to add the following section in its entirety as follows:

ADDED SECTION:

26-43.3E Bulk Requirements.

All bulk requirements set forth in the specific zoning district in which the development lies shall be applicable in the inclusionary housing overlay.

SECTION XIII. Chapter 26, Section 48 of the Revised General Ordinances of the City of Sea Isle City, entitled “R-3 AGE-RESTRICTED RESIDENTIAL DISTRICT” is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-48 R-3 AGE-RESTRICTED RESIDENTIAL DISTRICT.

SECTION XIV. Chapter 26, Section 48.1 of the Revised General Ordinances of the City of Sea Isle City, entitled “Purpose” is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-48.1 Purpose.

The purpose of this subsection is to establish the standards and requirements for inclusionary development that includes a mix of age restricted housing servicing both market rate housing and housing that is affordable to low- and moderate-income households. The affordable housing will assist Sea Isle City in meeting its constitutional and statutory obligations to provide a realistic opportunity for the construction of its fair share of its region’s needed low- and moderate-income housing.

The R-3 Age-Restricted Residential District provides opportunities for development of age-restricted housing in compliance with the appropriate administrative code requirements. The R-3 Age-Restricted Residential District allows for a density of four (4) dwelling units per 5,000 square foot lot, which may be developed as either 100% affordable age-restricted housing, or as mixed-income age-restricted housing with a 20% affordable housing set aside.

Bulk standards for structures housing more than four (4) units based upon combined lots and a planned development shall be formulated by the Planning Board and referred to the administration for review and as applicable presented to Council for adoption.

SECTION XV. Chapter 26, Section 48.2 of the Revised General Ordinances of the City of Sea Isle City, entitled “Permitted Uses” is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-48.2 Permitted Uses.

The following uses and no others are permitted in the R-3 district:

- a. Inclusionary housing development consisting of market rate housing and affordable age-restricted housing as defined by this Section and N.J.A.C. 5:80-26.1, et seq., Uniform Housing Affordability Controls (UHAC) and the Sea Isle City Affordable Housing Ordinance (Chapter 26-43). All housing shall comply with the provisions set forth in this section. Permitted residential dwellings include:

1. Market rate multi-unit dwelling units that are deed restricted to limit the number of bedrooms to a maximum of two (2) per dwelling unit and to prohibit the conversion of basements, dens, offices, lofts and other non-bedroom spaces and rooms into a new bedroom. The maximum number of market rate multi-unit dwelling units provided shall not exceed 3 units per 5,000 square feet of lot area.
 2. Affordable multi-unit age-restricted rental or sale dwelling units that are provided at a minimum set aside rate of twenty percent (20%) of the total number of dwelling units constructed in the development, with thirteen percent (13%) of the affordable dwelling units to be affordable to very low-income households, and the remaining housing unit allocation to be consistent with the City's Affordable Housing Ordinance, Chapter 26-43, and are deed restricted to limit the number of bedrooms to a maximum of two (2) per dwelling unit and to prohibit the conversion of basements, dens, offices, lofts and other non-bedroom spaces and rooms into a new bedroom. The minimum number of affordable multi-unit age-restricted rental or sale dwelling units provided shall be one (1) unit per 5,000 square feet of lot area.
- b. A 100% affordable multi-unit age-restricted rental or sale dwelling units development, with thirteen percent (13%) of the affordable dwelling units to be affordable to very low-income households and the remaining housing unit allocation to be consistent with the City's Affordable Housing Ordinance, Chapter 26-43 and are deed restricted to limit the number of bedrooms to a maximum of two (2) per dwelling unit and to prohibit the conversion of basements, dens, offices, lofts and other non-bedroom spaces and rooms into a new bedroom. The maximum number of affordable multi-unit age-restricted rental dwelling units provided shall be four (4) per 5,000 square feet of lot area.
 - c. Church or house of worship, related conference centers and uses, including housing and offices.
 - d. Elementary school.
 - e. Library.
 - f. Park.
 - g. Playground.
 - h. Civic Center.
 - i. No building, structure or land shall be used for and no building structure shall hereafter be erected, structurally enlarged or maintained except for the permitted affordable age-restricted and market rate housing to be used by the residents of the Inclusionary housing development, their guests or other authorized users, except as a permitted use herein.

SECTION XVI. Chapter 26, Section 48.3 of the Revised General Ordinances of the City of Sea Isle City, entitled "Accessory Uses" is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-48.3 Accessory Uses.

The following uses are permitted as accessory uses and no others:

- a. Private garage or carport.

SECTION XVII. Chapter 26, Section 48.4 of the Revised General Ordinances of the City of Sea Isle City, entitled "Conditional Uses and Structures" is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-48.4 Conditional Uses and Structures.

The following uses and structures are permitted if they satisfy the specified conditions:

- a. Utility uses or structures may be permitted if the applicant can demonstrate to the satisfaction of the Planning Board the necessity of locating such use or structure in a residential district and the lack of adverse impact on the general comfort, convenience, health of the surrounding uses and preservation of the general character of the neighborhood in which it is placed.
- b. Satellite television antennas and solar energy systems may be permitted if in compliance with the requirements of Section 26-30.
- c. Home occupations may be permitted if all of the requirements of Section 26-22 are satisfied.

SECTION XVIII. Chapter 26, Section 48.5 of the Revised General Ordinances of the City of Sea Isle City, entitled "Front Yard" is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-48.5 Front Yard.

Each lot shall have a minimum fifteen (15') foot setback from the front property line. A corner lot shall be considered to have two (2) front property lines and shall require two (2) front yards. Accessory structures, patios, terraces and decks shall not be permitted within a required front yard setback. Attached enclosed shower structures shall be prohibited in the front yard.

SECTION XIX. Chapter 26, Section 48.6 of the Revised General Ordinances of the City of Sea Isle City, entitled "Side Yard" is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-48.6 Side Yard.

Each lot, other than a corner lot, shall have two (2) side yards.

- a. For principal structures and accessory structures, the sum of the side yards shall not be less than fifteen (15') feet and the minimum width of any side yard shall be five (5') feet.
- b. Patios, terraces and decks shall not be permitted in a required side yard setback.

SECTION XX. Chapter 26, Section 48.7 of the Revised General Ordinances of the City of Sea Isle City, entitled "Rear Yard" is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-48.7 Rear Yards.

Each lot shall have a fifteen (15') foot rear yard setback. Accessory structures, patios and terraces shall be no closer to rear lot lines than five (5') feet.

SECTION XXI. Chapter 26, Section 48.8 of the Revised General Ordinances of the City of Sea Isle City, entitled "Minimum Lot Area; Dimensions" is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-48.8 Minimum Lot Area; Dimensions.

- a. No lot shall be less than five thousand (5,000) square feet.
- b. No lot shall be less than fifty (50') feet wide at the street line or less than one hundred (100') feet deep.

SECTION XXII. Chapter 26, Section 48.9 of the Revised General Ordinances of the City of Sea Isle City, entitled "Building Height" is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-48.9 Building Height.

a. The height of a principal building or structure in the R-3 District shall not exceed thirty-two (32') feet above the height standards set forth in the flood damage prevention ordinance (Section 14-3), where there is a pitched roof, twenty-five (25') feet above the height standards set forth in the flood damage prevention ordinance (Subsection 14-3.2), where there is a flat roof.

- b. The maximum height for accessory structures in the R-3 District shall be fifteen (15') feet.

SECTION XXIII. Chapter 26, Section 48.10 of the Revised General Ordinances of the City of Sea Isle City, entitled "Lot Coverage" is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-48.10 Lot Coverage.

The maximum lot coverage for the principal structure or structures excluding decks on a lot shall be thirty-five (35%) percent. The maximum lot coverage for all accessory structures excluding decks on a lot shall be ten (10%) percent.

SECTION XIV. Chapter 26, Section 48.11 of the Revised General Ordinances of the City of Sea Isle City, entitled "Floor Area Ratio" is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-48.11 Floor Area Ratio.

The maximum floor area ratio for any lot, upon which is a multi-unit dwelling, shall be eight-tenths (.8).

SECTION XXV. Chapter 26, Section 48.12 the Revised General Ordinances of the City of Sea Isle City, entitled "Parking" is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-48.12 Parking.

Off-street parking shall be required in accordance with Section 26-23, and the Residential Site Improvement Standards NJAC 5:21 as applicable.

SECTION XXVI. Chapter 26, Section 48.13 of the Revised General Ordinances of the City of Sea Isle City, entitled "Landscaping" is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-48.13 Landscaping.

All areas not covered by buildings, driveways, pedestrian walkways or parking areas shall be landscaped in accordance with Section 26-25.

SECTION XXVII. Chapter 26, Section 48.14 of the Revised General Ordinances of the City of Sea Isle City, entitled "Encroachment into Side and Front Yard Setbacks" is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-48.14 Encroachment into Side and Front Yard Setbacks.

A one (1') foot encroachment of stairs is only permitted into the side or front yard setbacks if the entrance foyer is at or above flood elevation, providing the one (1') foot freeboard is used as the reference level.

SECTION XXVIII. Severability. If for any reason any section of this Ordinance shall be declared illegal by any Court of competent jurisdiction, the remaining section of the Ordinance shall remain in full force and effect, notwithstanding.

SECTION XXIX. Repealer. Any Ordinance or provision thereof inconsistent with this Ordinance is hereby repealed to the extent of such inconsistency.

SECTION XXX. Publication. This Ordinance shall take effect immediately upon the adoption and publication in accordance with the law.

Jack C. Gibson, Council President

Mayor Leonard C. Desiderio

I HEREBY CERTIFY THAT the foregoing ordinance was duly passed by the City Council of the City of Sea Isle City, New Jersey on first reading at the regular meeting of said Council held on the 23rd day of October, 2018 and was taken up for second reading, public hearing and final passage at the regular meeting of said Council held on the 27th day of November, 2018, in City Hall, 3rd Floor Council Chambers, 233 JFK Blvd., Sea Isle City, New Jersey at 10:00 a.m.

Shannon D. Romano, Municipal Clerk