

**CITY OF SEA ISLE CITY
NEW JERSEY**

ORDINANCE NO. 1628 (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 ADD NON-RESIDENTIAL AFFORDABLE HOUSING DEVELOPMENT FEES

WHEREAS, in Holmdel Builder's Association V. Holmdel Township, 121 NJ 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), 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 PL 2008, c.46, Section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), the Council on Affordable Housing (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 a court of competent jurisdiction and have an approved spending plan may retain fees collected from non-residential development. The City is under the jurisdiction of the Superior Court of New Jersey and intends to obtain Court approval of its spending plan; and

WHEREAS, pursuant to the March 10, 2015 Supreme Court Order, the Court transferred all functions, powers, and duties to the Courts. Any and all references to COAH shall mean the Courts; and

WHEREAS, this ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to the Court's regulations and in accordance PL 2008, c.46, sections 8 and 32 through 38; 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 43.4 of the Revised General Ordinances of the City of Sea Isle City, entitled “NON-RESIDENTIAL AFFORDABLE HOUSING DEVELOPMENT FEES” is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-43.4 NON-RESIDENTIAL AFFORDABLE HOUSING DEVELOPMENT FEES.

SECTION II. Chapter 26 Section 43.4A 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:

26-43.4A Purpose.

1. In Holmdel Builder’s Association v. Holmdel City, 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 adoption of Rules by the Council on Affordable Housing (COAH).

2. Pursuant to P.L. 2008, c. 46, Section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH was 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 were under the jurisdiction of COAH, and that are now before a court of competent jurisdiction and have a Court-approved Spending Plan, may retain fees collected from non-residential development.

3. This Ordinance establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with COAH’s regulations and policies developed in response to P.L. 2008, c. 46, Sections 8 and 32-38 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing low- and moderate- income housing in accordance with a Court-approved Spending Plan.

SECTION III. Chapter 26 Section 43.4B of the Revised General Ordinances of the City of Sea Isle City, entitled “Basic Requirements” is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-43.4B Basic Requirements.

1. This Ordinance shall not become effective until approved by the Court pursuant to N.J.A.C. 5:96-5.1.
2. The City of Sea Isle City shall not spend development fees until the Court has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.
3. This Ordinance shall be interpreted within the framework of COAH's last adopted rules on development fees, codified at N.J.A.C. 5:97-8, as same may be interpreted and applied by the Court.

SECTION IV. Chapter 26 Section 43.C of the Revised General Ordinances of the City of Sea Isle City, entitled “Non-residential Development Fees” is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-43.4C Non-residential Development Fees.

1. Imposed fees
 - a. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted below, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
 - b. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
 - c. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.
2. Eligible exactions, ineligible exactions and exemptions for nonresidential development.
 - a. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.
 - b. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
 - c. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF “State of New Jersey Non-Residential Development Certification/Exemption” Form. Any exemption claimed by a developer shall be substantiated by that developer.
 - d. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
 - e. If a property, which was exempted from the collection of a non-residential development fee thereafter, ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these

circumstances may be enforceable by Sea Isle City as a lien against the real property of the owner.

- f. Developers that have received final approval prior to the adoption of a municipal development fee ordinance shall be exempt from paying a development fee, unless the developer seeks a substantial change in the approval.
- g. Exempted from these provisions shall be approvals for the following classes of development:
 - 1) Utility facilities
 - 2) Educational, cultural and facilities
 - 3) Quasi-public uses, including clubs, lodges and similar uses
 - 4) Public uses
 - 5) Hospital uses

SECTION V. Chapter 26 Section 43.4D of the Revised General Ordinances of the City of Sea Isle City, entitled "Collection Fees" is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-43.4D Collection Fees.

1. Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
2. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The Developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
3. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development, which is subject to a development fee.
4. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
5. The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of all requests for the scheduling of a final inspection on property, which is subject to a development fee.
6. Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
7. Should Sea Isle City fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).
8. Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
9. Appeal of development fees
 - a. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board,

collected fees shall be placed in an interest bearing escrow account by Sea Isle City. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

- b. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by Sea Isle City. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

SECTION VI. Chapter 26 Section 43E of the Revised General Ordinances of the City of Sea Isle City, entitled "Affordable Housing Trust Fund" is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-43.4E Affordable Housing Trust Fund.

1. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Sea Isle City Chief Financial Officer for depositing development fees collected from non-residential developers and proceeds from the sale of units with extinguished controls.
2. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - a. Payments in lieu of on-site construction of affordable units, except that payments in lieu of construction shall be separately identifiable from other payments in lieu of construction as a sub-account within the Affordable Housing Trust Fund;
 - b. Developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
 - c. Rental income from municipally operated units;
 - d. Repayments from affordable housing program loans;
 - e. Recapture funds;
 - f. Proceeds from the sale of affordable units; and
 - g. Any other funds collected in connection with Sea Isle City's affordable housing program.
3. Within seven days from the opening of the trust fund account, Sea Isle City shall provide the Court with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and Court to permit Court to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).
4. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by Court.

SECTION VII. Chapter 26 Section 43.4F of the Revised General Ordinances of the City of Sea Isle City, entitled "Use of Funds" is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-43.4F Use of Funds.

1. 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 Sea Isle City'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 non-residential 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, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.

2. Funds shall not be expended to reimburse Sea Isle City for past housing activities.
3. At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
 - a. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
 - b. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
 - c. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
 - d. Sea Isle City may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.
 - e. No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with Court's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

SECTION VIII. Chapter 26 Section 43.4G of the Revised General Ordinances of the City of Sea Isle City, entitled "Monitoring" is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-43.4G Monitoring.

Sea Isle City shall complete and return to New Jersey Department of Community Affairs (NJDCA), Local Government Services, all monitoring forms included in monitoring requirements related to the collection of development fees from non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with Sea Isle City's housing program, as well as to the expenditure of revenues and implementation of the plan certified by the Court. All monitoring reports shall be completed on forms designed by NJDCA or successor entity for that purpose.

SECTION IX. Chapter 26 Section 43.4H of the Revised General Ordinances of the City of Sea Isle City, entitled "Ongoing Collection of Fees" is hereby amended to add the following section in its entirety as follows:

ADDED SECTION:

26-43.4H Ongoing Collection of Fees.

1. The ability for the City of Sea Isle City to impose, collect and expend development fees shall expire with the expiration of the repose period covered by its impending Judgment of

Compliance and Repose unless the City of Sea Isle City has first 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 and Repose 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.

2. If the City of Sea Isle City fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance and Repose, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to Section 20 of P.L. 1985, c. 222 (C. 52:27D-320).

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

SECTION XII. 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 will be 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