

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
ORDINANCE**

**ORDINANCE NO. 003-2016**

**RE: AN ORDINANCE ADOPTING REVISED GENERAL ORDINANCE  
CHAPTER XX (ZONING) OF THE CODE OF UPPER TOWNSHIP**

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**WHEREAS**, the Township Committee desires to adopt an ordinance regulating affordable accessory apartments with respect to land subdivision, site plan, land use administration and zoning; and

**WHEREAS**, the New Jersey Supreme Court and New Jersey Legislature have recognized and mandated in So. Burl. Co. NAACP v. Mount Laurel, 92 N.J. 158 (1983) (“Mount Laurel II”) and the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. (“FHA”) that every municipality in New Jersey has an affirmative obligation to facilitate the provision of affordable housing; and

**WHEREAS**, the Township Planning Board prepared and adopted a Housing Element and Fair Share Plan (HEFSP) and Master Plan Reexamination Report on December 18, 2008 in accordance with N.J.S.A.40:55D-89; and

**WHEREAS**, the Township Planning Board prepared a DRAFT Affordable Accessory Apartment ordinance as part of the 2008 HEFSP; and

**BE IT ORDAINED** by the Township Committee, in the Township of Upper, County of Cape May and State of New Jersey, as follows:

**SECTION 1.** Chapter 20 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be amended and supplemented as hereinafter provided:

**Add Section 20-4.19 Affordable Accessory Apartments.**

- a. Purpose. The purpose of the Affordable Accessory Apartments is to accommodate the development and conversion of accessory apartments to provide affordable housing in accordance with the Township’s Housing Element and Fair Share Plan.
- b. *Where Permitted* Affordable Accessory Apartments" is provided on Schedule B Commercial and Mixed Use Districts.
- c. Definition. An AFFORDABLE ACCESSORY APARTMENT shall be a self-contained residential dwelling unit with a kitchen, bathroom, sleeping quarters and a private entrance which is created to be occupied by a "moderate" income

household in accordance with the applicable provisions of the "Substantive Rules" of the New Jersey Council on Affordable Housing (COAH) at N.J.A.C. 5:97-6.8.

*d. Additional Conditions.*

1. The "Affordable Accessory Apartment" shall be rented only to a "moderate" income household at the time of initial occupancy of the unit.
  2. The "Affordable Accessory Apartment" shall, for a period of thirty (30) years from the date of the issuance of a Certificate of Occupancy, be rented only to "moderate" income households.
  3. Rents of "Affordable Accessory Apartments" shall be affordable to moderate income households in accordance with the applicable provisions of N.J.A.C. 5:97-9, and shall specifically include an allowance for utilities in accordance with Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et. seq.
  4. There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the "Affordable Accessory Apartment" is located running with the land and limiting its subsequent rental or sale.
  5. No more than ten (10) units of the Township's Affordable Housing Obligation to produce "Affordable Accessory Apartments" shall be permitted.
  6. The "Affordable Accessory Apartment" program shall be affirmatively marketed to the Housing Region 6 consisting of Atlantic, Cape May, Cumberland and Salem counties in accordance with the "Affirmative Marketing Plan".
- e. At the end of the 30 year deed restriction, the Township may negotiate with the owner to extend affordability controls subject to COAH's expiration of affordability controls procedures.
- f. At the termination of the deed restriction, the affordable accessory apartment will be permitted to be marketed to the general public without affordability controls.
- g. The "Affordable Accessory Apartment" may be a newly created accessory apartment in the Commercial and Mixed Use District.
- h. Administration of the "Affordable Accessory Apartment" Program.
- a. The Township Committee of Upper Township shall designate an "administrative entity" to administer the "Affordable Accessory Apartment" program in accordance with the following:
    - i. The administrative entity shall administer the "Affordable Accessory Apartment" program including advertising, income qualifying prospective renters, setting rents and annual rental increases, maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports, and affirmatively marketing the "Affordable Accessory Apartment" program;
    - ii. The administrative entity shall only deny an application for an accessory apartment if the project is not in conformance with COAH's requirements and/or the provisions of this Ordinance. All denials shall be in writing with the reasons clearly stated; and
    - iii. In accordance with COAH requirements, the Township shall provide at least \$20,000 to subsidize the creation of an "Affordable Accessory Apartment" conforming to the requirements of this Ordinance section and COAH requirements.
    - iv. Prior to the grant of such subsidy, the property owner shall enter into a written agreement with the Township insuring that the apartment shall meet the requirements of this Ordinance and COAH regulations.
- i. Application Procedures
- a. Each application for the creation of an "Affordable Accessory Apartment" shall submit the following information to the designated administrative entity:
    - i. A sketch of floor plan(s) showing the location, size and relationship of both the "Affordable Accessory Apartment" and the primary dwelling within the building or in another structure;

- ii. Rough elevations showing the modification of any exterior building facade to which changes are proposed; and
- iii. A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition if any, along with the minimum building setback lines; the required parking spaces for both dwelling units and any natural or man-made conditions which might affect construction.

**Schedule B in Chapter 20:** Add “Affordable Accessory Apartment” as an accessory use (“A”) in the following zones: CM2, RC, TC & TCC.

**Schedule B in Chapter 20:** Add “For any dwelling unit added after January 1, 2016, said dwelling unit must be an “Affordable Accessory Apartment” and comply with 20-4.19.” to notes #5 and #12.

**SECTION 2: EFFECTIVE DATE:** This ordinance shall take effect immediately upon adoption and publication as required by law.

**SECTION 3: REPEALER:** All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency only.

**SECTION 4: SEVERABILITY:** If any section, paragraph, subdivision, subsection, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

**SECTION 5: CODIFICATION:** This Ordinance shall be codified as indicated in Chapter 20 of the Upper Township Code.

ATTEST:

  
BARBARA L. YOUNG, Township Clerk

  
RICHARD PALOMBO, Mayor

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 8<sup>th</sup> DAY OF FEBRUARY, 2016 AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 7<sup>th</sup> DAY OF MARCH, 2016 AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY.

BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.

BARBARA L. YOUNG, TOWNSHIP CLERK  
TOWNSHIP OF UPPER

**Legislative History:**

Introduced: February 8, 2016

Publication: February 12, 2016

Newspaper(s): The Press of Atlantic City

Second Reading and Public Hearing: March 7, 2016

Final Adoption: March 7, 2016

Final Publication Date: March 10, 2016

I certify that the foregoing Ordinance was finally adopted by the Township Committee of the Township of Upper on March 7, 2016 and notice of adoption was thereafter published pursuant to law in the Press of Atlantic City on March 10, 2016.

  
BARBARA L. YOUNG, Township Clerk