

**ORDINANCE NO. 08-18 AN ORDINANCE AMENDING CHAPTER 207, ZONING,
OF THE CODE OF THE BOROUGH OF KINNELON, BY
THE ADDITION OF ARTICLE XVIII, ENTITLED
"ACCESSORY APARTMENTS"**

WHEREAS, on March 10, 2015, the New Jersey Supreme Court issued its decision in In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015). In that decision, the New Jersey Supreme Court transferred primary jurisdiction over affordable housing matters from the New Jersey Council on Affordable Housing ("COAH") to the New Jersey Superior Court and established a transitional process for municipalities, like the Borough of Kinnelon ("Borough"), to file declaratory judgment actions seeking to declare their Housing Element and Fair Share Plans ("HEFSPs") as being constitutionally compliant and seeking similar protections to what they would have received if they had continued to proceed before COAH; and

WHEREAS, on June 25, 2015, the Borough filed a declaratory judgment action with the New Jersey Superior Court seeking to declare its HEFSP as being constitutionally compliant and seeking protection and repose against exclusionary zoning litigation for a ten (10) year period; and

WHEREAS, the Borough negotiated and executed a Settlement Agreement with the Fair Share Housing Center ("FSHC") which included agreement on the extent of the Borough's affordable housing fair share obligation for the period from 1999 to 2025 and the methods the Borough intends to use to satisfy the obligation; and

WHEREAS, the New Jersey Superior Court entered a Judgment of Compliance and Repose on March 9, 2018 that granted the Borough immunity and repose from any and all Mount Laurel lawsuits through July 1, 2025, subject to the satisfaction of certain Compliance Conditions and Requirements including the adoption of a 10 unit accessory apartment ordinance; and

WHEREAS, the Borough of Kinnelon desires to amend and supplement Chapter 207, Zoning, of the Code of the Borough of Kinnelon by the addition of Article XVIII, entitled "Accessory Apartments".

NOW, THEREFORE, BE IT ORDAINED, by the Governing Body of the Borough of Kinnelon, County of Morris, State of New Jersey as follows:

SECTION ONE. Chapter 207, Zoning, of the Code of the Borough of Kinnelon is hereby amended and supplemented by the addition of the following:

Article XVIII: Accessory Apartments

§ 207-108 Requirements. All accessory apartments shall meet the following conditions:

- A. Provided the units are affordable to low- and moderate-income households, accessory apartments shall be permitted in all Residential and Commercial Zones provided the accessory apartment is located on a property with a residential and/or commercial use and further provided that the property is not used for any industrial purpose. Accessory apartments may be developed as low-income or moderate-income units (accessory apartments may be limited to only low- or only moderate-income units as determined in the Fair Share Plan).
- B. Accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all building codes.
- C. At the time of initial occupancy of the unit and for at least ten (10) years thereafter, the accessory apartment shall be rented only to a household which is either a very-low, low- or moderate-income household.

- D. Rents of accessory apartments shall be affordable to very-low, low- or moderate-income households as per the FHA and COAH and UHAC regulations.
- E. There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale of the unit and the accessory apartment. The deed or declarations shall be reviewed and approved by the Borough Attorney prior to recording; and such document must be recorded prior to the issuance of a building permit or if no building permit needs to be issued prior to the issuance of the Certificate of Occupancy.
- F. The appropriate utility authority must certify that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartment. Where the proposed location is served by an individual well and/or septic system, the additional capacity necessitated by the new unit must meet the appropriate NJDEP standards.
- G. The Borough of Kinnelon Accessory Apartment Program shall not restrict the number of bedrooms in any accessory apartment.
- H. No accessory apartment created as a result of this section or these regulations shall exceed the gross floor area of the existing principal dwelling on the lot.

§ 207-109 Credits. The maximum number of creditable accessory apartments shall be equal to no more than ten (10) or an amount equal to ten (10%) percent of the Borough of Kinnelon's fair share obligation, whichever is greater (additional units may be approved by the State or the Courts if the municipality has demonstrated successful completion of its accessory apartment program.).

§ 207-110 Administration. The Borough of Kinnelon shall designate an administrative entity to administer the accessory apartment program that shall have the following responsibilities:

- A. The Administrative Agent shall administer the accessory apartment program, including advertising, income qualifying prospective renters, setting rents and annual rent 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 in accordance with the UHAC.

- B. 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 section/article. All denials shall be in writing with the reasons clearly stated.
- C. In accordance with COAH requirements, the Borough of Kinnelon shall provide at least ten thousand (\$10,000.00) dollars per unit to subsidize the creation of each low- income or moderate-income accessory apartment. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates.

§ 207-111 Applications. Property owners wishing to apply to create an accessory apartment shall submit to the administrative entity:

- A. A sketch of floor plan(s) showing the location, size and relationship of both the accessory apartment and the primary dwelling within the building or in another structure;
- B. Rough elevations showing the modifications of any exterior building facade to which changes are proposed; and
- C. 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 manmade conditions which might affect construction.
- D. Applicants shall provide septic and well details to support their application.


SECTION TWO. All Ordinances of the Borough of Kinnelon which are inconsistent with the provisions of this Ordinance are hereby repealed as to the extent of such inconsistency.

SECTION THREE. If any section, subsection, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any Court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.


SECTION FOUR. This Ordinance shall take effect as provided by law.

ATTEST:

BOROUGH OF KINNELON



Karen M. Iuele, RMC, Borough Clerk



Robert W. Collins, Mayor

CERTIFICATION

I, Karen M. Iuele, Borough Clerk of the Borough of Kinnelon, County of Morris, State of New Jersey, do hereby certify the foregoing to be a true copy of an Ordinance introduced, read by title and passed on the first reading at the regular meeting of the Borough held on June 21, 2018 and adopted by the Governing Body at a regular meeting of the Borough held on July 19, 2018.



Karen M. Iuele, RMC, Borough Clerk