

**MONTAGUE TOWNSHIP
SUSSEX COUNTY, NEW JERSEY**

ORDINANCE 2026-04

**ORDINANCE OF THE TOWNSHIP OF MONTAGUE, COUNTY OF
SUSSEX, STATE OF NEW JERSEY, AMENDING CHAPTER 76,
ZONING, OF THE TOWNSHIP CODE TO CREATE ARTICLE XXVIII,
AFFORDABLE ACCESSORY APARTMENTS, IN SUPPORT OF THE
TOWNSHIP'S FOURTH ROUND AFFORDABLE HOUSING PLAN**

WHEREAS, in 2024, the New Jersey Legislature amended the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq. through the adoption of P.L. 2024, c.2 ("FHA" or "FHA-2"); and

WHEREAS, P.L. 2024, c. 2 abolished the Council on Affordable Housing (COAH), created the Affordable Housing Dispute Resolution Program (Program), and established new procedures and deadlines for municipalities to come into compliance with the FHA and the Mount Laurel doctrine for each future ten-year affordable housing round beginning with the Fourth Round, which starts on July 1, 2025 and ends on June 30, 2035; and

WHEREAS, in December 2024, the Administrative Office of the Courts issued Directive #14-24, which sets forth additional procedures all municipalities must follow to be in compliance with the FHA in order to maintain immunity from exclusionary zoning and builder's remedy litigation through the Program process set forth in P.L. 2024, c.2; and

WHEREAS, in compliance with P.L. 2024, c. 2 and Directive #14-24, the Township of Montague timely adopted a resolution setting forth the Township's pre-credited/unadjusted Fourth Round affordable housing obligations on January 28, 2025 and on January 30, 2025 the Township uploaded same to the Program and filed a declaratory judgment action with the Program, which is entitled: In re Township of Montague, Docket No.: SSX-L-000073-25 (Township's "2025 Action"); and

WHEREAS, on April 24, 2025 Morris/Sussex County Mount Laurel Judge, the Honorable Janine M. Allen, J.S.C., issued an Order in the Township's 2025 Action fixing the Township's Fourth Round pre-credited/unadjusted Present Need Obligation at twenty-three (23) and the Township's Fourth Round gross Prospective Need Obligation at fifty-five (55), which Order further directs the Township to adopt its Fourth Round Housing Element and Fair Share Plan; and

WHEREAS, in accordance with the requirements of Directive #14-24 and P.L. 2024, c.2, and the Order issued by Judge Allen in the Township's 2025 Action, the Township's Municipal Planner prepared the Township's 2025 Housing Element and Fair Share Plan which, in part, establishes that there shall be created an accessory apartment program to provide affordable rental units in the Township's existing R-3 Residential Zone, available to supportive and special needs living arrangements; and

WHEREAS, on timely prior notice to the public, on June 30, 2025, the Township of Montague Land Use Board adopted the Township's 2025 Housing Element and Fair Share Plan following a public hearing thereon, all in accordance with the requirements of the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., N.J.S.A. 40:49-2.1 of the Home Rule Act and

the applicable provisions of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.; and

WHEREAS, the Township Committee of the Township of Montague endorsed the 2025 Housing Element and Fair Share Plan, pursuant to Resolution 2025-076, approved by the Township Committee on July 15, 2025.

NOW THEREFORE, BE IT ORDAINED, by the Mayor and Township Committee of the Township of Montague, County of Sussex, State of New Jersey, as follows:

SECTION 1. Chapter 76, Zoning, of the Township Code is hereby amended to create Article XXVIII, “Affordable Accessory Apartments,” to read as follows:

Article XXVIII. Affordable Accessory Apartments.

§ 76-123. Purpose.

The purpose of this Article is to provide housing opportunities to fulfill Montague Township's affordable housing obligation. The intent is to encourage the creation of affordable Accessory Apartments within new or existing dwellings in Montague Township, for supportive and special needs living arrangements.

§ 76-124. Apartment within principal dwelling or accessory structure permitted.

In the R-3 Residential Zone, an affordable accessory apartment may be created within a principal dwelling, subject to the standards set forth herein.

§ 76-125. Permitted Living Arrangements for Accessory Apartments.

Pursuant to the Affordable Housing Law, an Accessory Apartment is a residential dwelling unit that provides complete independent living facilities with a private entrance for one or more persons, consisting of provisions for living, sleeping, eating, sanitation, and cooking, including a stove and refrigerator, and is located within a proposed or existing primary dwelling, within an existing or proposed structure that is accessory to a dwelling on the same lot, constructed in whole or part as an extension to a proposed or existing primary dwelling, or constructed as a separate detached structure on the same lot as the existing or proposed primary dwelling.

§ 76-126. Preference for low- and moderate-income households.

Affordable Accessory Apartments created pursuant to this Article shall be occupied by a low- or moderate-income household, with affordability controls for a minimum of ten (10) years, as defined in the Substantive Rules of the New Jersey Council on Affordable Housing, N.J.A.C. 5:93-1 et seq., as supplemented and amended.

§ 76-127. Number of dwelling units.

No lot shall contain more than two dwelling units. A lot shall contain a principal dwelling unit and not more than one affordable accessory apartment, which may be located in the principal

residence or in an accessory structure. No more than ten (10) total Accessory Apartments shall be created pursuant to this Article.

§ 76-128. Minimum lot area.

An Accessory Apartment shall be permitted within a principal dwelling, provided that the lot conforms to the area and bulk requirements of the R-3 Residential Zone. If the Accessory Apartment is to be located in an accessory structure, the lot shall be a minimum of 10 acres, and the structure containing the affordable unit shall conform to the bulk standards for an accessory structure.

§ 76-129 Design standards

Accessory Apartments shall be subject to the following design standards:

A. The floor area of an Accessory Apartment shall not comprise more than 25% of the aggregate floor area of the dwelling in which it is located, except that an affordable unit located in an accessory structure on the same lot as the principal dwelling shall not exceed 1,000 square feet of floor area. In no case shall an accessory apartment contain less than 350 square feet of floor area.

B. Access to any affordable accessory apartment shall be provided with an exterior entrance separate from the principal dwelling entrance.

C. There shall be no sign or separate driveway access serving an accessory apartment. The exterior appearance of the structure shall remain consistent with the single-family residential character of the neighborhood.

D. Off-street parking shall be provided for any vehicles used by the occupants of the affordable accessory apartment. A minimum of two parking spaces shall be provided for each dwelling unit on the lot. On-street parking is prohibited.

E. The affordable accessory unit shall include living/sleeping space, cooking facilities and a complete sanitary facility for the exclusive use of its occupants. It shall consist of not less than two rooms, one of which shall be a full bathroom, but shall have no more than two bedrooms.

F. The dwelling structure, if occupied by two households, shall comply with all requirements for a two-family dwelling in accordance with the New Jersey Building Code and all other applicable laws and housing regulations of the state and Township.

§ 76-130. Permitting

A. Application for an Accessory Apartment permit shall be made upon a form provided by the Zoning Official. The application shall require a certification that the above standards and conditions are in effect. Prior to the issuance of an affordable accessory apartment permit, the owner-occupant of the dwelling or, in the event that the dwelling is leased, the owner and tenant of the dwelling shall execute an affordable accessory apartment occupancy agreement with the Township prepared by the Township in

recordable form which shall provide that the Accessory Apartment shall be occupied only in accordance with the provisions of a currently valid affordable accessory apartment permit and that the Township may take appropriate legal action to enforce the provisions of the agreement.

B. Every Accessory Apartment permit shall be valid for a term ending on December 31 of the year in which it is issued and shall, upon application, be renewed annually, provided that the accessory apartment is occupied by a low- or moderate-income household as required pursuant to this Article. However, an initial permit or any renewal thereafter shall expire immediately in the event that the unit is vacated or a change occurs in the household occupying the unit which renders the occupant ineligible.

§ 76-131. Deed restrictions.

Upon approval of an application to create an Accessory Apartment, the Township, on behalf of the property, shall file a deed recorded in the Sussex County Clerk's office containing a restriction in the form set forth in the applicable appendices to the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., to the effect that the unit shall remain available and affordable to a very low-, low-, or moderate-income household for a period of at least 10 years. The County filing fee is to be paid by the owner of the property. If the Accessory Apartment is not occupied by a low or moderate-income household as required by this Article, it shall be removed, and the structure shall comply with all the requirements for a single-family detached dwelling.

§ 76-132. Municipal subsidies.

A. Pursuant to N.J.A.C. 5:97-6.8(b)(2), the Township shall provide a minimum subsidy of twenty-five thousand dollars (\$25,000.00) per low-income accessory apartment unit and twenty thousand dollars (\$20,000.00) per moderate-income accessory apartment unit created under this program. Subsidies may be used for the costs of construction, renovation, or conversion necessary to create the accessory apartment, including but not limited to labor, materials, permits, and related expenses.

B. Subsidies shall be funded from the Township's Affordable Housing Trust Fund in accordance with the Township's Spending Plan, as adopted by the Township Committee and approved by the Court.

C. Payment of the subsidy shall be contingent upon execution of the deed restriction required by § 76-131 of this Article, recording of the affordability controls with the Sussex County Clerk's office, and verification by the Township's Administrative Agent that the unit meets all applicable standards.

§ 76-133. Submission of plans.

The applicant shall provide a plan for the proposed construction which provides sufficient information to determine that all ordinance requirements will be satisfied.

SECTION 2. All ordinances of the Township of Montague that are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

SECTION 4. This Ordinance shall take effect immediately upon final passage, approval, and publication as required by law.

Introduced: February 10, 2026

Adopted: March 16, 2026

George Zitone, Mayor
Montague Township

ATTEST:

Dana Klinger, RMC
Montague Township Municipal Clerk

RECORD OF COMMITTEE VOTES – Ordinance 2026-04				
<u>COMMITTEE MEMBER</u>	<u>AYES</u>	<u>NAYES</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
BARBARA HOLSTEIN	X			
RICHARD INNELLA	X			
JAMES LEDONNE	X			
FRED MERUSI	X			
MAYOR GEORGE ZITONE	X			

CERTIFICATION

I hereby certify that this is a true and accurate copy of an ordinance adopted by the Montague Township Committee in the County of Sussex, State of New Jersey at a special meeting held on March 16, 2026.

Dana Klinger, RMC/CMR
Montague Township Municipal Clerk