



East Hampton Town Board

159 Pantigo Road
East Hampton, NY 11937

Carole Brennan
Town Clerk

www.ehamptonny.gov

SUBMITTED

Meeting: 02/02/23 02:00 PM

RESOLUTION (ID # 28949)

DOC ID: 28949

Schedule Public Hearing Amend Chapter 255 Regarding Affordable Accessory Apartments

WHEREAS, The Town Board is considering various amendments to Chapter 255 (Zoning) to provide for increased opportunities for affordable housing within the Town of East Hampton; now, therefore, be it

RESOLVED, that the Town Board will hold a public hearing on Thursday, March 2, 2023 at 2:00 p.m. or as soon thereafter as this matter may be heard, in the East Hampton Town Hall Meeting Room, 159 Pantigo Road, East Hampton, New York, to hear any and all persons with regard to a local law entitled: "A LOCAL LAW amending Chapter 255 "Zoning" to amend various provisions of Chapter 255 "Zoning" related to affordable accessory apartments, including amendments to 255-1-20 Definitions", "Apartment or residence", 255-5-50 "Specific standards and safeguards", "Apartments within Commercial Structures"; 255-11-63 "Affordable accessory apartments", "General Requirements"; 255-11-63 B "Site requirements." 255-11-63 C "Permits required; 255-11-63 E "Issuance of an affordable accessory apartment permit; conditions; lease; fees."; 255-11-63 F "Lease."; 255-11-63 G "Occupancy requirements"; and 255-11-63 H "Design requirements""

LOCAL LAW No. ___ of 2023
Introductory No. ___ of 2023

BE IT ENACTED by the Town Board of the Town of East Hampton as follows:

A LOCAL LAW amending Chapter 255 (Zoning) to amending Chapter 255 "Zoning" to

SECTION 1. Town Code Amended.

Chapter 255 (Zoning) is hereby amended as follows:

NOTE: Cross outs represent text to be deleted. Underlined italics indicate new text.

- A. **255-1-20 Definitions: "Affordable Housing Unit" Paragraph A "Apartment or residence" Sub-paragraph "(1)"** is amended to read in its entirety as follows

- (1) The maximum monthly rental (excluding utilities) does not exceed ~~110%~~ 130% of the Fair Market Rent for Existing Housing^[1] promulgated for the Nassau-Suffolk, NY HUD Metro FMR Area and published annually in the Federal Register by the Secretary of the United States Department of Housing and Urban Development, pursuant to Section 8(c)(1) of the United States Housing Act of 1937 [42 U.S.C. § 1437f(c)(1)] and Part 888, Subpart A, Sections 111 - 115, of Title 24, Subtitle B, of the Code of Federal Regulations (24 CFR 888.111-115). Starting the second year, such an affordable apartment or residence is leased and, thereafter, the maximum monthly rental may be adjusted annually in accordance with the Annual Adjustment Factor^[2]

published annually in the Federal Register by the Secretary of the United States Department of Housing and Urban Development pursuant to Section 8(c)(2)(A) of the Housing Act [42 U.S.C. § 1437f(c)(2)(A)] and Part 888, Subpart B, Sections 201, 202 and 203(3), of Title 24 of the Code of Federal Regulations [24 CFR 888.201, 202 and 203(3)]

- B. **255-5-50 "Specific standards and safeguards.", "Apartments Within Commercial Structures", Paragraph (3)** is amended to read in its entirety as follows:

(3) The habitable floor area of the apartment shall be at least 450 square feet, but in no case more than 1,200 square feet *or 50% of the gross floor area of the principal dwelling unit, whichever is less*. ~~The apartment shall be located either on the first or second floor of the building, but shall not be located in a basement or cellar, and the apartment shall contain all services for safe and convenient habitation, meeting the New York State Uniform Fire Prevention and Building Code and the Sanitary Code.~~

- C. **255-11-63 "Affordable accessory apartments" A "General Requirements" Paragraph (3)** is amended to read in its entirety as follows:

[3] An affordable accessory apartment shall not be permitted on a lot on which there exists an artist studio, rooming house or boarders, ~~home occupation, home professional office,~~ preexisting accessory apartment, two-family detached dwelling or multiple-family dwelling. The owner of a single-family residence with an affordable accessory apartment may not also rent guest rooms pursuant to § **255-11-62C(3)**

- D. **255-11-63 A "General requirements" Paragraph (8)** is amended to read in its entirety as follows"

[8] No more than ~~20~~ 40 affordable accessory apartment permits or building permits for affordable accessory apartments shall be issued in each school district located within the Town of East Hampton. The total number of permits issued for affordable accessory apartments in the Town of East Hampton shall not exceed ~~100~~ 200. The permits will be issued on a first-come-first-served basis. See § 255-11-63C(3)(a)[1] for additional restrictions.

- E. **255-11-63 B "Site requirements." Paragraph (2)** is amended to read in its entirety as follows:

(2) No affordable accessory apartment within a residence *or a detached structure* shall be constructed on a lot with a total lot area less than 20,000 square feet. ~~No affordable accessory apartment within a detached structure shall be constructed on a lot with a total lot area less than 30,000 square feet.~~

- F. **255-11-63 B "Site requirements." Paragraph (3)** is amended to read in its

entirety as follows:

~~(3) No affordable accessory apartment shall be permitted on any lot located wholly or partially within a Harbor Protection Overlay District or the Affordable Housing Overlay District. Affordable accessory apartments shall only be permitted on any lot located wholly or partially within the Harbor Protection Overlay District provided all sanitary systems on the lot are either Low-Nitrogen Sanitary Systems or are upgraded to be Low-Nitrogen Sanitary Systems, as the same are defined in section 210-1-4 of the Town Code.~~

- G. **255-11-63 C "Permits required; conditional use." Paragraph (3) "Certificate of occupancy for affordable accessory apartment will not be issued until:" , Subparagraph "(a)", item [1]** is amended to read in its entirety as follows:

~~[1] The principal dwelling is owner occupied, except the owner shall be permitted to occupy an affordable apartment within a residence and rent the principal dwelling under the applicable, as determined by the Office of Housing and Community Development, affordable apartment guidelines and terms found herein, including but not limited to the rental limits set forth for an affordable housing unit pursuant to § 255-1-20 of the East Hampton Town Code. This exception shall be limited to up to four affordable accessory apartments within residences within each school district and shall not apply to affordable apartments within detached structures.~~

[1] The apartment or principal dwelling is owner-occupied, serving as the owner's legal primary residence. Rent for the remaining dwelling unit is determined by the affordable guidelines and terms found herein, including but not limited to the rental limits set forth for an affordable housing unit pursuant to § 255-1-20 of the East Hampton Town Code.

- H. **255-11-63 C "Permits required; conditional use." Paragraph (3) "Certificate of occupancy for affordable accessory apartment will not be issued until:" Subparagraph "(a)" item [3]** is deleted in its entirety:

~~[3] The affordable dwelling unit will be used only for the year-round occupancy of an East Hampton Town resident;"~~

- I. **255-11-63 C "Permits required; conditional use." Paragraph (3)) "Certificate of occupancy for affordable accessory apartment will not be issued until:" subparagraph "(a)" item [4]** is re-numbered [3] and amended to read in its entirety as follows:

[3] The affordable accessory apartment dwelling unit is the legal domicile of all tenants therein;

- J. **255-11-63 C "Permits required; conditional use." Paragraph (3) "Certificate of occupancy for affordable accessory apartment will not be issued until:" subparagraph "(a)" item [5] through [8]** are re-numbered [4] through [7].

- K. **255-11-63 C "Permits required; conditional use." Paragraph (3) "Certificate of occupancy for affordable accessory apartment will not be issued until:" Subparagraph "(a)" item [9]** is DELETED.
- ~~[9] No more than two persons are permitted to reside in the apartment;~~
- L. **255-11-63 E "Issuance of an affordable accessory apartment permit; conditions; lease; fees." Paragraph (1) "Application." item (b)** is DELETED.
- ~~(b) Proof of residency of the tenant(s);~~
- M. **255-11-63 E "Issuance of an affordable accessory apartment permit; conditions; lease; fees." Paragraph (1) "Application." Items (c) through (h)** are re-lettered (b) through (g).
- N. **255-11-63 E "Issuance of an affordable accessory apartment permit; conditions; lease; fees." Paragraph (3) "Permit fees."** Is amended to read in its entirety as follows:
- (3) Permit fees. The fee for the initial permit application for an affordable accessory apartment permit shall be ~~\$250~~ \$50, unless such application is made to legalize an otherwise illegal apartment, in which case the fee shall be \$500, which shall be nonrefundable and paid at the time of filing the application, in addition to any other fees required by the Building Department for a building permit.
- O. **255-11-63 E "Issuance of an affordable accessory apartment permit; conditions; lease; fees." Paragraph (4) "Permit renewal" item "(a)"** is amended to read in its entirety as follows:
- (a) Any permit issued under this local law may be renewed for an additional term of one year. A ~~complete application~~ renewal form pursuant to Subsection E(1) herein must be filed for a permit renewal. The filing fee for the renewal of an affordable accessory apartment shall be ~~\$100~~ \$25."
- P. **255-11-63 E "Issuance of an affordable accessory apartment permit; conditions; lease; fees." Paragraph (4) "Permit renewal" item "(c)"** is amended to read in its entirety as follows:
- (c) Failure to renew an affordable accessory permit results in the presumption that an affordable accessory apartment is being operated, used, rented, leased and/or maintained by the ~~new~~ owner(s) in violation of law.
- Q. **255-11-63 E "Issuance of an affordable accessory apartment permit; conditions; lease; fees." Paragraph (5) "Transfer of permits." Item "(b)"** is amended to read in its entirety as follows:
- (b) The application for a transfer of the affordable accessory apartment must occur

- within 90 days of the closing of title, ~~and the main dwelling will be or is the principal residence of the new owner upon sale.~~ Such transfer of the permit will not take effect until the new owner(s) submits a complete application and such application is approved by the Office of Housing and Community Development. In the event an application for a transfer of an accessory permit has not been filed by the new owner(s) in violation of this article, there shall be a presumption that an affordable accessory apartment is being operated, used, rented, leased and/or maintained by the new owner(s) in violation of law.
- R. **255-11-63 E "Issuance of an affordable accessory apartment permit; conditions; lease; fees." Paragraph (5) "Transfer of permits." Item "(c)"** is amended to read in its entirety as follows:
- (c) Said transfer application shall be subject to Subsection E(1) ~~and (4)~~ herein and payment of the applicable fee
- S. **255-11-63 F "Lease." The lease between the owner and the tenant must be in writing and contain the following provisions:"** is amended to strike items (1) through (3) inclusive:
- ~~(1) A minimum term of one year;~~
~~(2) No more than two persons are permitted to reside in the apartment.~~
~~(3) "The apartment must serve as the year-round legal residence of the tenant, except where the owner occupies the apartment and tenant occupies the principal residence as permitted by § 255-11-63C(3)(a)[1]. Should the tenant occupy the principal residence, said principal residence must serve as the year-round legal residence of the tenant."~~
- T. **255-11-63 F "Lease." The lease between the owner and the tenant must be in writing and contain the following provisions:"** is amended to re-number items (4) through (6) as (1) through (3).
- U. **255-11-63 G "Occupancy requirements" Paragraph "(1)"** is amended to read as follows:
- (1) One or more owners of the lot upon which the affordable accessory apartment is located shall reside within the principal dwelling, or in the affordable accessory apartment as permitted herein, as a primary legal residence ~~year-round resident~~. The owner or owners in residence shall have no other primary residence and must demonstrate legal residency in the Town of East Hampton.
- V. **255-11-63 G "Occupancy requirements" Paragraphs "(3)", "(4)" and "(5)"** are deleted in its entirety.
- ~~(3) No more than two persons are permitted to reside in an affordable accessory apartment."~~
- ~~(4) The tenant must have established legal residency in the Town of East Hampton prior to occupying an affordable accessory apartment."~~

- ~~(5) Documents that may be requested to establish legal residency may include but are not limited to:~~
- ~~(a) Government issued photo identification;~~
 - ~~(b) New York State income tax forms;~~
 - ~~(c) A voter registration card;~~
 - ~~(d) A year round lease for a residence in the Town of East Hampton with rent receipts; and~~
 - ~~(e) Any other information the Office of Housing and Community Development deems necessary to the determination of residency."~~

- W. **255-11-63 H "Design requirements" Paragraph "(1)"** is amended to read in its entirety as follows.

~~(1) The affordable accessory apartment shall be a minimum of 300 square feet and shall not exceed 600 square feet."~~

(1) A detached affordable accessory apartment shall be a minimum of 300 square feet and a maximum of 600 square feet. An attached affordable accessory apartment shall be a minimum of 300 square feet and a maximum of 50% of the gross floor area of the principal dwelling unit.

- X. **255-11-63 H "Design requirements" Paragraph "(2)"** is amended to read in its entirety as follows:

(2) The affordable accessory apartment shall not contain more than ~~one~~ two conventional bedrooms, and such design shall be in compliance with the New York State Uniform Fire Prevention and Building Code and/or the rules and regulations of any other agency having jurisdiction.

- Y. **255-11-63 H "Design requirements" Paragraph "(3)"** is deleted in its entirety.

~~(3) No portion of a single family dwelling structure or affordable accessory apartment shall utilize a cellar, attic or any portion thereof as habitable living space unless a variance is issued by the New York State Uniform Fire Prevention and Building Code Review Board or other agency having jurisdiction.~~

SECTION II Effective date.

This local law shall take effect immediately upon filing with the Secretary of State as provided by law.

And be it further

RESOLVED, that the full text of the Code Sections including the proposed changes is available at the Town's website at www.ehamptonny.gov <<http://www.ehamptonny.gov>> for review; and be it further

RESOLVED, that the Town Clerk is directed to publish the following Notice of Public Hearing

in the _____ 2023 edition of the EAST HAMPTON STAR.

NOTICE OF PUBLIC HEARING

LOCAL LAW NO. __ of 2023
Introductory No. __ of 2023

NOTICE IS HEREBY GIVEN that the Town Board of the Town of East Hampton will hold a public hearing on Thursday, March 2, 2023 at 2:00 p.m. or as soon thereafter as this matter may be heard, at Town Hall, 159 Pantigo Road, East Hampton, New York to consider a local law, an abstract of which is as follows:

A local law law entitled: "A LOCAL LAW amending Chapter 255 "Zoning" related to affordable accessory apartments, including amendments to 255-1-20 "Definitions", "Apartment or residence", 255-5-50 "Specific standards and safeguards", "Apartments within Commercial Structures"; 255-11-63 "Affordable accessory apartments", "General Requirements"; 255-11-63 B "Site requirements." 255-11-63 C "Permits required"; 255-11-63 E "Issuance of an affordable accessory apartment permit; conditions; lease; fees."; 255-11-63 F "Lease."; 255-11-63 G "Occupancy requirements"; and 255-11-63 H "Design requirements"" to amend provisions related to affordable accessory apartments, varying the requirements to add such an apartment to a property within the Town of East Hampton as well as the qualifications for those desiring to occupy such premises. The Town last updated affordable apartment regulations through a pilot program in 2016 that succeeded in creating nearly 50 affordable housing units, roughly half the total allowed under the program. After detailed review of the code, surveys of community members and organizations and an updated assessment of housing needs within the community, the Town is seeking to simplify the application process and code regulating affordable apartments as well as allow for a total of up to 200 total units throughout Town.

The full text of the local law is available for review on the Town's website at <https://www.ehamptonny.gov> and is also available for review at the office of the Town Clerk, 159 Pantigo Road, East Hampton, New York.

The public hearing will be held live and in-person by the Town Board and will be available electronically by video and teleconferencing, and will be televised on Local TV (LTV) Channel 22, and available for livestream on the LTV website (<<https://www.ltveh.org>>). The public shall be permitted to appear in person but may also provide comments on the matter being heard by calling 351-888-6331.

Any person or party wishing to be heard with respect to the foregoing may do so, in person or by agent, or by attorney, or by call-in to the live stream, or by written comment addressed to the East Hampton Town Clerk, 159 Pantigo Road, East Hampton, New York 11937. Comments may also be submitted to the Town Clerk by email to CBrennan@ehamptonny.gov. All comments must be received by the Town Clerk by the date and time of the public hearing.

Please check the meeting Agenda posted on the Town's website (www.ehamptonny.gov) for any changes, and for updated information.

Dated: February 2, 2023

BY ORDER OF THE TOWN BOARD
TOWN OF EAST HAMPTON
CAROLE A. BRENNAN
TOWN CLERK