

**TOWNSHIP OF UPPER
2100 TUCKAHOE ROAD
PETERSBURG, NJ 08270
CAPE MAY COUNTY
MINUTES FOR JULY 9, 2018**

REGULAR MEETING OF THE TOWNSHIP COMMITTEE –7:30 P.M.

CALL TO ORDER

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

Edward Barr	Present
John Coggins	Present
Curtis Corson	Present
Hobart Young	Present
Richard Palombo	Present

Also present were Municipal Clerk Barbara Young, Municipal Attorney Daniel Young, Municipal Engineer Paul Dietrich, and Chief Financial Officer Barbara Spiegel.

APPROVAL OF MINUTES - June 25, 2018 Regular Meeting and
Closed Session Minutes

Motion by Curtis Corson, second by Edward Barr, to approve the June 25, 2018 Regular Meeting and Closed Session Minutes as submitted. During roll call vote all Committeemen present voted in the affirmative.

REPORT OF GOVERNING BODY MEMBERS

John Coggins, Committeeman, congratulated Karen Mitchell and her Committee for the wonderful 4th of July parade in Strathmere. Next he reported that he has received numerous complaints of dangerous passing along Stagecoach Road and proposed extending the no passing zone along the entire length of Stagecoach Road. Motion by Hobie Young, second by John Coggins to request the County to designate the entire length of Stagecoach Road as a no passing zone. During roll call vote all five Committeemen voted in the affirmative. A resolution for formal action will be listed on the next agenda.

Hobie Young, Committeeman, thanked the Clerk's Office, the Department of Public Works, Office of Emergency Management, Division of EMS, the Tuckahoe, Seaville, and Marmora Fire Companies, and the Challenger program for their hard work and support during the 4th of July event. He also thanked his personal friends Bonnie and Vince for volunteering their time to help during the event. He next reported that the Township will be holding a fall car show on November 3rd and volunteers are needed.

Edward Barr, Committeeman, reported that Public Works employee George Adams has recently retired and made a motion to prepare a resolution honoring his years of service. The motion was seconded by Richard Palombo. During roll call vote all five Committeemen voted in the affirmative. A resolution for formal action will be listed on the next agenda.

Curtis Corson, Committeeman, reported on a recent Facebook post stating that an individual in the area of Peach Orchard and State Highway 50 had requested signage to notify motorists of a disabled person in that area. Mr. Corson stated that in the past three or four years no such request has been received by the Township Clerks office. The Municipal Attorney explained that without a request from the family it may not be appropriate to discuss the matter at a public meeting and that it may be best if someone knows the family to reach out to them. Lastly Mr. Corson reported that the 4th of July parade and the event at Amanda's Field were wonderful and very well done.

Richard Palombo, Mayor, reported on a recent information meeting held in Strathmere to discuss the Strathmere bulkhead. A second informational meeting will be held again in September to continue the discussion.

OTHER REPORTS

Scott Morgan, Township Administrator, gave a brief report on the recent active shooter drill held at Township Hall for Municipal employees. He next reported that he and the Township Engineer recently completed the wifi upgrade at Town Hall, the Public Works building and the EMS building. They also completed the active directory upgrade to the server. Last, he thanked Barbara Young, Larry Cole, the Public Works Department, Upper EMS, the Rescue Squad, the Tuckahoe, Marmora, and Seaville Fire Companies, CERT members, New Jersey State Police, and the Cape May County Sheriff's Office for their work on the 4th of July event.

Daniel Young, Municipal Attorney, reported that there are a number of items for closed session.

Paul Dietrich, Township Engineer, requested permission to pursue a NJDOT grant opportunity that may be used for the Harbor Road Gateway project. Mr. Dietrich next requested permission to participate in the New Jersey Resilient Grant program and requested authorization for the CFO to sign the duplication of benefits statement certifying that the Township has not received any other funding under this grant program. He explained that this program will be done in collaboration with other municipalities to focus on strengthening natural systems to protect coastal communities from floods and storms. Motion by Richard Palombo, second by John Coggins, that upon the Municipal Attorneys review to authorize the CFO to sign the duplication of benefits statement for participation in the Resilient NJ program. During roll call vote all five Committeemen present voted in the affirmative. A resolution for formal authorization will be placed on the next agenda. Lastly Mr. Dietrich reported that as a follow up to discussions at the Strathmere Bulkhead meeting he found a National Fish and Wildlife Foundation matching funds grant program which could be used for design and permitting of back bay dunes. He explained that the program would be for design and permitting only and once that was complete the Township would then need to look for other grant opportunities for construction of the project. There was then a brief discussion on how the Township would fund their portion of such a project.

RESOLUTIONS

1. Honoring Andrew Holloway on attaining the designation of "Eagle Scout".

TOWNSHIP OF UPPER CAPE MAY COUNTY R E S O L U T I O N

RESOLUTION NO. 193-2018

RE: HONORING ANDREW HOLLOWAY ON ATTAINING THE DESIGNATION OF "EAGLE SCOUT"

WHEREAS, Andrew Holloway of Troop 79, Ocean View, New Jersey has recently achieved the designation of Eagle Scout in the Boy Scouts of America; and

WHEREAS, the Township of Upper wishes to acknowledge the outstanding accomplishment of this remarkable young man; and

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

RESOLVED THAT the Township Committee extends its sincere congratulations to Andrew on the occasion of his receiving the designation of Eagle Scout and commends him for this outstanding accomplishment and the completion of his Eagle Scout project which consisted of designing and constructing a gazebo on an existing deck located at Family Promise in Lower Township. Andrew designed a grand plan for the gazebo based on the pavilions on the boardwalk, and with some help from his Father and fellow Scouts, was able to construct the gazebo over the course of six weekends; and

BE IT FURTHER RESOLVED that the Township Committee extends its sincere congratulations and best wishes to Andrews's parents, family, and friends on this happy occasion; and it is

FURTHER RESOLVED that the Township Committee also extends its congratulations and appreciation to the Scout Masters and others who give so freely and generously of their time for the benefit of our youth.

GIVEN UNDER OUR HANDS and the seal of the Township of Upper this 9th day of July 2018.

Resolution No. 193-2018

Offered by: Coggins

Seconded by: Corson

Adopted: July 9, 2018

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Barr	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Coggins	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Corson	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Young	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Palombo	<u> X </u>	<u> </u>	<u> </u>	<u> </u>

2. Congratulating employee Patty Smyth of the Upper Township Tax Office for her winning entry in the Upper Township Safety Award Program for the 2nd quarter of 2018.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
R E S O L U T I O N**

RESOLUTION NO.194-2018

**RE: CONGRATULATING EMPLOYEE PATTY SMYTH OF THE UPPER TOWNSHIP
TAX OFFICE FOR HER WINNING ENTRY IN
THE UPPER TOWNSHIP SAFETY AWARD PROGRAM
FOR THE 2ND QUARTER OF 2018**

WHEREAS, employee Patty Smyth, is recognized for her efforts to promote safety for her fellow employees and residents of the Township through her participation in the Upper Township Safety Award Program with the submission of a safety suggestion; and

WHEREAS, Patty's safety suggestion was chosen by the Upper Township Safety Committee from the entries submitted in the second quarter for the promotion of safety for employees and the community; and

WHEREAS, Patty should be publicly recognized for reporting the safety hazard of a manhole cover located on Stagecoach Road, which was not properly secured causing it to collapse when walked upon; and

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

1. That the Committee extends its appreciation and publicly recognizes Patty Smyth on her commitment to safety by identifying a potential safety hazard and offering a suggestion through participation in the program.
2. That the Committee, on behalf of our employees and the citizens of the Township of Upper, extend to Patty Smith our congratulations and present her with the "Safety Day Award" of one day off with pay.

GIVEN UNDER OUR HANDS and the seal of the Township of Upper the 9th day of July, 2018.

Resolution No. 194-2018

Offered by: Coggins

Seconded by: Barr

Adopted: July 9, 2018

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Barr	<u>X</u> _____	_____	_____	_____
Coggins	<u>X</u> _____	_____	_____	_____
Corson	<u>X</u> _____	_____	_____	_____
Young	<u>X</u> _____	_____	_____	_____
Palombo	<u>X</u> _____	_____	_____	_____

3. Congratulating Alexa Johnson, Aili Martin, Jacob Schneider, and Zach Card for winning a Bicycle Safety Contest.

**TOWNSHIP OF UPPER
COUNTY OF CAPE MAY
STATE OF NEW JERSEY**

RESOLUTION NO. 195-2018

RE: CONGRATULATING ALEXA JOHNSON, AILI MARTIN, JACOB SCHNEIDER, AND ZACH CARD FOR WINNING A BICYCLE SAFETY CONTEST

WHEREAS, it is vital for the public to be aware of bicycle safety, especially during the summer season; and

WHEREAS, the Ocean City Police Department PBA Local 61 and Ocean City Bike Advocacy Group (BikeOCNJ) sponsored a Bicycle Safety Contest to promote public awareness of bicycle safety by providing scholarships to winning entries of Public Service Announcements; and

WHEREAS, Alexa Johnson, Aili Martin, Jacob Schneider and Zach Card, Ocean City High School students that reside in Upper Township, were winners of the Bicycle Safety Contest for their Public Service Announcement entries; and

WHEREAS, the public service announcements were created through the Ocean City High School's TV/Media Production program with the expert guidance of teacher Greg Wheeldon and engineer Steve Trauger. Zach and Jacob chose Obeying Traffic Signs as their topic, while Alexa and Aili chose Why You Shouldn't Ride on the Sidewalk; and

WHEREAS, through these students' dedicated efforts, the production of their short commercials provides strong messages, conveying increased awareness of bike safety to the public.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, to honor Alexa Johnson, Aili Martin, Jacob Schneider, and Zach Card on winning the Bicycle Safety Contest sponsored by the Ocean City Police Department PBA Local 61 and BikeOCNJ to promote bicycle safety awareness.

GIVEN UNDER OUR HANDS and the seal of the Township of Upper this 9th day of July, 2018.

Resolution No. 195-2018
Offered by: Barr
Adopted: July 9, 2018

Seconded by: Young

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Barr	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Coggins	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Corson	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Young	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Palombo	<u> X </u>	<u> </u>	<u> </u>	<u> </u>

4. Authorizing the Township of Upper to enter into a Lease and Management Agreement with the County of Cape May for the property known as Block 451, Lot 19.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
R E S O L U T I O N**

RESOLUTION NO. 196-2018

**RE: AUTHORIZING THE TOWNSHIP OF UPPER TO ENTER INTO A LEASE AND
MANAGEMENT AGREEMENT WITH THE COUNTY OF CAPE MAY FOR THE PROPERTY
KNOWN AS BLOCK 451, LOT 19**

WHEREAS, on April 24, 2017, the Township of Upper adopted Resolution 137-2017 supporting the County of Cape May's purchase of the property known as Block 451, Lot 19 pursuant to the County's Open Space, Park, Recreation and Farmland Preservation Program; and

WHEREAS, the purchase of the above mentioned Block and Lot was recommended for approval by the County's Open Space Review Board on July 25, 2017; and

WHEREAS, the Township Committee deems it to be in the best interest of the Township and its citizens to enter into a Lease and Management Agreement with the County of Cape May for Block 451, Lot 19.

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

1. The allegations of the preamble are incorporated herein by this reference.

2. The Township Committee hereby authorizes the Mayor and Township Clerk to sign a Lease and Management Agreement with the County of Cape May for the property known as Block 451, Lot 19.

3. All Township officials and officers are hereby authorized and empowered to take all action deemed necessary or advisable to carry into effect the intent and purpose of this Resolution.

Resolution No. 196-2018

Offered by: Barr

Seconded by: Coggins

Adopted: July 9, 2018

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Barr	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Coggins	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Corson	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Young	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Palombo	<u>X</u>	<u> </u>	<u> </u>	<u> </u>

5. Renewing Mobile Home Park Licenses.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
R E S O L U T I O N**

RESOLUTION NO. 197-2018

RE: RENEWING MOBILE HOME PARK LICENSES

WHEREAS, each of the Mobile Home Parks hereinafter designated has attested that the operation of the mobile home park is in compliance with all applicable New Jersey Statutes and the rules and regulations promulgated pursuant thereto.

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

1. The allegations of the preamble are incorporated herein by this reference.
2. The following mobile home park licenses are hereby renewed for a term of (1) one year, commencing August 1, 2018.

**HIDDEN PINES MOBILE HOME PARK
1414 SOUTH SHORE ROAD
OCEAN VIEW, NJ 08230
10 Sites**

**OCEAN BEACH TRAILER RESORT
1100 SOUTH COMMONWEALTH AVENUE
PO BOX 90
STRATHMERE, NJ 08248
100 Sites**

**PINE HILL MOBILE HOME PARK
430 ROUTE 9 SOUTH
MARMORA, NJ 08223
132 Sites**

**SHORE ACRES MOBILE HOME PARK, LLC
1621 SOUTH SHORE ROAD
OCEAN VIEW, NJ 08230
200 Sites**

3. All officials of the Township are hereby authorized to take such action as necessary or required in order to carry out the intent and purpose of this Resolution.
4. This Resolution shall become effective immediately upon adoption.

Resolution No. 197-2018

Offered by: Barr

Seconded by: Young

Adopted: July 9, 2018

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Barr	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Coggins	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Corson	<u> </u>	<u> </u>	<u> X </u>	<u> </u>
Young	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Palombo	<u> X </u>	<u> </u>	<u> </u>	<u> </u>

6. Renewing Campground Licenses.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
R E S O L U T I O N**

RESOLUTION NO. 198-2018

RE: RENEWING CAMPGROUND LICENSES

WHEREAS, Chapter XII of the Code of Upper Township provides for the renewal of licenses to operate a Campground annually after certification by the Cape May County Board of Health; and

WHEREAS, each of the Campgrounds hereinafter designated has had an

on-site inspection conducted by the Cape May County Board of Health and it has been attested that the operation of the campground is in compliance with all applicable New Jersey Statutes and the rules and regulations promulgated pursuant thereto.

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

1. The allegations of the preamble are incorporated herein by this reference.
2. The following campground licenses are hereby renewed for a term of (1) one year, commencing August 1, 2018.

**BAYBERRY COVE CONDO ASSOCIATION
435 ROUTE 9
MARMORA, NJ 08223
310 Sites**

**FRONTIER CAMPGROUND
84 TYLER ROAD
GREENFIELD, NJ 08230
196 Sites**

**OAK RIDGE RESORT CONDO ASSOCIATION, INC.
516 ROUTE US 9, SOUTH
MARMORA, NJ 08223
240 Sites**

**ROUTE 50 CAMPGROUND, LLC
T/A OCEAN ISLE CAMPING RESORT
64 ROUTE 50
SEAVILLE, NJ 08230
218 Sites**

**OCEAN SANDS RESORT ASSOCIATION, INC.
56 ROUTE 50
SEAVILLE, NJ 08230
217 Sites**

**PLANTATION ENTERPRISES, INC.
T/A PLANTATION CAMPGROUND
60 CORSON TAVERN ROAD
SEAVILLE, NJ 08230
223 Sites**

**SCENIC RIVERVIEW CAMPGROUND
465 ROUTE 49
TUCKAHOE, NJ 08250
125 Sites**

**SEAVILLE SHORES TRAILER RESORT
98 CORSON TAVERN ROAD
SEAVILLE, NJ 08230
275 Sites**

**SHOREBIRDS CAMPGROUND
1314 STAGECOACH ROAD
PALERMO, NJ 08230
100 Sites**

3. All officials of the Township are hereby authorized to take such action as necessary or required in order to carry out the intent and purpose of this Resolution.
4. This Resolution shall become effective immediately upon adoption.

Resolution No. 198-2018

Offered by: Palombo

Seconded by: Coggins

Adopted: July 9, 2018

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Barr	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Coggins	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Corson	<u> </u>	<u> </u>	<u> X </u>	<u> </u>
Young	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Palombo	<u> X </u>	<u> </u>	<u> </u>	<u> </u>

7. Renewing Campground License for Whippoorwill Campground.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
R E S O L U T I O N**

RESOLUTION NO. 199-2018

**RE: RENEWING CAMPGROUND LICENSE
FOR WHIPPOORWILL CAMPGROUND**

WHEREAS, Chapter XII of the Code of Upper Township provides for the annual renewal of licenses to operate a Campground after certification by the Cape May County Board of Health; and

WHEREAS, Whippoorwill Campground, located at 810 South Shore Road, Marmora, New Jersey, is one of the Campgrounds that operates in Upper Township, and that is subject to this annual renewal requirement; and

WHEREAS, there has arisen a dispute between Upper Township and Whippoorwill Campground as to whether the campground's operations comply with all applicable state and local laws and regulations; and

WHEREAS, pending the resolution of this dispute, the Township is willing to renew Whippoorwill Campground's license for 2018-2019, subject to the Township's reservation of all its rights, claims and defenses with respect to that dispute, and without thereby waiving any of those rights, claims or defenses,

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

1. The allegations of the preamble are incorporated herein by this reference.
2. The following campground license is hereby renewed for a term of (1) one year, commencing August 1, 2018, subject to the provisions of Paragraph 3 below.

**WHIPPOORWILL CAMPGROUND, INC.
810 ROUTE US 9 SO.
MARMORA, NJ 08223
288 Sites**

3. In authorizing this renewal, Upper Township does not waive any of its rights, claims, positions, or defenses in connection with the current dispute between the Township and the campground concerning the campground's compliance with state and local campground and land use laws and regulations; nor does the township waive or release any rights, claims, defenses or positions it might have or be able to assert in connection with that dispute.
4. All officials of the Township are hereby authorized to take such action as necessary or required in order to carry out the intent and purpose of this Resolution.
5. This Resolution shall become effective immediately upon adoption.

Resolution No. 199-2018

Offered by: Coggins

Seconded by: Barr

Adopted: July 9, 2018

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
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Barr	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Coggins	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Corson	<u> </u>	<u> </u>	<u> X </u>	<u> </u>
Young	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Palombo	<u> X </u>	<u> </u>	<u> </u>	<u> </u>

8. Appointing the 2018 season Beach Patrol Personnel.

TOWNSHIP OF UPPER
CAPE MAY COUNTY
R E S O L U T I O N

RESOLUTION NO. 200-2018

RE: APPOINTING ADDITIONAL 2018 SEASON BEACH PATROL PERSONNEL

WHEREAS, the individuals hereinafter named have been determined to possess the requisite skills, training and are otherwise eligible for appointment to the position of lifeguard; and

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

1. The allegations of the preamble are incorporated herein by this reference.

2. The following individuals are appointed as lifeguards in the Township of Upper at a salary as stated below in accordance with the Salary Ordinance:

RETURNING GUARDS

BRUCKNER CHASE	\$14.50 per hour
ABIGAIL FREITAG	\$14.50 per hour

Resolution No. 200-2018

Offered by: Barr Seconded by: Coggins

Adopted: July 9, 2018

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Barr	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Coggins	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Corson	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Young	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Palombo	<u> X </u>	<u> </u>	<u> </u>	<u> </u>

9. Authorizing the execution of an NJDEP TWA-1 Application Statements of Consent form regarding 14 East Whittier Avenue, Strathmere, Block 845, Lot 8.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
R E S O L U T I O N**

RESOLUTION NO. 201-2018

**RE: AUTHORIZING THE EXECUTION OF AN NJDEP TWA-1 APPLICATION
STATEMENTS OF CONSENT FORM REGARDING 14 EAST WHITTIER AVENUE,
STRATHMERE, BLOCK 845, LOT 8**

WHEREAS, Jim Collins has or is about to make application to the New Jersey Department of Environmental Protection (hereinafter "DEP") for Treatment Works Approval for a proposed three bedroom single family dwelling, and has requested that the Township complete a portion of DEP Form No. WQM-003, which merely consents to the submission of the application to the DEP and certifies that the project, as proposed, conforms with the requirements of all municipal Ordinances and does not otherwise impose any obligation or liability on the Township; and

WHEREAS, Jim Collins must apply to the New Jersey Department of Environmental Protection for Treatment Works Approval in order to install a pressure dosing septic system for a three bedroom single family dwelling to be constructed on 14 East Whittier Avenue, Block 845, Lot 8 of the municipal tax map of Upper Township, New Jersey; and

WHEREAS, the Township Engineer has informed the Township Committee as to the general nature of the project and has indicated that the Township has no ordinance prohibiting the proposed project; and

WHEREAS, the matter has been considered by the Township Committee and it has been determined that the consent by the Governing Body should be granted to this application to permit the application process to go forward; and

WHEREAS, the Township Committee wishes to authorize the Township officials to execute said documentation;

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

1. The allegations of the preamble are incorporated herein by this reference.

2. The Mayor is hereby authorized to execute on behalf of the Township of Upper a Statements of Consent, Section A-1, in the form attached hereto as Exhibit "A" and said consent shall be completed by inserting therein this Resolution number and the date of its adoption.

3. This Statements of Consent is submitted in conjunction with the application of Jim Collins for treatment works approval for the property at Block 845, Lot 8 on the municipal tax map.

4. A certified copy of this Resolution shall be provided to the applicant.

Resolution No. 201-2018

Offered by: Corson

Seconded by: Barr

Adopted: July 9, 2018

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Barr	<u>X</u>	_____	_____	_____
Coggins	<u>X</u>	_____	_____	_____
Corson	<u>X</u>	_____	_____	_____
Young	<u>X</u>	_____	_____	_____
Palombo	<u>X</u>	_____	_____	_____

10. Authorizing a Notice of Violation and Abatement of Nuisance pursuant to Township Code Section 11-1.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
R E S O L U T I O N**

RESOLUTION NO. 202-2018

**RE: AUTHORIZING A NOTICE OF VIOLATION AND ABATEMENT OF NUISANCE
PURSUANT TO TOWNSHIP CODE SECTION 11-1**

WHEREAS, pursuant to Township Code Section 11-1, the Township Committee is empowered to enforce the removal of public health hazards, safety hazards, fire hazards and nuisances, including the clearing of obnoxious growths, filth, garbage, trash and debris; and

WHEREAS, the Upper Township zoning officer has determined that the properties listed and attached hereto as Exhibit A each contain a public nuisance, obnoxious growths, filth, garbage, trash or debris as indicated which must be removed; and

WHEREAS, pursuant to Upper Township Code Section 11-1 and N.J.S.A. 40:48-2.13, the Township Committee is authorized to cause a Notice of Violation to be sent to each owner and/or foreclosing lien holder describing the violation and stating that unless the violation is abated, removed and remedied within 10 days from the date of such notice the violation shall be abated, removed and remedied by the Township and the cost thereof shall be assessed as a lien against said land; and

WHEREAS, the Township Committee has determined that said Notice of Violation shall be served upon each owner and/or foreclosing lien holder forthwith; and

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

1. The allegations of the preamble are incorporated herein by this reference.
2. The zoning officer is hereby directed to serve a Notice of Violation pursuant to Township Code Section 11-1 describing the violation and nuisance upon each owner and/or foreclosing lien holder of the properties listed on Exhibit A, attached hereto.
3. All Township officials and officers are hereby authorized and empowered to take all action deemed necessary or advisable to carry into effect the intent and purpose of this Resolution.

Resolution No. 202-2018

Offered by: Young

Seconded by: Coggins

Adopted: July 9, 2018

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Barr	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Coggins	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Corson	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Young	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Palombo	<u>X</u>	<u> </u>	<u> </u>	<u> </u>

11. Authorizing the Upper Township Tax Collector to extend the 3rd quarter grace period.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
R E S O L U T I O N**

RESOLUTION NO. 203-2018

**AUTHORIZING THE UPPER TOWNSHIP TAX COLLECTOR
TO EXTEND THE 3RD QUARTER GRACE PERIOD**

WHEREAS, the tax rate or bills were not received in time to meet the statutory mailing and due dates, the grace period for the 3rd quarter of 2018 which is 10 days, will be extended to meet the statutory requirements as per N.J.S.A. 54:4-66.3d . (N.J.S.A.54:4-67) By law, the bills must be mailed 25 days prior to due date.

NOW, THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Upper, Cape May County, that in accordance with the law the third quarter of 2018 shall not be subject to interest until 25 days after mailing. Anyone paying after the extended grace period shall pay interest from the due date of August 1st.

Resolution No. 203-2018

Offered by: Coggins

Seconded by: Palombo

Adopted: July 9, 2018

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Barr	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Coggins	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Corson	<u>X</u>	<u> </u>	<u> </u>	<u> </u>

Young	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Palombo	<u> X </u>	<u> </u>	<u> </u>	<u> </u>

12. Authorizing the purchase and annual maintenance of a Computer Aided Dispatch (CAD) back up center in the amount of \$34,500.00 from the 2016 Capital Improvement Bond Ordinance and the 2018 Emergency Management Operating Expenses Budgetary Line.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 204-2018

**RE: AUTHORIZING THE PURCHASE AND ANNUAL MAINTENANCE OF A
COMPUTER AIDED DISPATCH (CAD) BACK UP CENTER IN THE AMOUNT OF
\$34,500.00 FROM THE 2016 CAPITAL IMPROVEMENT BOND ORDINANCE AND THE
2018 EMERGENCY MANAGEMENT OPERATING EXPENSES BUDGETARY LINE**

WHEREAS, it is necessary for the Township of Upper to purchase and maintain a computer aided dispatch (CAD) back up center; and

WHEREAS, the Township Committee adopted the 2016 Capital Improvement Bond Ordinance 08-2016 on April 25, 2016 and subsequently amended on November 6, 2017; and

WHEREAS, pursuant to N.J.S.A 40A:11-12a, the Township wishes to purchase a computer aided dispatch (CAD) back up center along with annual maintenance through State Contract No. 89851; and

WHEREAS, the Township's QPA has reviewed and approved the quotes for a computer aided dispatch (CAD) back up center and annual maintenance provided by SHI International Corp.; and

WHEREAS, the Qualified Purchasing Agent has determined and certified in writing that the value of the services with SHI International Corp. for the year 2018 will exceed \$17,500; and

WHEREAS, SHI International Corp. has completed and submitted a Business Entity Disclosure Certification which certifies that SHI International Corp. has not made any reportable contributions

to a political or candidate committee in the Township in the previous one year, and that the contract will prohibit SHI International Corp. from making any reportable contributions through the term of the contract.

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

1. The allegations of the preamble are incorporated herein by this reference.

2. The Township Committee of the Township of Upper, County of Cape May, New Jersey hereby authorizes the Qualified Purchasing Agent to enter into a contract with SHI International Corp. to purchase a computer aided dispatch (CAD) back up center along with annual maintenance in the amount of **\$30,000.00** from the 2016 Capital Improvement Bond and **\$4,500.00** from the Emergency Management Operating Expenses budgetary line.

3. The Chief Financial Officer is hereby authorized, directed and empowered to execute any and all necessary documents in order to implement the intent of this Resolution.

Resolution No. 204-2018

Offered by: Corson Seconded by: Coggins

Adopted: July 9, 2018

Roll Call Vote:

NAME	YES	NO	ABSTAINED	ABSENT
Barr	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Coggins	<u> X </u>	<u> </u>	<u> </u>	<u> </u> ,
Corson	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Young	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Palombo	<u> X </u>	<u> </u>	<u> </u>	<u> </u>

13. Authorizing the Municipal Emergency Management Coordinator to sign a Scope of Work Statement with CSI Technology Group for an Upper Township Office of Emergency Management Computer Aided Dispatch (CAD) back up center.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
R E S O L U T I O N**

RESOLUTION NO. 205-2018

**RE: AUTHORIZING THE MUNICIPAL EMERGENCY MANAGEMENT COORDINATOR
TO SIGN A SCOPE OF WORK STATEMENT WITH CSI TECHNOLOGY GROUP
FOR AN UPPER TOWNSHIP OFFICE OF EMERGENCY MANAGEMENT
COMPUTER AIDED DISPATCH (CAD) BACK UP CENTER**

WHEREAS, the Township wishes to complete a Scope of Work Statement with CSI Technology Group attached hereto as Exhibit A, to provide a back-up computer aided dispatch (CAD) for police, fire, EMS as well as other related services to be connected to the Cape May County instance of InfoShare.

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

1. The allegations of the preamble are incorporated herein by this reference.
2. The Scope of Work Statement between the Township of Upper, the County of Cape May and CSI Technology Group is approved and the Municipal Emergency Management Coordinator is hereby authorized, directed and empowered to execute said agreement on behalf of the Township of Upper.
3. All Township officials, officers and employees are empowered to take such action as may be necessary or advisable in order to carry out the intent and purpose of this Resolution.

Resolution No. 205-2018

Offered by: Corson

Seconded by: Barr

Adopted: July 9, 2018

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Barr	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Coggins	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Corson	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Young	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Palombo	<u>X</u>	<u> </u>	<u> </u>	<u> </u>

ORDINANCES

14. Introduction and first reading of Ordinance No. 007-2018 RE: AN ORDINANCE VACATING A PORTION OF MISTLETOE AVENUE, WITHIN THE TOWNSHIP OF UPPER, COUNTY OF CAPE MAY AND STATE OF NEW JERSEY. **Motion by Curtis Corson, second by John Coggins, to introduce Ordinance 007-2018 with a public hearing and final adoption scheduled for August 13, 2018. During roll call vote all five Committeemen voted in the affirmative.**

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
O R D I N A N C E**

ORDINANCE NO. 007-2018

**AN ORDINANCE VACATING A PORTION OF MISTLETOE AVENUE,
WITHIN THE TOWNSHIP OF UPPER, COUNTY OF CAPE MAY
AND STATE OF NEW JERSEY**

WHEREAS, N.J.S.A. 40:67-1 authorizes the Governing Body of a municipality to adopt an Ordinance, among other things, to vacate any street, highway, lane, alley, square, place or park, or any part thereof, dedicated to public use but not accepted by the municipality, whether or not the same, or any portion, has been actually opened or improved; and

WHEREAS, Stephen P. DeMarchi and Margaret A. DeMarchi are the owners of Block 494, Lot 16, and have requested that the Township vacate a portion of Mistletoe Avenue as described in this Ordinance and have agreed to pay the costs incurred by the Township to vacate said street including the costs of the revisions to the tax map; and

WHEREAS, the Township Committee has duly considered the matter and it appears reasonable to agree to the request since there is no present or foreseeable need or intention to utilize said roadway; and

WHEREAS, it is deemed to be in the public interest to vacate a portion of Mistletoe Avenue within the Township of Upper, as hereinafter provided.

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

SECTION 1: The public right in, along, upon and over the following described land is hereby vacated, surrendered and extinguished:

Description

Vacation of a portion of Mistletoe Avenue,
as shown on Current Municipal Tax Map Sheet No. 18.1
Marmora Section of Township of Upper

BEGINNING at a point at the Northeasterly intersection of Tuckahoe Rd. (50' wide) and Mistletoe Ave. (50' wide); and extending Northwestwardly along Block 494 a distance of 207.4' to a point; and extending Southwestwardly across Mistletoe Ave. (50' wide) along the Southeasterly line of Monmouth Ave. to a point at the Southeasterly intersection of Monmouth Ave. and Mistletoe Ave.; and extending Southeastwardly along Block 511 a distance of 176.24' to a point in the Northeasterly line of Tuckahoe Rd.; and extending Northeastwardly across Mistletoe Ave. (50' wide) to the point of beginning;

SECTION 2: This Ordinance vacates no portion of the street except that portion set forth and described in **SECTION 1** above.

SECTION 3: EXCEPTION: This Ordinance expressly reserves and excepts from vacation all rights and privileges now possessed by public utilities, as defined in R.S. 48:2-13, and by any cable television company, as defined in the "Cable Television Act", P.L. 1972, c. 186, (C.48:5A-1, et seq.), to maintain, repair and replace their existing facilities in, adjacent to, over or under the street, highway, lane, alley, square, place or park, or any part thereof, to be vacated, as hereinabove described.

SECTION 4: REPEALER: All Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency only.

SECTION 5: EFFECTIVE DATE: This Ordinance shall take effect immediately upon final adoption and publication as required by law.

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 9th DAY OF JULY, 2018 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 13th DAY OF AUGUST, 2018 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

15. Introduction and first reading of Ordinance No. 008-2018 RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER X (BUILDING AND HOUSING) AND CHAPTER XI (PROPERTY MAINTENANCE) OF THE CODE OF UPPER TOWNSHIP. **Motion by John Coggins, second by Hobie Young, to introduce Ordinance 008-2018 with a public hearing and final adoption scheduled for August 13, 2018. During roll call vote all five Committeemen voted in the affirmative.**

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
O R D I N A N C E**

ORDINANCE NO. 008-2018

RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER X (BUILDING AND HOUSING) AND CHAPTER XI (PROPERTY MAINTENANCE) OF THE CODE OF UPPER TOWNSHIP

WHEREAS, the Township Committee finds it necessary to ensure public health, safety and welfare insofar as they are affected by the construction and maintenance of structures and premises;

WHEREAS, the Township Committee finds it necessary to promote safety and foster the beautification of the Township of Upper through the appropriate building and

housing construction and maintenance standards as well as through the cleanup of litter, debris and unsightly properties.

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 10 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:

Delete existing **Section 10-1.6 Fire Limits**

Delete existing **Section 10-2 NATIONAL EXISTING STRUCTURES CODE**, including Sections 10-2.1 through 10-2.9.

Replace in its entirety **Section 10-4 REMOVAL OF DANGEROUS STRUCTURES**, with the following:

10-4 REMOVAL OF DANGEROUS STRUCTURES.

10-4.1 Dangerous Structures Prohibited.

No building, wall or structure or any part thereof, which is or may become dangerous to life or health or which creates a fire hazard shall be permitted. This ordinance section is adopted pursuant to the authority granted by N.J.S.A. 40:48-2.5.

10-4.2 Enforcement.

The Construction Official shall perform all services necessary to insure the strict enforcement of this section, and is designated to exercise the powers prescribed by this section.

10-4.3 Authorization for order of Construction Official.

- a. Whenever a petition is filed with the Construction Official by a public authority or by at least five (5) residents of the Township charging that any building is unfit for human habitation or occupancy or use or whenever it appears to the Construction Official (on his own motion) that any building is unfit for human habitation or occupancy or use, the Construction Official shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such building a complaint stating the charges in that respect and containing a notice that a hearing will be held before the Construction Official (or his/her designated agent) at a place therein fixed not less than seven (7) days nor more than thirty (30) days after the serving of said complaint; that the

owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in the courts shall not be controlling in hearings before the Construction Official.

- b. If, after such notice and hearing, the Construction Official determines that the building under consideration is unfit for human habitation or occupancy or use he/she shall state in writing his/her findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof and parties in interest an order:
 - 1. Requiring the repair, alteration or improvement of the said building to be made by the owner, within a reasonable time, which time shall be set forth in the order or at the option of the owner to vacate or have the said building vacated and closed within the time set forth in the order; and
 - 2. If the building is in such a condition as to make it dangerous to the health and safety of persons on or near the premises, and the owner fails to repair, alter or improve the said building within the time specified in the order, then the owner shall be required to remove or demolish the said building within a reasonable time as specified in the said order of removal;
- c. If the owner fails to comply with an order to repair, alter or improve or, at the option of the owner, to vacate and close the building, the Construction Official may cause such building to be repaired, altered or improved, or to be vacated and closed; that the Construction Official may cause to be posted on the main entrance of any building so closed, a placard with the following words: "This building is unfit for human habitation or occupancy or use; the use or occupancy of this building is prohibited and unlawful."
- d. If the owner fails to comply with an order to remove or demolish the building, the Construction Official may cause such building to be removed or demolished or may contract for the removal or demolition thereof after advertisement for, and receipt of, bids therefor. By resolution, the Township Committee shall authorize the removal or demolition to put the premises in proper condition, and municipal funds expended for such purpose, the amount of which shall be determined by the Township Committee, shall be a lien against the premises as provided by this ordinance and the provisions of N.J.S.A. 40:48-2.5 and N.J.S.A. 40:48-2.12b.
- e. The amount of :
 - 1. The cost of the filing of legal papers, expert witnesses' fees, search fees and advertising charges, incurred in the course of any proceeding taken under this section, and
 - 2. Such cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition, if any, or the amount of the balance

thereof remaining after deduction of the sum, if any, realized from the sale of materials derived from such building or from any contract for removal or demolition thereof, shall be a municipal lien against the real property upon which such cost was incurred. If the building is removed or demolished by the Construction Official, he/she shall sell the materials of such building. There shall be credited against the cost of the removal or demolition thereof, including the clearance and, if necessary, leveling of the site, the proceeds of any sale of such materials or any sum derived from any contract for the removal or demolition of the building. If there are no such credits or if the sum total of such costs exceeds the total of such credits, a detailed statement of the aforesaid costs and the amount so due shall be filed with the municipal tax assessor or other custodian of the records of tax liens and a copy thereof shall be forthwith forwarded to the owner by registered mail. If the total of the credits exceed such costs, the balance remaining shall be deposited in the Superior Court by the Township, shall be secured in such manner as may be directed by such court, and shall be disbursed according to the order or judgment of the court to the persons found to be entitled thereto by final order or judgment of such court. Any owner or party in interest may, within thirty (30) days from the date of the filing of the lien certificate, proceed in a summary manner in the Superior Court to contest the reasonableness of the amount or the accuracy of the costs set forth in the municipal lien.

10-4.4 Summary Proceedings to Demolish Unsafe Building.

If an actual and immediate danger to life is posed by the threatened collapse of any fire damaged or other structurally unsafe building, the Construction Official may, after taking such measure as may be necessary to make such building temporarily safe, seek a judgment in summary proceedings for the demolition thereof.

10-4.5 Other Laws and Regulations Not Affected.

Nothing in this section shall be construed to impair or limit in any way the power of the Township to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise, nor is anything in this act intended to limited the authority of the enforcing agency or Construction Official under the State Uniform Construction Code or any other law or ordinance.

Add Section 10-6 PILE INSTALLATION OPERATIONS AND DEMOLITION OF STRUCTURES.

10-6.1 Permits.

A construction permit is required for piling installation and for demolition.

10-6.2 Pile Installation – Control of Silt, Debris, Etc.

Any firm or corporation performing pile installation operations within the Township shall be responsible for all sand, silt, sediment, debris and water leaving the site of the pile installation operation. Said person, firm or corporation shall be responsible to clean and maintain all alleys, gutters, streets, sidewalks and inlets and prior to completing their pile driving operations shall specifically remove or cause to be removed all sand, silt, sediment, or other debris arising from the pile driving operation. The persons, firms or corporation performing the pile installation operation shall also take any and all actions or steps necessary to prevent the accumulation of sand, soil, sediment and other debris upon any adjoining property, and to likewise take whatever action necessary to prevent damage to alleys, streets, gutters, curbs, adjoining property, infrastructure and other improvements by the utilization of pile driving equipment.

Prior to performing any pile installation activities involving jetting, the contractor shall construct and install silt traps at the stormwater inlets located at both ends of the block in which the contractor is performing the pile installation operations. Prior to obtaining the pile installation permit the contractor shall notify the Construction Code Office of the exact type of silt trap which shall be utilized. No pile installation permit shall be issued unless the Code Enforcement Office is notified and approves of the type of silt trap which shall be utilized.

10-6.3 Notification to Adjacent Property Owners – Pile Installation and Demolition.

Prior to the commencement of work to install piles or demolish a structure, the contractor shall notify the owner of all properties within two hundred (200') feet of the site on which he is working to drive pile or demolish a structure. If the pile installation is via mechanical boring/auger, and vibration, the notification shall be to the owner of all properties within one hundred (100') feet of the site. All notifications required by this section shall include the name, address and telephone number of the piling installation or demolition contractor and the owner of the property, the street address, lot and block of the property, and the date(s) on which the piling installation or demolition is to be done, and shall be forwarded in writing, by certified mail, at least fourteen (14) calendar days prior to the commencement date of the pile installation activity or demolition work but not earlier than thirty (30) days prior. If the pile installation is via mechanical boring/auger, and vibration, the notification required by this section shall be forwarded at least ten (10) days prior to the commencement date of the pile installation. The notification shall be forwarded to the property's mailing address as set forth on the tax duplicate of the Upper Township Tax Assessor.

10-6.4 Damage to Property During Pile Installation or Demolition.

It shall be the responsibility of the pile installation contractor in the case of pile installation, or a demolition contractor in the case of demolition of structures, to prevent damage to alleys, streets, curbs, sidewalks, gutters, adjoining property, infrastructure and other improvements from pile installation and/or demolition construction.

10-6.5 Control of Dust and Debris During Demolition.

Dust and debris control at the site shall be the responsibility of the demolition contractor during the course of demolition. The contractor shall obtain, pay for, and transport water from its own source as required for dust control. Demolition activities

may be limited if weather conditions warrant as determined by the Construction Official. Debris generated by demolition shall be confined to the site. All debris that leaves the site must be collected immediately.

10-6.6 Restrictions on Pile Installation & Building Demolition Activity.

Pile installation and demolition activity shall only be permitted within the Township of Upper as follows:

- a. From July 1st to August 31st of each year from 8:00 a.m. to 4:00 p.m., Monday through Friday. During this time period set up shall not be permitted before 7:00 a.m.
- b. During the remainder of the year from 7:00 a.m. to 5:00 p.m., Monday through Friday. During this time period set up shall not be permitted before 7:00 a.m.
- c. Pile driving activities shall be prohibited on the following holidays: Memorial Day, July 4th, Labor Day, Thanksgiving, Christmas, and New Year's Day.
- d. Pile installation and building demolition shall be prohibited on Saturday and Sunday.

10-6.7 Signs.

Every pile driving construction site in Upper Township shall have a sign eighteen (18") inches in width and twenty-four (24") inches in height posted at the site which shall contain a phone number given to the contractor by the Upper Township advising people to call if they believe any violation of this section has occurred.

10-6.8 Penalties.

Any person, firm or corporation convicted of a violation of this section shall be subject to a fine not to exceed one thousand two hundred fifty (\$1,250.00) dollars per violation as determined by the Municipal Court Judge. Each day of violation shall be considered a separate offense. Additionally, the Municipal Court Judge shall have the authority to order restitution for any damage done to the property by a pile driving or demolition contractor.

SECTION 2. Chapter 11 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:

Replace in its entirety existing **Section 11-1 REMOVAL OF FIRE HAZARDS AND NUISANCES** with the following:

11-1 PROPERTY MAINTENANCE CODE

11-1.1 Purpose, intent and scope.

- a. The purpose of this article is to ensure public health, safety and welfare insofar as they are affected by the maintenance of structures and premises.
- b. The intent is to foster the beautification of the Township of Upper through the cleanup and removal of litter, debris, brush, weeds and obnoxious growths. The provisions of this chapter shall govern the minimum conditions and the responsibilities of persons for maintenance of structures and exterior property.

11-1.2 Definitions

CODE ENFORCEMENT OFFICER shall mean the official who is charged with the administration and enforcement of this code, or any duly authorized representative, including but not limited to code enforcement officer, zoning officer, construction official.

CONDEMN shall mean to adjudge unfit for occupancy.

DUMPSTER shall mean an exterior waste container designed to be mechanically lifted by and emptied into or carted away by a commercial vehicle.

DWELLING shall mean any building or structure or part thereof used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

DWELLING UNIT shall mean a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

HABITABLE SPACE shall mean a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces, and similar areas are not considered habitable spaces.

HEAVY DUTY EQUIPMENT shall mean vehicles, designated for executing commercial construction tasks, such as bulldozers, backhoe, excavators, equipment with heavy hydraulics, etc.

INOPERABLE TRAILER shall mean a trailer on which the wheels or other parts have been removed, altered or damaged, missing doors or flat tires or allowed to deteriorate to the point where the trailer cannot be trailered on the road, including growth of mold or vegetation on or in the trailer.

INOPERABLE VEHICLE shall mean a vehicle on which the engine, wheels or other parts have been removed, altered or damaged or flat tires or allowed to deteriorate to the point where the vehicle cannot be driven, including growth of mold or vegetation on or in the vehicle.

LITTER shall mean any used or unconsumed substance or waste material which has been discarded, whether made of aluminum, glass, plastic, rubber, paper or other

natural or synthetic material, or any combination thereof, including but not limited to any bottle, jar or can or any top, cap or detachable tab of any bottle, jar or can; any unlighted cigarette, cigar, match or any flaming or glowing material; any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste; newspapers or magazines; glass, metal, plastic or paper containers or other packaging; or construction material; but does not include the waste of the primary processes of mining or other extraction processes, logging, sawmilling, farming or manufacturing.

LITTER RECEPTACLE shall mean a container suitable for the depositing of litter.

MOTOR VEHICLE shall mean car, truck, motorcycle, boat, jet ski or other motorized means of transportation.

OCCUPANT shall mean any person or persons, regardless of age, in actual possession of and living in any room or rooms in a hotel, lodging house, motel, or dwelling unit designed and normally used for sleeping and living purposes, or the right to the use or possession of the furnishings or the services and accommodations accompanying the use and possession of such room, rooms or dwelling unit, regardless of whether such use and possession is as lessee, tenant, guest, invitee or licensee.

OWNER shall mean the holder of the title in fee simple.

PARTIES IN INTEREST shall mean all individuals, associations and corporations who or which have interests of record in a dwelling and any who or which are in possession thereof.

PUBLIC AUTHORITY shall mean any housing authority or any officer who is in charge of any department or branch of the government of the municipality, county or state relating to health, fire or building regulations or to other activities concerning dwellings in the municipality.

TRACTOR TRAILER shall mean any semi-trailer (with or without wheels) to be used for the purpose of storing tangible property

TRAILER shall mean any trailer, boat trailer, camper, travel trailer, recreational vehicle, motor home, jet ski trailer, utility trailer or equipment trailer.

11-1.3 Duty to Maintain Premises.

- a. It shall be the duty of the owner, lessee, tenant, occupant and/or person in charge of any structure or property to maintain the property in strict conformance with this article. The owner of the premises shall maintain the structures and exterior property in compliance with these requirements.
- b. A person shall not occupy as owner-occupant or permit another person to occupy premises which are not in a sanitary and safe condition and which do not comply with the requirements of this chapter.

- c. Occupants of a dwelling unit, rooming unit or housekeeping unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit, rooming unit, housekeeping unit or premises which they occupy and control.
- d. Exterior walls shall be free of holes, breaks, loose or rotting boards or timbers, and any other conditions which might admit rain or dampness to the interior portions of the walls or occupied spaces of the building. All exterior surface materials, including wood, composite, metal, stucco, vinyl or other materials shall be maintained weatherproof and shall be properly surface coated when required to prevent deterioration.
- e. The roof shall be structurally sound, tight and not have defects which might admit rain. Roof drainage, gutters and downspouts shall be adequate and in good working order and shall not discharge in a manner that creates a nuisance to owners or occupants of adjacent premises or that creates a public nuisance.
- f. Every basement hatchway shall be so constructed and maintained as to prevent the entrance of pests, animals, rain and surface drainage water into the structure.

11-1.4 Liability.

The Code Enforcement Officer or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act or by reason of an act or omission in the discharge of official duties. Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The Code Enforcement Officer or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code.

11-1.5 Duties and Powers of Code Enforcement Officer.

- a. General. The Code Enforcement Officer is hereby authorized and directed to enforce the provisions of this code. The Code Enforcement Officer shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.
- b. Inspections. The Code Enforcement Officer shall make all of the required inspections, or shall accept reports of inspection by approved agencies or

individuals. All reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The Code Enforcement Officer is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

- c. Right of entry. Where it is necessary to make an inspection to enforce the provisions of this code, or whenever the Code Enforcement Officer has reasonable cause to believe that there exists in a structure or upon a premises a condition in violation of this code, the Code Enforcement Officer is authorized to enter the structure or premises at reasonable times to inspect or perform the duties imposed by this code, provided that if such structure or premises is occupied the Code Enforcement Officer shall present credentials to the occupant and request entry. If such structure or premises is unoccupied, the Code Enforcement Officer shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the Code Enforcement Officer shall have recourse to the remedies provided by law to secure entry.
- d. Identification. The Code Enforcement Officer shall carry proper identification when inspecting structures or premises in the performance of duties under this code.
- e. Notices and orders. The Code Enforcement Officer shall issue all necessary notices or orders to ensure compliance with this code.
- f. Department records. The Code Enforcement Officer shall keep official records of all business and activities of the department specified in the provisions of this code. Such records shall be retained in the official records for the period required for retention of public records.

11-1.6 Vacant Structures and Land.

All vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health, safety or general welfare of the surrounding property owners, the neighborhood, or the community as a whole.

11-1.7 Exterior Property Areas.

All exterior property and premises shall be maintained in a clean, safe and sanitary condition. The occupant shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition.

11-1.8 Litter and Waste.

All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.

- a. It shall be unlawful for any person to throw, drop, discard or otherwise place litter of any nature upon any public or private property, other than in a litter receptacle. Every occupant of a structure shall dispose of all litter in a clean and sanitary manner by placing such litter in approved containers.
- b. No person shall sweep into or deposit in any gutter, street, catch basin or other public place any accumulation of litter from any public or private sidewalk, driveway, curb or property.
- c. It shall be unlawful for any owner, agent or contractor in charge of a construction or demolition site to permit the accumulation of litter, trees, stumps and/or cleaning debris before, during or after completion of any construction or demolition project on the job site or on any vacant lot situate in a residential district.
- d. It shall be unlawful for any residential or commercial property owner to permit open or overflowing waste disposal bins or litter receptacles on his or her property.
- e. It shall be unlawful for any person or entity to store or permit storage of any trash, garbage, rubbish, or bulky household waste, including household appliances, furniture and mattresses, except in a fully enclosed structure or during days designated for the collection of bulky items.
- f. It shall be unlawful for any property owner to store or permit the storage of tires, except in a fully enclosed structure or on days designated for the collection of tires.
- g. It shall be unlawful for any vehicle to be driven, moved, stopped or parked on any highway unless such a vehicle is constructed or loaded to prevent any of its load from dropping, sifting, leaking or otherwise escaping there from. Any person operating a vehicle from which any debris, glass or any objects have fallen or escaped, which could cause an obstruction, damage a vehicle or otherwise endanger travelers or public property, shall immediately cause the public property to be cleaned of all debris, glass or any objects and shall pay the cost therefore.
- h. Every occupant of a structure shall dispose of garbage in a clean and sanitary manner by placing such garbage and recycling in an approved garbage or recycling containers.
- i. The owner, lessee, tenant, occupant and/or person in charge of any structure or property shall provide a litter and recycling receptacle and service therefor at the following public places:
 - 1. Self-service refreshment areas: one litter and recycling receptacle per location.

2. Gasoline service station islands: one litter and recycling receptacle per island.
3. Shopping centers: minimum of one litter and recycling receptacle per store or unit to be placed at the entrances of stores/units.
4. Campgrounds: minimum of one litter and recycling receptacle in each of the following areas: pools, restrooms, laundry facilities, common areas.
5. Mobile home parks: minimum of one litter and recycling receptacle in each of the following areas: pools, restrooms, laundry facilities, common areas.
6. Marinas, boat moorage and fueling stations, boat-launching areas and public and private piers: minimum of one litter and recycling receptacle in each of the following areas: pools, restrooms, laundry facilities, common areas.

11-1.9 Grass, Weeds and Debris.

- a. All premises and exterior property shall be maintained free from weeds or plant growth in excess of 10 inches in height. All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs; provided however, this term shall not include cultivated flowers and gardens. This prohibition against such weeds and plant growth shall not apply to undeveloped wooded tracts or fields utilized for farming or residential agriculture. All premises and exterior property shall also be maintained free from brush, dying trees, filth, garbage, trash and debris. Upon failure of the owner or agent having charge of a property to abate a violation within 10 calendar days after notice to remove or destroy same, he or she shall be subject to prosecution in accordance with 11-1.16, including the abatement or removal of the violation by the Township. Each day shall be counted as a separate offense. Upon failure to comply with the notice of violation, any duly authorized employee of the jurisdiction or contractor hired by the jurisdiction shall be authorized to enter upon the property in violation and cut and destroy the weeds and grass growing thereon, and the costs of such removal plus a 20% administrative fee shall be paid by the owner or agent responsible for the property.
- b. Each separate twenty-four-hour period during which a violation continues shall be deemed to be a separate and distinct violation of this article.

11-1.10 Grading and Drainage.

All premises shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water thereon, or within any structure

or container located thereon with the exception of approved retention areas and reservoirs. Such grading and drainage shall not be directed to neighboring properties.

11-1.11 Sidewalks, Driveways and Parking Lots.

All sidewalks, walkways, stairs, driveways, parking spaces and similar areas abutting the building, structure, or property shall be kept in a proper state of repair, clean, and maintained free from hazardous conditions or nuisances of every kind. Any parking lot that services the public shall be kept free from potholes.

11-1.12 Rodent/ Insect Harborage and Pest Elimination.

All structures and exterior property (residential and nonresidential) shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes which will not be injurious to human health. After pest elimination, proper precautions shall be taken to eliminate rodent harborage and prevent reinfestation. Upon failure to comply with the notice of violation, any duly authorized employee of the jurisdiction or contractor hired by the jurisdiction shall be authorized to enter upon the property in violation and exterminate, and the costs of such action shall be paid by the owner or agent responsible for the property along with a reasonable administrative fee to be determined by the Township.

- a. The owner of any structure shall be responsible for pest elimination within the structure prior to renting or leasing the structure.
- b. The occupant of a one-family dwelling or of a single-tenant nonresidential structure shall be responsible for pest elimination on the premises.
- c. The owner of a structure containing two or more dwelling units, a multiple occupancy, a rooming house or a nonresidential structure shall be responsible for pest elimination in the public or shared areas of the structure and exterior property. If infestation is caused by failure of an occupant to prevent such infestation in the area occupied, the occupant and owner shall be responsible for pest elimination.
- d. The occupant of any structure shall be responsible for the continued rodent- and pest-free condition of the structure.
- e. Exception: Where the infestations are caused by defects in the structure, the owner shall be responsible for pest elimination. Upon failure to comply with the notice of violation, any duly authorized employee of the jurisdiction or contractor hired by the jurisdiction shall be authorized to enter upon the property in violation and exterminate the pests. The costs of such removal shall be paid by the owner or agent responsible for the property, along with an administrative fee.

11-1.13 Accessory Structures.

All accessory structures, including but not limited to detached garages, fences and walls, shall be maintained structurally sound and in good repair.

11-1.14 Motor Vehicles, Trailers, Boats, RV's and ATV's.

- a. Except as provided for in other regulations, only one (1) unregistered or inoperable motor vehicle, trailer, boat, recreational vehicle, heavy equipment or ATV shall be parked, kept or stored on any exterior premises, and no vehicle or similar apparatus or equipment shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Notwithstanding the foregoing, an owner or occupant shall be permitted to keep up to three (3) unregistered or inoperable motor vehicles, or parts thereof, in the exterior rear yard of a premises provided such motor vehicles are part of an ongoing restoration process, the activity and use complies with Chapters 19 and 20, the motor vehicles are not located within the setback lines of the property, the motor vehicles are screened from view by neighboring properties and there exists no environmental or other hazard associated with such motor vehicles.
- b. No person, firm or corporation shall park or store any unregistered or inoperable motor vehicle, trailer, boat, jet ski, recreational vehicle, heavy equipment or ATV on any street within the limits of the Upper Township. In addition, no registered trailer that is not attached to a registered motor vehicle shall be parked or stored on any street within the limits of Upper Township.
- c. Registered, operable motor vehicles, trailers, boats, jet skis, recreational vehicles, ATVs and any other motorized vehicles being stored or kept must be parked in accordance with Chapter 20 of the Revised General Ordinances of the Township of Upper. No portion of the motor vehicle or trailer may encroach upon any public right-of-way, including sidewalks.
- d. Existing nonconforming parked boats, trailers, and campers are not exempt from the above provisions, as of the effective date of this article.
- e. Any such recreational vehicle stored in accordance with this section and Chapters 19 and 20 shall not be occupied and shall not have bump outs or awnings extended for occupancy and shall not be provided with utility connections other than water and electric service reasonably required for vehicle use off site and shall not be used for storage or space for the permanent conduct of a business, profession, occupation or trade.

11-1.15 Defacement of Property.

- a. No person shall willfully or wantonly damage, mutilate or deface any exterior surface of any structure or building on any private or public property by placing thereon any marking, carving or graffiti.

- b. It shall be the responsibility of the owner to restore said surface to an approved state of maintenance and repair.

11-1.16 Violations and Penalties.

- a. Unlawful acts. It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this code.
- b. Notice of violation. The Code Enforcement Officer shall serve a notice of violation in writing.
- c. Prosecution of violation. Any person failing to comply with a notice of violation or order served in accordance with this Section shall be deemed guilty of a local ordinance violation as determined by the local municipality. If the notice of violation is not complied with, the Code Enforcement Officer shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto. Any action taken by the authority having jurisdiction on such premises shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.
- d. Violation penalties. Any person who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. Each day that a violation continues after due notice has been served shall be deemed a separate and distinct offense, subject to additional fines and penalties. Each day any offense shall exist may subject the person to cumulative fines and penalties established by this Ordinance without need to file separate complaint.
- e. Abatement of violation. The imposition of the penalties herein prescribed shall not preclude the enforcement officer of the jurisdiction from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct, business or utilization of the building, structure or premises and collect the costs of same as set forth in Section 11-1.19 below in addition to any other penalty for the violation. If a violation is abated after the prescribed time period allotted by the violation notice, prosecution and penalties may still be implemented and assessed.

11-1.17 Notices and Orders.

- a. Notice to person responsible. Whenever the Code Enforcement Officer determines that there has been a violation of this code or has grounds to believe that a violation has occurred, notice shall be given in the manner prescribed to the person responsible for the violation as specified in this code.

- b. Form. Such notice shall be in accordance with all of the following:
1. Be in writing.
 2. Include a description of the real estate sufficient for identification.
 3. Include a statement of the violation or violations and why the notice is being issued.
 4. Include a correction order allowing a reasonable time (or such specific time as set forth elsewhere in this Ordinance) to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code.
 5. Include a statement of the right to file a lien in accordance with this chapter.
 6. Method of service. Such notice shall be deemed to be properly served if a copy thereof is either:
 - (a) Delivered personally;
 - (b) Sent by certified or first-class mail addressed to the last known address; or
 - (c) If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.
 7. Unauthorized tampering. Signs, tags or seals posted or affixed by the Code Enforcement Officer shall not be mutilated, destroyed or tampered with, or removed without authorization from the Code Enforcement Officer.

11-1.18 Penalties.

- a. Any person or entity that shall violate Section 11-1.9, Grass, Weeds and Debris, shall be subject to a fine as follows:
1. First offense: The violator shall, upon conviction, compensate the Township, as restitution, for all costs incurred in cleaning the premises. A lien shall issue against the premises in this regard until paid. Additionally, the violator shall be fined One Hundred Fifty Dollars (\$150.00).
 2. Second offense: The violator shall, upon conviction, compensate the Township, as restitution, for all costs incurred in cleaning the premises. A lien shall issue against the premises in this regard until paid. Additionally, the violator shall be fined Two Hundred Fifty Dollars (\$250.00).

3. Third and all subsequent offenses: The violator shall, upon conviction, compensate the Township, as restitution, for all costs incurred in cleaning the premises. A lien shall issue against the premises in this regard until paid. Additionally, the violator shall be fined Five Hundred Dollars (\$500.00).
- b. Any person or entity that shall violate any other provision of this Section 11-1 shall, upon conviction, be subject to a fine not to exceed One Thousand Dollars (\$1,000) per occurrence. Each separate twenty-four-hour period during which a violation continues shall be deemed to be a separate and distinct violation of this section.

11-1.19 Abatement.

- a. A Code Enforcement Officer shall keep an accurate record of all expenses incurred in causing the abatement or removal and upon completion of the work he shall certify in writing the total costs thereof.
- b. Upon receipt of any such certification the same shall be examined and if found to be correct, the governing body shall declare by the passage of a resolution that the costs be certified to the Tax Collector as a lien against the land in question. Upon receipt by the Tax Collector of any such certification of costs, the same shall be entered upon the Tax Collector's records as a lien against the property and shall become and form a part of the taxes next to be assessed and levied upon the property. Thereafter, if the lien remains unpaid it shall bear interest when it becomes delinquent at the same rate as other delinquent taxes and shall be collected and enforced by the same officers and in the same manner as taxes.

SECTION 3: EFFECTIVE DATE: This ordinance shall take effect immediately upon the following publication as required by law.

SECTION 4: REPEALER: All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency only.

SECTION 5: 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 6: CODIFICATION: This Ordinance shall be codified in the Upper Township Code at the sections referred to above.

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 9TH DAY OF JULY, 2018 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 13TH DAY OF AUGUST, 2018 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

16. Introduction and first reading of Ordinance No. 009-2018 RE: AN ORDINANCE TO AMEND CHAPTER XIII OF THE CODE OF UPPER TOWNSHIP TO PERMIT WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY. **Motion by John Coggins, second by Edward Barr, to introduce Ordinance 009-2018 with a public hearing and final adoption scheduled for August 13, 2018. During roll call vote all five Committeemen voted in the affirmative.**

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
ORDINANCE**

ORDINANCE NO. 009-2018

**RE: AN ORDINANCE TO AMEND CHAPTER XIII OF THE CODE OF UPPER
TOWNSHIP TO PERMIT WIRELESS COMMUNICATIONS FACILITIES IN THE
PUBLIC RIGHTS-OF-WAY**

WHEREAS, the Township Committee deems it necessary and appropriate to supplement and/or amend the Code of Upper Township to address issues associated with the deployment of wireless communications facilities in the public rights-of-way; and

WHEREAS, the Township acknowledges that wireless communications carriers may enter into written agreements with parties that have the lawful right to erect poles in the public rights-of-way pursuant to N.J.S.A. 48:3-18, and that the consent of the municipality is required pursuant to N.J.S.A. 48:3-19, if the party seeking to install such facilities does not have an independent lawful right to construct such facilities; and

WHEREAS, the consent by the Township for the facilities to be installed is limited to existing wood structure poles, commonly known as wooden utility poles, or replacement poles as regulated herein, no new poles of any material shall be erected within the Township by Wireless Company, the setting of poles is regulated by the New Jersey Board of Public Utilities (“BPU”) the Township authorizes only those that have an independent lawful right to construct utility poles to set poles in the Township’s public rights-of-way; and

WHEREAS, the Township acknowledges that in connection with the use of those public rights-of-way under the jurisdiction of the County of Cape May, municipal consent is required in addition to the consent of the County pursuant to N.J.S.A. 27:16-6; and

WHEREAS, the Township acknowledges that notwithstanding the proscriptions of 47 U.S.C. §253(a), it has the authority to manage the public rights-of-way as provided in 47 U.S.C. §253(c); and

WHEREAS, this Ordinance only effects the limited installation of facilities in the public rights-of-way on existing wooden poles and shall have no effect on site plan and zoning requirements for local communication towers or wireless telecommunication equipment and facilities elsewhere in the Township; and

WHEREAS, the purpose of this Ordinance is to allow the prompt deployment of wireless communications facilities in the public rights-of-way while also effectively managing the rights- of-way in the interests of the public health, safety and welfare; and

NOW, THEREFORE, 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 13, Section 3, of the Revised General Ordinances of the Township of Upper, entitled “Wireless Communications Facilities in the Public Rights-of-Way” is hereby established to add the following Section in its entirety as follows:

ADDED SECTION:

13-3 Wireless Communications Facilities in the Public Rights-of-Way.

SECTION 2. Chapter 13, Section 3.1 of the Revised General Ordinances of the Township of Upper, entitled “Definitions” is hereby established to add the following Section in its entirety as follows:

ADDED SECTION:

13-3.1 Definitions.

- a. For the purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Any term not defined in this section shall have the meaning ascribed to it in the New Jersey Municipal Land Use Law, 40:55D-1, et seq., unless the context clearly requires otherwise. In the event that a term is not defined by this Ordinance, said term shall have its common and/ordinary meaning.
- b. Definitions:

Carrier means any firm, partnership, association, corporation, limited liability company, or any other legally recognized organization, licensed by the Federal Communications Commission to provide Personal Wireless Services or authorized by the New Jersey Board of Public utilities to provide telecommunications services in the State of New Jersey.

Conduit means a casing or encasement for wires or cables.

County means the County of Cape May, State of New Jersey.

Facility or Facilities means all structures, devices, and materials, including but not limited to: antennas, radios and radio cabinets, electrical wires and cables, fiber optic cables, communications and video cables and wires, poles, conduits, pads, backup power supply and other components of Personal Wireless Service Facilities, and appurtenances thereto, located in the public rights-of-way. Each pole mounting set up shall be a separate Facility for regulatory purposes, applications, and fees.

Governing Body means the Township Committee of the Township of Upper, County of Cape May, State of New Jersey.

Municipality means the Township of Upper, County of Cape May, State of New Jersey.

Permittee means the Carrier to which a permit has been issued pursuant this Ordinance and Master License Agreement for Use of Public Rights-of-Way.

Personal Wireless Services means any technologies defined in 47 U.S.C. 332(c)(7) including commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, provided to personal mobile communication devices through wireless Facilities or any fixed mobile wireless services provided using personal wireless Facilities.

Personal Wireless Service Facilities means equipment at a fixed location that enables Personal Wireless Service between user equipment and a communications network, including but not limited to: (a) equipment associated with Personal Wireless Services such as private, broadcast and public safety services, as well as unlicensed wireless

services and fixed wireless services such as microwave backhaul; and (b) Tower, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment, regardless of technological configuration.

Public Right-of-Way means the surface, the air space above the surface, and the area below the surface of any Street, road, highway, lane, alley, boulevard, or drive, including the sidewalk, shoulder and area for utilities owned by the Township of Upper or within an easement to the public or other easement owned by the Township of Upper.

Street means any street, avenue, boulevard, road, parkway, viaduct, drive or other way as defined in the Municipal Land Use Law, 40: 55D-7.

Stealth Structure means a new structure for the mounting of Facilities, such as a light pole with integrated antenna, with aesthetics found to be reasonably acceptable to the Township Engineer.

Utility pole a tall wooden pole that is used to support telephone wires, electrical wires, etc.

Township means the Township of Upper, County of Cape May, State of New Jersey.

Township Engineer means, where applicable, the Administrative Officer as defined in N.J.S.A. 40:55D-3 and the duly appointed Township Engineer of the Township.

Zoning Officer means, where applicable, the Administrative Officer as defined in N.J.S.A. 40:55D-3 and the duly appointed Zoning Officer of the Township.

Zoning Permit means the document signed by the Zoning Officer pursuant to N.J.S.A. 40:55D-18 that is required as a condition precedent to the installation of an individual Facility and which acknowledges that the Facility complies with the provisions of this Ordinance, or approved deviation therefrom.

SECTION 3. Chapter 13 Section 3.2 of the Revised General Ordinances of the Township of Upper, entitled “Facilities in the Public Rights-of-Way” is hereby established to add the following Section in its entirety as follows:

ADDED SECTION:

13-3.2 Facilities in the Public Rights-of-Way.

a. *Purpose.* The purpose and intent of this Ordinance is for the Township to exercise its lawful authority to grant consent to the limited use of the public rights-of-way and to allow the attachment of Facilities only to existing wooden utility poles located therein pursuant to N.J.S.A. 48-19, subject to certain conditions as stated herein, in order to allow the

prompt deployment of Facilities while also effectively managing the public rights-of-way and protecting the aesthetic and safety interests of the public.

b. Facilities subject to this Ordinance. This Ordinance applies to all facilities, as herein defined, within the public rights-of-way, except as otherwise provided in any existing franchise, license or similar agreement. The deployment of facilities on private property and public property outside of the public rights-of-way shall not be controlled by this Ordinance or the Master License Agreement, but by the Township Zoning Ordinance, Site Plan Ordinance and the New Jersey Municipal Land Use Law. In no event shall this Ordinance apply to the Township or facilities owned or operated by the Township.

c. Master License Agreement Required. Every Carrier seeking to install facilities in the public rights-of-way, excluding those holding a franchise, license or similar agreement with the Township, shall first enter into the Master License Agreement substantially complying with the requirements of this Chapter and apply for and obtain a Zoning Permit as provided herein. The execution of the Master License Agreement by the Carrier and the Township shall grant the Township's consent to the Carrier to utilize the public rights-of-way pursuant to N.J.S.A. 48-19 and N.J.S.A. 27:16-6 and shall control the installation, maintenance, and removal of the facilities.

d. Duration of Consent and Removal. The non-exclusive consent granted to the Carrier shall expire in twenty five (25) years unless earlier terminated. Carrier may cancel this Agreement upon sixty (60) days prior written notice to the Township. Upon expiration of such consent, or at such earlier date that the Carrier ceases to operate its facilities for a period of ninety (90) consecutive days, the Carrier shall remove its facilities and restore the right-of-way at its sole cost and expense.

SECTION 4. Chapter 13, Section 3.3 of the Revised General Ordinances of the Township of Upper, entitled "Permit Required; Application and Fees" is established to add the following Section in its entirety as follows:

ADDED SECTION:

13-3.3 Permit Required; Application and Fees.

a. Permit required. No Carrier, without first filing an application and obtaining a Zoning Permit from the Township Zoning Officer pursuant to N.J.S.A. 40:55D-18, shall construct any Facility within any public right-of-way.

b. Application requirements. The application shall contain, at a minimum, the following:

1. The Carrier's name and address and telephone number of the contact person for such Carrier;
2. The applicant's name and address, if different than the Carrier, and telephone number of the contact person for such applicant;

3. The names, addresses, telephone number of the professional consultants, if any, advising the applicant with respect to the application;
4. A brief description of the proposed work;
5. A plan with specifications of the Facility showing the work proposed, including sufficient information regarding the components of the Facility, including their types and quantities;
6. Any request for a deviation from one or more provisions of this Ordinance, and
7. Such additional information as may be reasonably required by the Township Zoning Officer.

c. Application fees. All applications for Zoning Permits pursuant to this Ordinance shall be accompanied by a fee of Two Hundred Dollars (\$200.00) for each independent facility as compensation to the Township for expenses incurred in processing the application as permitted by N.J.S.A. 54:30A-124.

SECTION 5. Chapter 13, Section 3.4 of the Revised General Ordinances of the Township of Upper, entitled “Conditions and Requirements” is hereby established to add the following Section in its entirety as follows:

ADDED SECTION:

13-3.4 Conditions and Requirements.

a. Installation of Facilities. It shall be lawful for wireless communication carriers to install facilities in the public rights-of-way on existing or replacement wooden poles only, shall comply with all requirements of this Ordinance and the terms and condition of the Master License Agreement. All applicants shall obtain any and all approvals necessary from the owner and/or operator of the wooden utility poles to be used;

b. Other approvals. All applicants shall obtain any and all approvals necessary from any other governmental agency in addition to the owner and/or operator of the wooden utility poles to be used;

c. Height. No antenna or attachment to an existing wooden utility pole shall exceed the height of that pole by more than six feet (6’);

d. New poles. No new poles shall be erected for the purpose of placing Facilities regulated herein. The setting of utility poles is regulated by the New Jersey Board of Public Utilities (“BPU”), the Township authorizes only the utility company to set utility poles in the public rights-of-way in their normal course as they deem appropriate and/or necessary subject to BPU regulation.

e. *Pole-Mounted equipment.* equipment shall be pole mounted at a minimum of eight feet (8') from the ground and/or shall conform to all Flood Prevention Ordinance requirements of the Township including but not limited to base flood plus elevations required, whichever is higher in height and shall be limited to one (1) antenna and one (1) cabinet or other mounted device at each site per carrier. A single antenna shall not exceed a height of four feet (4') and two feet (2') in width or two (2) antennas each of a maximum dimension of a height of two feet (2') and width of one foot (1'). The cabinet or other mounted device may project beyond the side of the pole no more than thirty inches (30").

f. *Ground-mounted equipment.* No ground-mounted equipment is permitted on or around any pole;

g. *Color & Conduit.* All antennas, conduit and equipment shall be a color that blends with the wooden utility pole on which it is mounted. Any cables or wiring attached to the utility pole shall be covered with an appropriate conduit;

h. *Construction Permits.* Subsequent to the issuance of the Zoning Permit, the Permittee shall obtain any necessary permits required pursuant to the current Uniform Construction Code adopted in New Jersey prior to installation;

i. *Underground work.* All underground work shall follow standard road opening permit requirements; and

j. *Co-locate.* All carriers shall co-locate and cooperate with each other to minimize the impact and number of facilities on and in the public rights-of-way.

k. *Nearby Facilities.* No Facility shall be installed within three hundred feet (300') of an existing Facility.

l. *Aesthetics.* The Zoning Officer shall determine if the aesthetics of the proposed Facility are reasonably acceptable in accordance with the visual standards of the area. If the Zoning Officer and the Carrier cannot agree then the Carrier may appeal to the Township Committee to determine if the proposed facilities are reasonably acceptable in accordance with the visual standards in the area.

m. *Replacement Poles.* No existing pole shall be replaced with a new pole that is more than thirty-five feet (35') above grade level unless the existing pole being replaced was taller than thirty-five feet (35') in which case the replacement pole shall be no taller than the existing pole.

SECTION 6. Chapter 13, Section 3.5 of the Revised General Ordinances of the Township of Upper, entitled "Action on Zoning Permit Applications" is established to add the following Section in its entirety as follows:

ADDED SECTION:

13-3.5 Action on Zoning Permit Applications.

The Zoning Officer shall approve or reject the permit application within thirty (30) days, unless the Zoning Officer determines that the permit application is incomplete and insufficient for him or her to either approve or reject, in which case the Zoning Officer shall inform the applicant in writing what information is missing. If the application does not conform to the requirements of this Ordinance and no request for a deviation is made with the application, the Zoning Officer shall reject such application in writing, stating the reasons therein. If the Zoning Officer is satisfied that the application conforms to the requirements of this Ordinance, the Zoning Officer shall issue a permit therefor within 60 days.

SECTION 7. Chapter 13, Section 3.6 of the Revised General Ordinances of the Township of Upper, entitled “Effect of Permit” is hereby established to add the following Section in its entirety as follows:

ADDED SECTION:

13-3.6 Effect of Permit.

A Zoning Permit from the Zoning Officer shall confirm compliance with this Ordinance and shall authorize the Permittee to apply for construction permits to undertake the work set forth in the plans filed with the permit application. The permit shall not grant authority to the Permittee to impinge upon the rights of others who may also have an interest in the public rights-of-way.

SECTION 8. Chapter 13, Section 3.7 of the Revised General Ordinances of the Township of Upper, entitled “Deviations” is hereby established to add the following Section in its entirety as follows:

ADDED SECTION:

13-3.7 Deviations.

a. Request for deviations. A Carrier proposing to deviate from one or more of the provisions of this Ordinance shall do so in writing to the Township Engineer as part of the permit application. The request shall identify each provision of this Ordinance from which a deviation is requested and the reasons why a deviation should be granted.

b. Authority to grant deviations. The Township Engineer shall have no authority to grant a deviation from any conditions of Section 13-3.4 “Conditions and Requirements”. The Township Engineer shall decide for all other requests whether a deviation is authorized by this Ordinance and the Carrier requesting the deviation has demonstrated that:

1. One or more conditions not under the control of the Carrier (such as terrain features or an irregular public rights-of-way line or condition) create a special hardship that would make enforcement of the provision

unreasonable, given the public purposes to be achieved by the provision;
and

2. All other designs, methods, materials, locations or facilities that would conform to the provision from which a deviation is requested are impracticable in relation to the requested approach.

c. Additional conditions for granting of a deviation. As a condition for authorizing a deviation, the Township Engineer may require the Carrier requesting the deviation to meet reasonable standards and conditions that may or may not be expressly contained within this Ordinance but which carry out its purposes.

d. Material deviations. In the event the actual size, type, material, or location of any facilities installed in the public rights-of-way deviate in a materially significant way from that which was shown on the plans submitted with the Zoning Permit application, the Permittee shall file new plans with the Township Engineer within 30 days of request or be subject to a stop work order, an order of removal, or a requirement to apply to the Governing Body for relief.

e. Appeal to Township Committee. If the Township Engineer determines that the deviation requested (or existing) is a major deviation and/or that practical hardship has not been properly demonstrated, or is a deviation from Chapter 13-3.4, the Carrier may appeal this decision to the Township Committee.

f. Review fees. Any reasonable professional fees incurred by the Township in its review of a request for a deviation or as a result of the installation of a facility in violation of this Ordinance, and for which no approval is granted, shall be paid to the Township within thirty (30) and prior to the issuance of the Zoning Permit as permitted by N.J.S.A. 54:30A-124. An escrow of twenty-five hundred dollars (\$2,500.00) shall be submitted with the request for deviation to the construction office to cover such fees and be replenished as deemed appropriate by the Zoning Officer.

SECTION 9. Chapter 13, Section 3.8 of the Revised General Ordinances of the Township of Upper, entitled “Insurance” is hereby established to add the following Section in its entirety as follows:

ADDED SECTION:

13-3.8 Insurance.

a. Required coverage and limits. Each Carrier constructing a Facility in the public rights-of-way shall secure and maintain commercial general liability insurance with limits \$6,000,000.00 per occurrence for bodily injury (including death) and for damage or destruction to property insuring the Carrier as named insured and including the Township as an additional insured as their interest may appear under this agreement on the policies. Required limits may be provided through a combination of primary and excess/umbrella liability insurance.

b. *Copies required.* The Carrier shall provide copy of certificates of insurance reflecting the requirements of this section to the Township within ten (10) days following zoning approval and prior to obtaining a construction permit pursuant to this Ordinance.

c. *Self-insurance.* A Carrier may self-insure all or a portion of the insurance coverage and limit requirements required by subsection (a) of this section. A Carrier that self-insures is not required, to the extent of such self-insurance, to comply with the requirement for the naming of additional insured under subsection (a) or the requirements of subsection (b) of this section. A Carrier that elects to self-insure shall provide to the Township evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit required under subsection (a) of this section. Proof of such financial ability to self-insure shall be provided to the Township within ten (10) days following the effective date of the Master License Agreement and prior to obtaining a permit pursuant to this Ordinance.

d. *Effect of insurance and self-insurance on Carrier's liability.* The legal liability of the Carrier to the Township and any person for any of the matters that are the subject of the insurance policies or self-insurance required by this section shall not be limited by such insurance policies or self-insurance or by the recovery of any amounts thereunder, however neither the Township nor the carrier shall be liable to the other for consequential, incidental, exemplary or punitive damages on account of any activity pursuant to this Ordinance.

SECTION 10. Chapter 13, Section 3.9 of the Revised General Ordinances of the Township of Upper, entitled “Indemnification” is hereby established to add the following Section in its entirety as follows:

ADDED SECTION:

13-3.9 Indemnification.

Prior to constructing a Facility in the public rights-of-way, and as a precondition to the issuance of a permit pursuant to this Ordinance, the Carrier shall execute the Master License Agreement, agreeing, among other things, to indemnify and hold harmless the Township against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the Carrier, its employees, contractors or agents, except to the extent such claims or damage may be due to or caused by the negligence or willful misconduct of the Township, or its employees, contractors or agents. The Township will provide the Carrier with prompt, written notice of any claim covered by this indemnification; provided that any failure of the Township to provide any such notice, or to provide it promptly, shall not relieve the Carrier from its indemnification obligation in respect of such claim, except to the extent the Carrier can establish actual prejudice and direct damages as a result thereof. The Township shall cooperate with the Carrier in connection with the Carrier’s defense of such claim. The Carrier shall defend the Township, at the Township’s request, against any claim with counsel of the Township’s choosing that is reasonably satisfactory to the Carrier.

SECTION 11. Chapter 13, Section 3.10 of the Revised General Ordinances of the Township of Upper, entitled “Permit Suspension and Revocation” is hereby established to add the following Section in its entirety as follows:

ADDED SECTION:

13-3.10 Permit Suspension and Revocation.

a. Right to revoke permit. The Zoning Officer may revoke or suspend a permit issued pursuant to this Ordinance for one or more of the following reasons:

1. Materially false or incomplete statements in the permit application,
2. Non-compliance with one or more provisions this Ordinance for which a deviation has not been allowed,
3. The Permittee's Facilities within the public rights-of-way presents a direct or imminent threat to the public health, safety, or welfare,
4. Permittee's failure to construct the Facilities substantially in accordance with the permit and approved plans, or
5. Violation of the terms and conditions of the Master License Agreement.

b. Notice of revocation or suspension. The Zoning Officer shall send written notice of its intent to revoke or suspend a permit issued pursuant to this Ordinance stating the reason or reasons for the revocation or suspension and the alternatives available to Permittee under this section.

c. Permittee alternatives upon receipt of notice of revocation or suspension. Upon receipt of a written notice of revocation or suspension from the Zoning Officer, the Permittee shall have the following options:

1. Immediately provide the Township with evidence that no cause exists for the revocation or suspension;
2. Immediately correct, to the satisfaction of the Zoning Officer, the deficiencies stated in the written notice, providing written proof of such correction to the Zoning Officer within ten (10) business days after the receipt of the written notice of revocation, or
3. Within ten (10) days remove the facilities located within the public rights-of-way and restore the public rights-of-way to the satisfaction of the Zoning Officer providing written proof of such removal to the Zoning Officer within ten (10) business days after receipt of the written notice of revocation. The Zoning Officer may, in his or her discretion, extend the time periods provided in this subsection. To be effective extensions must be in writing.

SECTION 12. Chapter 13, Section 3.11 of the Revised General Ordinances of the Township of Upper, entitled "Change of Ownership, Owner's Identity, or Legal Status" is hereby established to add the following Section in its entirety as follows:

ADDED SECTION:

13-3.11 Change of Ownership, Owner's Identity, or Legal Status.

Notification of change. A Carrier shall notify the Township no less than thirty (30) days following the transfer of ownership of any facility in the public rights-of-way or change in identity of the Carrier. The rights and obligations given to the Carrier pursuant to the Master License and Zoning Permit shall be binding on and benefit the new owner of the Carrier or the facility, its successors and assigns, who shall have all the obligations and privileges enjoyed by the former owner under the Master License Agreement, Zoning Permit, and all applicable laws, ordinances, rules and regulations, including this Ordinance, with respect to the work and facilities in the public rights-of-way.

SECTION 13. Chapter 13, Section 3.12 of the Revised General Ordinances of the Township of Upper, entitled "Traffic Control" is hereby established to add the following Section in its entirety as follows:

ADDED SECTION:

13-3.12 Traffic Control.

a. *Warning signs, protective devices, and flaggers.* The Carrier is responsible for providing and installing warning signs, protective devices and flaggers, when necessary for protection of the public and the Carrier's workers when performing work on the public rights-of-way.

b. *Interference with traffic.* All work shall be phased so that there is minimum interference with pedestrian and vehicular traffic.

c. *Compliance.* The Carrier shall take immediate action to correct any deficiencies in traffic protection requirements that are brought to the Carrier's attention by the Zoning Officer, Township Engineer, Local Fire District and the State Police.

SECTION 14. Chapter 13, Section 3.13 of the Revised General Ordinances of the Township of Upper, entitled "Removal, Relocation, or Modification of Facilities" is hereby established to add the following Section in its entirety as follows:

ADDED SECTION:

13-3.13 Removal, Relocation, or Modification of Facilities.

a. *Notice.* Within 30 days following written notice from the Township, any Carrier with facilities in the public rights-of-way shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any facilities whenever the Township determines that (a) such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Township improvement in or upon the public rights-of-way; or (b) because the equipment is interfering with or adversely affecting proper operation of the light or other poles; or (c) the widening of the public rights-of-way. In such instance, the Township shall cooperate with Carrier to find a replacement location for the facility that will provide similar radio frequency coverage to the facility removed or relocated.

b. *Removal of unauthorized facilities.* Within thirty (30) days following written notice from the Zoning Officer to any Carrier that owns, controls, or maintains any unauthorized facility or related appurtenances within any public rights-of-way shall, at its own expense, remove all or any part of such facilities or appurtenances. A facility is unauthorized and subject to removal, but not limited to, in the following circumstances:

1. Upon expiration or termination of the Permittee's license, unless otherwise permitted by applicable law,
2. If the Facility was constructed without the prior grant of a Zoning Permit,
3. If the Facility was constructed without prior issuance of a required construction permit,
4. If the Facility was constructed at a location not permitted by the Permittee's permit, or
5. Upon abandonment of the Facility. Abandonment will be presumed where a Facility has not been used for the purpose for which it was installed for a period of ninety (90) consecutive days, or more, and where there have been no efforts to repair or renew the use during the ninety (90) day period. The Carrier owning, controlling or maintaining the facility shall have the burden of establishing to the Zoning Officer that the facility is still being used within thirty (30) days of the notice. All notices described herein shall be in writing and sent by recognized national overnight courier (e.g., U.S. Postal, Federal Express or UPS) for which proof of delivery is supplied. Failure to respond to the Zoning Officer's request for information regarding the abandonment of the facility shall constitute a presumption of abandonment. Upon the Zoning Officer's determination and final written notification to the Carrier of such abandonment the Carrier shall have sixty (60) days within which to:
 - (a) Reactivate the use of the facility or transfer the facility to another entity which makes actual use of the facility promptly, or
 - (b) Dismantle and remove the facility and notify the Zoning Officer in writing of the completion of such removal.

If the entity believes that the determination of abandonment by the Zoning Officer is incorrect it may file a written appeal with the Zoning Board of Adjustment pursuant to N.J.S.A. 40:55D-70a. If the entity fails to prevail on appeal, or fails to reactivate, or transfer to another active user or remove the service facility the Township shall have the right to have the facilities removed at the Carrier's sole expense. The Township shall be entitled to reimbursement for all costs and expenses associated with the removal of any facility thereafter.

SECTION 15. Chapter 13, Section 3.14 of the Revised General Ordinances of the Township of Upper, entitled "Cleanup and Restoration" is hereby established to add the following Section in its entirety as follows:

ADDED SECTION:

13-3.14 Cleanup and Restoration.

Upon completion of all construction or maintenance of Facilities, the Carrier shall remove all debris and restore the right-of-way to a clean and safe condition in a timely manner and to the satisfaction of the Zoning Officer.

SECTION 16. Chapter 13, Section 3.15 of the Revised General Ordinances of the Township of Upper, entitled “Maintenance and Emergency Maintenance” is hereby established to add the following Section in its entirety as follows:

ADDED SECTION:

13-3.15 Maintenance and Emergency Maintenance.

a. General. Facilities within public rights-of-way shall be maintained by or for the Carrier at the Carrier's sole expense. Carrier shall not damage the Public Right-of-Way and shall keep the Public Right-of-Way free of all debris. If any portion of the Public Right-of-Way suffers damage by reason of access by Carrier, then in that event, Carrier, at its sole cost and expense, shall immediately repair all such damage or replace the damaged portion of the Public Right-of-Way and restore the damaged portion of the property to its condition prior to the occurrence of such damage.

b. Emergency maintenance procedures. The noncompliance with normal procedures for securing a required permit shall be excused when a Carrier reasonably determines that an emergency exists.

1. If an emergency creates a hazard on the traveled portion of the public rights-of-way, the Carrier shall take immediate steps to provide all necessary protection for traffic on the roadway including the use of signs, lights, barricades or flaggers.

2. In an emergency, the Carrier shall, as soon as practical, notify the Zoning Officer or his or her duly authorized agent and the State Police of the emergency, informing him or her as to what steps have been taken for protection of the traveling public and what will be required to make the necessary repairs. On nights and weekends, the Carrier shall notify the State Police of an emergency if the Zoning Officer is unavailable. If the nature of the emergency is such as to interfere with the free movement of traffic, the State Police shall be notified immediately. To the extent that the Township has actual knowledge of the displacement or damage to any facility, it shall inform Carrier upon learning of the same.

SECTION 17. Chapter 13, Section 3.16 of the Revised General Ordinances of the Township of Upper, entitled “Enforcement” is hereby established to add the following Section in its entirety as follows:

ADDED SECTION:

13-3.16 Enforcement.

Nothing in this Ordinance shall be construed as limiting any additional or further remedies that the Township may have for enforcement of this Ordinance or the right of a Carrier to appeal any decision to the state courts of New Jersey or the United States District Court for the District of New Jersey.

SECTION 18. 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 19. REPEALER. Any Ordinance or provision thereof inconsistent with this Ordinance is hereby repealed to the extent of such inconsistency.

SECTION 20. PUBLICATION. This Ordinance shall take effect immediately upon the adoption and publication in accordance with the law.

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 9th DAY OF JULY, 2018 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 13th DAY OF AUGUST, 2018 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

CORRESPONDENCE

NEW BUSINESS

17. **The Greater Tuckahoe Area Merchants Association request use of the Community Center for a Craft Show on November 16 & 17, 2018.** Motion by Hobie Young, second by John Coggins, to approve the request. During roll call vote all five Committeemen voted in the affirmative.

18. **Bid results for Reroofing of Municipal Building.** The Municipal Engineer reported that the Township received three bids for this project on June 27, 2018, and recommended the contract be awarded to the lowest bidder, Journey Contracting Co., Inc., for \$95,550. Motion by Hobie Young, second by John Coggins, to encumber the funds to award the contract to Journey Contracting. During roll call vote all five Committeemen voted in the affirmative. A resolution for formal action will be placed on the next regular meeting agenda.

UNFINISHED BUSINESS

19. **Installation of LED flood light on a new pole, 200 feet from existing pole (W26610) at Bayview Drive, Strathmere, NJ.** The Township Engineer stated that this will be an energy efficient streetlight to illuminate the area near the street end of Bayview Drive. After a brief discussion regarding the hours the boat ramp is in use as well as public safety, there was a motion by Curtis Corson, second by Edward Barr, to authorize the installation of the light. During roll call vote all five Committeemen voted in the affirmative.

DISCUSSION

20. **2018 Capital Requests.** After discussion, there was a motion by Curtis Corson, second by John Coggins, to direct Bond Counsel to prepare a Bond Ordinance. During roll call vote all five Committeemen voted in the affirmative

PAYMENT OF BILLS

21. "I hereby move that all claims submitted for payment at this meeting be approved and then incorporated in full in the minutes of this meeting." **Motion by John Coggins, second by Edward Barr. During roll call vote all five Committeemen present voted in the affirmative.**

Bills approved for payment: \$275,366.85

Payroll: \$198,107.01

REPORT OF MUNICIPAL DEPARTMENTS

- 22. Construction Code
- 23. MUA Report
- 24. Tax Collector

Motion by Richard Palombo, second by Edward Barr, to accept the reports as submitted. During roll call vote all five Committeemen present voted in the affirmative.

PUBLIC COMMENT

Mark Schuler, Palermo - inquired into the plans for a Pumpkin Run this year. It was stated that Flemings will not hold a "Pumpkin Run" in 2018, but Mr. Fleming is planning on having one in 2019. The Township will be holding a fall fest and car show on November 3rd. The name of the event has not yet been determined. Mr. Schuler stated that the Township should

consider raising the vendor fees. Mr. Schuler next offered comments on Ordinance 008-2018 which was introduced this evening.

Christina Schuler, Petersburg - questioned the date of the public hearing for Ordinance 008-2018. It was stated that the public hearing on Ordinance 008-2018 will be August 13th at 7:30 p.m.. Ms. Schuler also asked who she should contact to volunteer for the car show. She was advised to contact the Clerks office.

Janice Connolly, Strathmere – commented the agenda item regarding the installation of a street light on Bayview Avenue in Strathmere. She also thanked the Committee for their efforts addressing the concerns of Strathmere residents..

Nathalie Neiss, Petersburg – commented regarding trash receptacles and outside displays at the new Dollar General Store in Petersburg. She also spoke regarding complaints she filed with the Zoning Officer about her neighbors property and one of the campgrounds that was licensed this evening.

Peter Schuler, Petersburg – questioned whether or not the volunteer organizations in the Township would be interested in helping with the various Township events. Mr. Schuler also commented on Ordinance 008-2018 which was introduced this evening.

Jon Kevin Grubb, Seaville – commented on Ordinance 008-2018 and the authority of the Code Enforcement Officer to address complaints.

CLOSED SESSION

25. Resolution to conduct a closed meeting pursuant to N.J.S.A. 10:4-12, from which the public shall be excluded.

TOWNSHIP OF UPPER RESOLUTION NO. 206-2018 MOTION GOING INTO CLOSED SESSION JULY 9, 2018

I hereby move that a resolution be incorporated into the minutes authorizing the Township Committee to enter into an executive session for the following matters pursuant to the Open Public Meetings Act:

MATTERS:

1. Personnel
2. Contract negotiation - Collective Bargaining Agreement
3. Contract negotiation - Emergency Medical Billing
4. Contract negotiation - Architectural Services
5. Contract negotiation - K.D. National Force Security & Investigations
6. Contract negotiation - Assignment of Tax Sale Certificate - Blk 653.01 Lot 3, Tax Cert #13-00026 and Blk 653.01 Lot 2, Tax Cert #13-00025
7. Potential Litigation – Whippoorwill

I also include in my motion the estimated time and the circumstances under which the discussion conducted in closed session can be disclosed to the public as follows:

- A. It is anticipated that the matters discussed in closed session may be disclosed to the public upon the determination of the Township Committee that the public interest will no longer be served by such confidentiality.
- B. With respect to employment and personnel matters such discussions will be made public if and when formal action is taken or when the individuals involved consent that it can be made public.
- C. With respect to contract negotiations such matters will be made public when negotiations have ceased and there is no longer a reason for confidentiality.
- D. With respect to litigation matters such discussions will be made public when litigation is complete and the applicable appeal period has expired.

Moved by: John Coggins

Motion seconded by: Edward Barr

During roll call vote all five Committee members present voted in the affirmative.

RECONVENE PUBLIC PORTION OF MEETING

Motion by John Coggins, second by Edward Barr, to reconvene the public portion of the meeting with all five Committeemen voting in the affirmative.

ADJOURNMENT

There being no further business this evening the meeting was adjourned at 10:21 P.M., with a motion by John Coggins, second by Richard Palombo, and all five Committeemen voting in the affirmative. The next regular meeting is scheduled for July 23, 2018 at 7:30 P.M.

Minutes prepared by,

Barbara L. Young, RMC
Municipal Clerk

BILL LIST

71780 07/09/18 A0021 ADAMS, GEORGE E. JR. 383.82 3033
71781 07/09/18 A0025 ADVANTAGE RENTAL ACE HARDWARE 306.00 3033
71782 07/09/18 A0027 ACE PLUMBING SUPPLY, INC 192.78 3033
71783 07/09/18 A0030 AFTER-PROM COMMITTEE OCHS 3,775.00 3033
71784 07/09/18 A0091 ATLANTIC CITY ELECTRIC 4,430.11 3033
71785 07/09/18 A0168 ATLANTIC CRANKSHAFT 138.00 3033
71786 07/09/18 A0175 Adams Rehmann & Haggan Assoc 16,236.00 3033
71787 07/09/18 A0193 ATLANTIC INVESTIGATIONS, LLC 186.00 3033
71788 07/09/18 A0195 ADVANTAGE BUSINESS EQUIPMENT 60.29 3033
71789 07/09/18 A0212 ANCERO, LLC 10,342.00 3033
71790 07/09/18 A0218 ATLANTIC CITY CYCLE CENTER LLC 356.21 3033
71791 07/09/18 A0221 AMP GAMING, LLC 715.00 3033
71792 07/09/18 B0035 BELMONT & CRYSTAL SPRINGS 20.53 3033
71793 07/09/18 B0052 BENNETT BATTERIES, LLC. 105.00 3033
71794 07/09/18 B0182 BRIGGS LAW OFFICE, P.C. 631.20 3033

71795 07/09/18 B0220 BERGEY'S TRUCK CENTERS 962.72 3033
 71796 07/09/18 B0232 BLUE FLAME GAS 635.60 3033
 71797 07/09/18 B0248 BARNES LAW GROUP LLC 3,735.00 3033
 71798 07/09/18 C0031 CAPE ASSIST 2,250.00 3033
 71799 07/09/18 C0046 CAPE MAY COUNTY CLERK 3,908.80 3033
 71800 07/09/18 C0060 CAPRIONI'S PORTABLE TOILETS 3,244.25 3033
 71801 07/09/18 C0068 COMCAST 570.44 3033
 71802 07/09/18 C0072 CATERINA SUPPLY INC. 670.00 3033
 71803 07/09/18 C0116 CINTAS CORPORATION 58.99 3033
 71804 07/09/18 C0182 CDW GOVERNMENT, INC 1,168.20 3033
 71805 07/09/18 C0201 CRUZAN'S TRUCK SERVICE INC. 239.96 3033
 71806 07/09/18 C0223 CASA PAYROLL SERVICE 281.75 3033
 71807 07/09/18 C0246 CRAFT OIL CORPORATION 488.62 3033
 71808 07/09/18 C0304 CAPE HARMONAIRES 250.00 3033
 71809 07/09/18 F0053 FORD, SCOTT & ASSOCIATES 3,000.00 3033
 71810 07/09/18 F0220 FAIRHURST, JONATHAN 500.00 3033
 71811 07/09/18 G0016 GARDNER HARDWARE INC. 55.92 3033
 71812 07/09/18 G0074 GPA OF NEW JERSEY, INC. 100.00 3033
 71813 07/09/18 G0092 GRUND, BARBARA J. 30.96 3033
 71814 07/09/18 G0157 GRANTURK EQUIPMENT CO., INC. 1,378.90 3033
 71815 07/09/18 G0187 GSF, LLC 357.50 3033
 71816 07/09/18 H0018 HAROLD RUBIN L & H SUPPLY 781.16 3033
 71817 07/09/18 H0022 HR DIRECT 252.66 3033
 71818 07/09/18 H0073 HOME DEPOT CRC/GEFC 179.75 3033
 71819 07/09/18 H0095 HORIZON BCBSNJ 162,794.26 3033
 71820 07/09/18 J0079 JAMES WYERS LANDSCAPING, LLC 100.00 3033
 71821 07/09/18 K0086 K D NATIONAL FORCE SECURITY 4,525.25 3033
 71822 07/09/18 L0031 LORCO PETROLEUM SERVICES 114.00 3033
 71823 07/09/18 M0019 MAXIMUM MARINE, LLC 25.25 3033
 71824 07/09/18 M0032 MARINE RESCUE PRODUCTS, INC. 2,089.75 3033
 71825 07/09/18 M0180 MED-TECH RESOURCE, LLC 119.52 3033
 71826 07/09/18 M0235 MODERN GROUP, LTD 551.45 3033
 71827 07/09/18 M0247 MORGAN, SCOTT 102.06 3033
 71828 07/09/18 M0290 MADDEN & MADDEN, PC 75.00 3033
 71829 07/09/18 N0004 NJ-AMERICAN WATER CO. 107.97 3033
 71830 07/09/18 N0052 NATL YOUTH SPORTS COACHED ASSN 200.00 3033
 71831 07/09/18 P0032 PEDRONI FUEL CO. 2,382.93 3033
 71832 07/09/18 P0056 TURF EQUIPMENT AND SUPPLY CO 1,905.42 3033
 71833 07/09/18 P0165 PETROSH'S BIG TOP, LLC 655.00 3033
 71834 07/09/18 P0175 PRIEST JR., ANTHONY 100.00 3033
 71835 07/09/18 R0030 RIGGINS, INC. 5,706.20 3033
 71836 07/09/18 S0001 SAM'S CLUB 183.48 3033
 71837 07/09/18 S0020 SUPPLY WORKS 391.75 3033
 71838 07/09/18 S0031 SCHULER SECURITY, INC. 200.00 3033
 71839 07/09/18 S0056 SEASHORE ASPHALT CORPORATION 393.04 3033
 71840 07/09/18 S0092 SHONE, LEROY 50.00 3033
 71841 07/09/18 S0121 SMUZ, THERESE A 195.81 3033
 71842 07/09/18 S0130 SOUTH JERSEY CHIEFS ASSOC. 150.00 3033
 71843 07/09/18 S0134 SO. JERSEY GAS COMPANY 34.96 3033
 71844 07/09/18 S0254 SHOPRITE 390.65 3033
 71845 07/09/18 S0275 SCHAEFER FIREWORKS 4,213.50 3033
 71846 07/09/18 S0282 SUSTAINABLE JERSEY, INC. 35.00 3033
 71847 07/09/18 S0303 SITEONE LANDSCAPE SUPPLY, LLC 860.00 3033
 71848 07/09/18 S0327 SUASION COMMUNICATIONS GROUP 637.50 3033
 71849 07/09/18 S0329 SERIOUSLY TOTAL VIDEO 250.00 3033
 71850 07/09/18 S0336 SPRIGG, ASHLEY 250.00 3033
 71851 07/09/18 S0337 SURETY TITLE COMPANY, LLC 375.80 3033
 71852 07/09/18 T0032 THE PRESS OF ATLANTIC CITY 439.92 3033
 71853 07/09/18 T0129 TRUGREEN CHEMLAWN 1,494.90 3033
 71854 07/09/18 T0168 TOWNSHIP OF UPPER 366.66 3033
 71855 07/09/18 U0003 U.S. MUNICIPAL SUPPLY, INC. 163.50 3033
 71856 07/09/18 V0001 VCI EMERGENCY VEHICLE 1,005.87 3033
 71857 07/09/18 V0013 VERIZON WIRELESS 1,158.13 3033
 71858 07/09/18 V0024 VAL-U AUTO PARTS L.L.C. 300.48 3033
 71859 07/09/18 V0025 V.E. RALPH & SON, INC. 765.06 3033
 71860 07/09/18 W0030 WEST PUBLISHING CO. 483.31 3033
 71861 07/09/18 W0045 WILDWOOD CATHOLIC HIGH SCHOOL 200.00 3033
 71862 07/09/18 W0054 WATER SAFETY PRODUCTS, INC 113.29 3033
 71863 07/09/18 W0085 WOODY, LESTER 199.65 3033
 71864 07/09/18 W0087 W.B. MASON EGG HARBOR 306.41 3033
 71865 07/09/18 Y0008 YOUNG, DANIEL J. ESQUIRE PC 15,225.00 3033

Total: \$275,366.85