

**TOWNSHIP OF UPPER
2100 TUCKAHOE ROAD
PETERSBURG, NJ 08270
CAPE MAY COUNTY
MINUTES FOR AUGUST 13, 2018**

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

CALL TO ORDER

SUNSHINE ANNOUNCEMENT

Deputy Mayor Barr read the following announcement. “In compliance with the Open Public Meetings Law, I wish to state that on August 10, 2018 the notice of this meeting of the Upper Township Committee was posted on the official Township Bulletin Board, mailed to the Cape May County Gazette, the Atlantic City Press, the Ocean City Sentinel-Ledger, the Herald Times and filed with the Township Clerk. Tonight’s meeting is being video recorded up until the closed session portion of this meeting and will be available on UTTV Channel 97 and on the Upper Township website. I hereby direct that this announcement be made a part of the minutes of this meeting.”

SALUTE TO THE FLAG

ROLL CALL

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

Also present were Municipal Clerk Barbara Young, Municipal Attorney Daniel Young, Municipal Engineer Paul Dietrich, Chief Financial Officer Barbara Spiegel, Township Administrator Scott Morgan and Professional Planner Tiffany (CuvIELLO) Morrissey.

APPROVAL OF MINUTES - **July 23, 2018 Regular Meeting and Closed Session Minutes** - Motion by John Coggins, second by Curtis Corson, to approve the July 23, 2018 Regular Meeting and Closed Session Minutes as submitted. During roll call vote all four Committeemen present voted in the affirmative.

REPORT OF GOVERNING BODY MEMBERS

Hobie Young, Committeeman, questioned why the site at the CVS in Marmora is not being maintained. Mr. Dietrich stated that he will follow up with the property owner who was going to reach out to the Landscaper who did the original landscaping. Lastly he asked for

Volunteers for the upcoming Fall Festival and Pumpkin Classic Car Show scheduled for November 3rd (rain date November 4th) at Amanda's Field.

Edward Barr, Committeeman, made a Motion, seconded by Hobie Young, to appoint Reghan Handley, Aiden Blake and James Gibbons to the Upper Township Beach Patrol as part-time Lifeguards contingent upon background clearance. During roll call vote all four Committeemen present voted in the affirmative.

OTHER REPORTS

Scott Morgan, Township Administrator, reported on a Public Service Announcement issued by the State Office of Emergency Management, the County Office of Emergency Management and the New Jersey Board of Public Utilities as of August 18th calls from within the 609 area code and the new area code of 640, will be required to dial 1 plus the area code plus the seven digit number. 911 calls 211, 311 and 811 will remain the same. Information relating to the changes can be found on the BPU website at www.nj.gov/bpu, and a link to the BPU site can also be found on the Township website at www.uppertownship.com.

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

Paul Dietrich, Township Engineer, reported on an NJDOT grant proposal for local aid projects and recommended that the Township apply for the grant to complete the Commonwealth Avenue road project. He explained that at this time all that is required is the submission of an online application which will come back for a resolution at a later date. Motion by Curtis Corson, second by John Coggins, to authorize the Engineer to submit an online application to the NJDOT for a Local Aid Grant for the rehabilitation of Commonwealth Avenue. During roll call vote all four Committeemen present voted in the affirmative. Lastly Mr. Dietrich briefly reported on a meeting with the Upper Township Historical Society and the Architect for the renovation of the Old Town Hall at kick off meeting for the project.

Barbara Spiegel, Chief Financial Officer, requested authorization to attend the 2018 Government Finance Officers Fall Conference in Atlantic City at the end of September. Ms. Spiegel explained that early registration which ends this Wednesday is \$350, after that it goes up to \$500. Motion by John Coggins, second by Curtis Corson, to authorize the CFO to register for the Government Finance Officers Fall Conference. During roll call vote all four Committeemen present voted in the affirmative.

PRESENTATIONS

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

RESOLUTIONS

2. Honoring Thomas Castaldi on attaining the designation of "Eagle Scout".

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 224-2018

**RE: HONORING THOMAS CASTALDI ON ATTAINING THE
DESIGNATION OF "EAGLE SCOUT"**

WHEREAS, Thomas Castaldi of Troop 95, Seaville, 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 Thomas 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 collecting old and broken bicycles and recycling the parts to rebuild usable bicycles. These bicycles were given to St Casimir's Church in Woodbine and distributed at Christmastime to children in the church's serving area. With the help of his troop members, friends and family, Thomas' project has initiated a valued tradition that will be repeated in future years; and

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

WHEREAS, a Resolution is required authorizing the award of a contract for professional services to Adams, Rehmann & Heggan Associates, Inc. as a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

WHEREAS, Adams, Rehmann & Heggan Associates, Inc. have completed and submitted a Business Entity Disclosure Certification which certifies that said firm has not made any contributions to a political or candidate committee in the Township that would bar the award of this contract and that the contract will prohibit said firm from making any contributions through the term of the contract; 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. Adams, Rehmann & Heggan Associates, Inc. with offices at 215 Bellevue Avenue, Hammonton, New Jersey is hereby contracted to perform site investigations as directed or requested by the Township.
3. The term of this contract is for a period not to exceed the length of time necessary for completion of the aforesaid project, unless sooner terminated by the Township of Upper, at the option of the Township of Upper.
4. This Contract is awarded without competitive bidding as a “professional service” in accordance with N.J.S.A. 40A:11-5(1)(a) of the New Jersey Local Public Contract Law because Adams, Rehmann & Heggan Associates, Inc., has professional knowledge as to environmental issues which knowledge is particularly valuable to the Township Committee.
5. This Contract is under and subject to any and all requirements of the State of New Jersey Department of Environmental Protection guidelines.

NOTICE OF CONTRACT AWARD

6. The Township Committee of the Township of Upper, State of New Jersey has awarded the contract without competitive bidding as a professional service pursuant to N.J.S.A. 40A:11-5(1)(a) to Adams, Rehmann & Heggan Associates, Inc.,. This contract and the resolution authorizing same shall be available for public inspection in the office of the municipal clerk of the Township of Upper, State of New Jersey.

7. The Mayor and the Township Clerk are hereby authorized and directed to execute, on behalf of the Township of Upper, a Professional Contract with Adams, Rehmann & Heggan Associates, Inc. in accordance with the terms and provisions of the Local Public Contracts Law, subject to and in accordance with the limitations imposed herein. Upon execution of all parties thereto said contract shall become effective.

8. Notice of this contract award shall be published in the official newspaper of the Township of Upper within ten (10) days from the date of adoption.

9. This Resolution shall be effective as of adoption.

Resolution No. 225-2018

Offered by: Corson

Seconded by: Young

Adopted: August 13, 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>

4. Cancel Tax on Exempt Property Block 574 Lot 17.02.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 226-2018

**CANCEL TAX ON EXEMPT PROPERTY
BLOCK 574 LOT 17.02**

WHEREAS, certain corrections have been recommended by the Upper Township Tax Collector in order to refund monies: and

WHEREAS, certain properties became tax exempt for the year 2018; and

WHEREAS, James McAfee is a 100% disabled American veteran residing at 3 Klains Lane Block 574, Lot 17.02 on the municipal tax map of Upper Township, New Jersey; and

WHEREAS, the Department of Veterans Affairs has determined that Mr. McAfee's 100% permanent wartime service connected disability was effective August 1, 2008; and

WHEREAS, James McAfee made application November 2, 2017 pending a Certificate of Occupancy which was issued January 29, 2018.

NOW, THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Upper, Cape May County, that corrections to the Tax records are hereby authorized and the Tax Collector is hereby directed to correct said records or take such action as indicated below.

Resolution No. 226-2018
Offered by: Coggins
Adopted: August 13, 2018

Seconded by: Coggins

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>

CANCEL TAX 2018

<u>BLOCK/LOT</u>	<u>AMOUNT</u>	<u>NAME</u>
574/17.02	\$1,585.30	James & Sandra McAfee 3 Klains Lane Marmora, NJ 08223

100% Totally Disabled Veteran

5. Canceling and Refunding Taxes on Exempt Property Block 471 Lot 6.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 227-2018

**CANCELING AND REFUNDING TAXES ON EXEMPT PROPERTY
BLOCK 471 LOT 6**

WHEREAS, certain corrections have been recommended by the Upper Township Tax Collector in order to correct tax records; and

WHEREAS, certain properties became tax exempt for the year 2018,

WHEREAS, Thomas Hunter is a 100% disabled American veteran residing at 30 Frances Drive South, Block 471, Lot 6 on the municipal tax map of Upper Township, New Jersey; and

WHEREAS, the Department of Veterans Affairs has determined that Mr. Hunter's 100% permanent wartime service connected disability was effective July 19, 2017; and

WHEREAS, Thomas Hunter made application on June 14, 2018; and

WHEREAS, Township of Upper Ordinance No. 009-2012 allows for the refund of property taxes paid for the calendar year in which claim is made.

NOW, THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Upper, Cape May County, that corrections to the Tax records are hereby authorized and the Tax Collector is hereby directed to correct said records or take such action as indicated on the attached sheet.

Resolution No. 227-2018
 Offered by: Coggins
 Adopted: August 13, 2018

Seconded by: Corson

Roll Call Vote:

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

CANCEL TAX 2018

<u>BLOCK/LOT</u>	<u>AMOUNT</u>	<u>NAME</u>
471/6	\$3,544.27	Thomas & Barbara Hunter 20 Frances Dr. South Petersburg, NJ 08270

REFUND TAX 2018

<u>BLOCK/LOT</u>	<u>AMOUNT</u>	<u>NAME</u>
471/6	\$2,646.39	Thomas & Barbara Hunter 20 Frances Dr. South Petersburg, NJ 08270

100% Totally Disabled Veteran

- Canceling Tax on Exempt Property Block 723 Lot 38.

**TOWNSHIP OF UPPER
 CAPE MAY COUNTY
 RESOLUTION**

RESOLUTION NO. 228-2018

**CANCELING TAX ON EXEMPT PROPERTY
 BLOCK 723 LOT 38**

WHEREAS, certain corrections have been recommended by the Upper Township Tax

Collector in order to refund monies; and

WHEREAS, certain properties became tax exempt for the year 2018; and

WHEREAS, Frank Mayer is a 100% disabled American veteran residing at 215 Route US 9 North Block 723, Lot 38 on the municipal tax map of Upper Township, New Jersey; and

WHEREAS, the Department of Veterans Affairs has determined that Mr. Mayer’s 100% permanent wartime service connected disability was effective May 15, 2017; and

WHEREAS, Frank Mayer made application on March 19, 2018.

NOW, THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Upper, Cape May County, that corrections to the Tax records are hereby authorized and the Tax Collector is hereby directed to correct said records or take such action as indicated below.

Resolution No. 228-2018
Offered by: Coggins Seconded by: Corson
Adopted: August 13, 2018

Roll Call Vote:

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

CANCEL TAX 2018

<u>BLOCK/LOT</u>	<u>AMOUNT</u>	<u>NAME</u>
723/38	\$4,241.91	Frank & Margaret Mayer 215 RT. US 9 North Marmora, NJ 08223

100% Totally Disabled Veteran

7. Authorizing the execution of a collective Bargaining Agreement between the Township of Upper and the American Federation of State, County and Municipal Employees (AFSCME), New Jersey, for the term January 1, 2018 to December 31, 2020.

TOWNSHIP OF UPPER

**CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 229-2018

RE: AUTHORIZING THE EXECUTION OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE TOWNSHIP OF UPPER AND THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME), NEW JERSEY, FOR THE TERM JANUARY 1, 2018 TO DECEMBER 31, 2020

WHEREAS, the Township Committee appointed a Negotiating Committee to meet with a Negotiating Committee appointed by the American Federation of State, County and Municipal Employees (AFSCME), New Jersey (hereinafter “Bargaining Unit”); and

WHEREAS, an agreement has been reached by the respective Negotiating Committees with respect to the contract terms which terms have been ratified by the members of the Bargaining Unit and by the Township Committee; 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 Township Committee of the Township of Upper hereby ratifies, confirms and approves a contract between the Township of Upper and the Bargaining Unit for the term commencing January 1, 2018 until December 31, 2020, a copy of which is attached hereto as “Exhibit A” and is on file in the office of the Municipal Clerk and available for public inspection. This approval is subject to the ratification and approval of the contract by the members of the Bargaining Unit and AFSCME.
3. The Mayor and Township Clerk are hereby authorized, directed and empowered to sign said contract on behalf of the Township of Upper.

Resolution No. 229-2018
Offered by: Coggins
Adopted: August 13, 2018

Seconded by: Barr

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>	___	___	___
Corson	<u>X</u>	___	___	___
Young	<u>X</u>	___	___	___
Palombo	___	___	___	<u>X</u>

8. Renewal of an Alcoholic Consumption License to Levariland, Inc. for the license year 2018.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 230-2018

**RE: RENEWAL OF AN ALCOHOLIC CONSUMPTION LICENSE TO
LEVARILAND, INC. FOR THE LICENSE YEAR 2018**

WHEREAS, the holder of the alcoholic beverage license in the Township of Upper has applied for renewal of license in the prescribed manner; and

WHEREAS, said holder of alcoholic beverage license has complied with all requirements of law and regulations of the Division of Alcoholic Beverage Control (“Division”); and

WHEREAS, no objections have been filed with the Township Committee as the issuing authority of the Township of Upper.

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, that the following license be authorized for issue for the license year effective July 23, 2018:

Levariland, Inc.
T/A Levari’s Seafood & American Grill
1291 State Highway Route 50
PO Box 17
Tuckahoe, NJ 08250
License # 0511-33-006-005
Plenary Retail Consumption License
Municipal Fee Paid: \$700.00
State Fee Paid: \$200.00

BE IT FURTHER RESOLVED that the aforesaid alcoholic beverage license which has been authorized to be issued pursuant to this Resolution shall be delivered to the licensee or his authorized agent

at such time as the licensee or his authorized agent shall sign an actual receipt therefore in the stub of the license book and otherwise satisfy the requirements of N.J.A.C. 13:2-3.2.

Resolution No. 230-2018

Offered by: Coggins

Seconded by: Corson

Adopted: August 13, 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> ___

9. Certification of Costs for Abatement of Nuisance on Block 653.01 Lot 4 and Block 330 Lot 35.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 231-2018

**CERTIFICATION OF COSTS FOR ABATEMENT OF NUISANCE ON
BLOCK 653.01 LOT 4 AND BLOCK 330 LOT 35**

WHEREAS, pursuant to Township Code Section 11-1, the Township Committee is empowered to enforce the removal of fire hazards and nuisances, including the clearing of obnoxious growth; and

WHEREAS, resolution #188-2018 adopted June 25, 2018 authorized the Zoning Officer to serve a notice of violation to certain property owners describing the violation and stating that unless the violation is abated, removed or 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 such land; and

WHEREAS, 10 days passed from the date of such notice of violation with no response from the property owners and the Township thereafter remedied the violation; and

WHEREAS, pursuant to Township Code Section 11-1 and N.J.S.A. 40:48-2.14, the Township Principal Public Works Manager has certified the costs of remedying the said violations as set forth on the attached list; and

WHEREAS, the Township Committee now wishes that said certified costs become a lien upon such lands and be added to and become and form part of the taxes assessed and levied against such lands pursuant to Township Code Section 11-1.8 and N.J.S.A. 40:48-2.13.

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 declares that the costs as set forth on the attached list shall be certified to the Township Tax Collector as a lien against the land in question which lien shall become and form a part of the taxes assessed and levied upon such land pursuant to Township Code Section 11-1.8 and N.J.S.A. 40:48-2.14.
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. 231-2018
Offered by: Coggins
Adopted: August 13, 2018

Seconded by: Corson

Roll Call Vote:

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

CLEARING OF OBNOXIOUS GROWTH

<u>BLOCK/LOT</u>	<u>LOCATION</u>	<u>COST</u>	<u>ADMIN FEE</u>	<u>TOTAL</u>
653.01/4	10 RT US 9 SO	\$125.00	\$160.00	\$285.00
330/35	136 E PENNSYLVANIA	\$120.00	\$160.00	\$280.00

10. Certification of Costs for Abatement of Nuisance on Block 597 Lot 43.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 232-2018

**CERTIFICATION OF COSTS FOR ABATEMENT OF NUISANCE ON
BLOCK 597 LOT 43**

WHEREAS, pursuant to Township Code Section 11-1, the Township Committee is empowered to enforce the removal of fire hazards and nuisances, including the clearing of obnoxious growth; and

WHEREAS, resolution #202-2018 adopted July 9, 2018 authorized the Zoning Officer to serve a notice of violation to certain property owners describing the violation and stating that unless the violation is abated, removed or 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 such land; and

WHEREAS, 10 days passed from the date of such notice of violation with no response from the property owners and the Township thereafter remedied the violation; and

WHEREAS, pursuant to Township Code Section 11-1 and N.J.S.A. 40:48-2.14, the Township Principal Public Works Manager has certified the costs of remedying the said violations as set forth on the attached list; and

WHEREAS, the Township Committee now wishes that said certified costs become a lien upon such lands and be added to and become and form part of the taxes assessed and levied against such lands pursuant to Township Code Section 11-1.8 and N.J.S.A. 40:48-2.13.

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 declares that the costs as set forth on the attached list shall be certified to the Township Tax Collector as a lien against the land in question which lien shall become and form a part of the taxes assessed and levied upon such land pursuant to Township Code Section 11-1.8 and N.J.S.A. 40:48-2.14.

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. 232-2018

Offered by: Young Seconded by: Corson
 Adopted: August 13, 2018

Roll Call Vote:

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

CLEARING OF OBNOXIOUS GROWTH

<u>BLOCK/LOT</u>	<u>LOCATION</u>	<u>COST</u>	<u>ADMIN FEE</u>	<u>TOTAL</u>
597/43	18 E TIMBER	\$120.00	\$160.00	\$280.00

11. Governing Body Resolution Adopting the Third Round 2018 Housing Element and Fair Share Plan.

Tiffany A. (CuvIELLO) Morrissey, Professional Planner for the Township, explained that on August 8, 2018 the Planning Board adopted the 2018 Master Plan Reexamination Report, Master Plan revisions to the Township’s Housing Element and Fair Share Plan and Spending Plan, as well as recommended implementing ordinances to the Township Committee for introduction to implement the Affordable Housing Plan. Ms. Morrissey explained that the plan is based upon a court approved Settlement Agreement with the Fair Share Housing Center which provides for the Township’s affordable housing obligation. Ms. Morrissey explained that the affordable housing obligation is based on a settlement which is about 43% less affordable units than the original number the Township was required to provide. The ordinance and the Housing Element Resolution presented to the Committee this evening are to endorse the Housing Element and Fair Share Plan and implement the Master Plan Reexamination and revisions as well as the terms of the settlement. The Plan provides various provisions on how to address affordable housing obligations including a durational adjustment which allows the Township to delay the affordable housing obligation until such time that public sewers are made available. The Municipal Attorney also explained that the court approved Fair Share Housing Settlement Agreement was reviewed in detail with Committee prior to the adoption of the resolution approving the agreement, and the Plan and ordinance will implement the planning aspects recommended in the Master Plan Reexamination and carry out the terms of the settlement agreement.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 233-2018

**GOVERNING BODY RESOLUTION ADOPTING THE THIRD ROUND 2018
HOUSING ELEMENT AND FAIR SHARE PLAN**

WHEREAS, on August 8, 2018, the Planning Board of the Township of Upper, County of Cape May, State of New Jersey adopted a Housing Element Fair Share Plan; and

WHEREAS, the Housing Element Fair Share Plan addresses the Township’s Mount Laurel obligations as delineated in the court-approved Settlement Agreement between the Township and Fair Share Housing center, dated February 12, 2018; and

WHEREAS, the Township of Upper remains committed to comply with its constitutional Mount Laurel obligations by voluntarily providing for its “fair share” of affordable housing.

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

1. That the Township Committee hereby endorses the Housing Element Fair Share Plan as adopted by the Planning Board of the Township of Upper on August 8, 2018, and;

2. That pursuant to the provisions of N.J.S.A. 52:27D-201 et. seq., the Township Committee hereby authorizes its professionals to immediately file the adopted and endorsed Housing Element Fair Share Plan and other relevant documents with the Court, and;

3. That the Township Committee hereby authorizes its professional to take any and all action as reasonable and necessary to secure a Final Round 3 Judgment of Compliance and Repose to maintain the Township’s immunity from any Mount Laurel lawsuits.

Resolution No. 233-2018
Offered by: Young
Adopted: August 13, 2018

Seconded by: Coggins

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>

Dated: August 13, 2018

I, Barbara Young, clerk of the Township of Upper, do hereby certify that the foregoing resolution was duly adopted by the Committee of said Township at a regular meeting held

on August 13, 2018 and that this is a true copy of the resolution endorsing the Housing Element Fair Share Plan of the Township of Upper, County of Cape May, New Jersey.

ORDINANCES

12. **Public hearing and final adoption 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.** During the public hearing portion there were no speakers. Motion by Curtis Corson, second by Hobie Young, to adopt Ordinance 007-2018. During roll call vote all four Committeemen present 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

13. **Public hearing and final adoption 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.**

During the public hearing the following members of the audience spoke:

Peter Schuler, Upper Township, expressed concerns with section 11-1.5 entitled “Duties and Powers of Code Enforcement Officer” with respect to the right to privacy and the right of Township Officials to inspect a property. The Municipal Attorney explained that the right of entry by a Township Official to inspect a property is already under both the State Law and in our current Code.

Jon Kevin Grubb, Upper Township, questioned how the Township would make the determination that it is necessary to enter a property for inspection. Mr. Barr responded that it would depend on the situation. He also questioned who oversees the actions of the Zoning Officer. Attorney Young explained that the Zoning Officer serves at the pleasure of the Township Committee, if an allegation is filed of an improper action by the Zoning Officer then that would be investigated. He advised that if an individual feels the Zoning Officer acted improperly the individual would have the right to file a complaint with the Township’s Personnel Officer and if the Zoning Officer is found to have violated Township policy there would be discipline under our policy. Mr. Young explained that there have been allegations in the past, which were investigated, which did not warrant discipline because the Zoning Officer was not found to have violated policy. The Township Attorney also explained that if an individual is not happy with the determination or decisions by the Zoning Officer, under State statute the individual has the right to appeal the determination to the Zoning Board. He explained that in this instance it is not a matter of Township policy and the Personnel Officer does not have the authority to review the decision.

Scott Phelps, Upper Township, spoke regarding section 11-1.5 of the Ordinance and the duties of the Zoning Officer.

The public comment portion was then closed.

Motion by John Coggins, second by Hobie Young, to adopt Ordinance 008-2018. During Roll call vote all four Committeemen present 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

14. **Public hearing and final adoption 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.** During the public hearing portion of the Ordinance there were no speakers. Motion by Curtis Corson, second by John Coggins, to adopt Ordinance 009-2018. During roll call vote all four Committeemen present 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

15. **Introduction and first reading of Ordinance No. 010-2018 RE: AN ORDINANCE AMENDING ORDINANCE NO. 017-2017 KNOWN AS THE SALARY ORDINANCE FOR THE CALENDAR YEAR 2018.** Motion by John Coggins, second by Hobie Young, to introduce Ordinance 0010-2018 with a public hearing and final adoption scheduled for September 10, 2018. During roll call vote all four Committeemen present voted in the affirmative.

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

ORDINANCE NO. 010-2018

**RE: AN ORDINANCE AMENDING ORDINANCE NO. 017-2017 KNOWN AS THE
SALARY ORDINANCE FOR THE CALENDAR YEAR 2018**

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: Ordinance No. 017-2017, known as the Salary Ordinance of 2018 at Section 2, is hereby amended as hereinafter provided for the line items as indicated below:

SECTION 2: SALARIES: Salaries for the various officials and employees of the Township of Upper for the calendar year 2018 shall be as follows:

<u>POSITION</u>	<u>MINIMUM</u>	<u>MAX-2018</u>
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E. PUBLIC WORKS/SPORTS AND RECREATIONAL PROGRAMS:

Sr. Carpenter (0-9 yrs.)	20,000.00	55,532.00
Sr. Carpenter (10 or more yrs.)	20,000.00	57,058.00
Carpenter (0-9 yrs.)	12,500.00	54,004.00
Carpenter (10 or more yrs.)	12,500.00	55,532.00
Carpenter's Helper	12,500.00	54,004.00
Senior Mechanic (0-9 yrs.)	12,500.00	57,602.00
Senior Mechanic (10 or more yrs.)	12,500.00	59,131.00
Mechanic (0-9 yrs.)	12,500.00	55,020.00
Mechanic (10 or more yrs.)	12,500.00	56,547.00
Mechanics Helper (0-9 yrs.)	12,500.00	52,807.00
Mechanics Helper (10 or more yrs.)	12,500.00	54,335.00
Equipment Operator (0-9 yrs.)	12,500.00	54,004.00
Equipment Operator (10 or more yrs.)	12,500.00	55,532.00
Truck Driver, Heavy (0-9 yrs.)	12,500.00	54,004.00
Truck Driver, Heavy (10 or more yrs.)	12,500.00	55,532.00
Truck Driver (0-9 yrs.)	12,500.00	52,721.00
Truck Driver (10 or more yrs.)	12,500.00	54,250.00
Laborer 1, 1 st year	12,500.00	41,152.00
Laborer 1, 2 nd year	12,500.00	43,316.00
Laborer 1, 3 rd year	12,500.00	45,481.00
Laborer 1, 4 th year	12,500.00	47,647.00
Laborer 1, 5 th year	12,500.00	49,814.00
Laborer 1 (6-9 yrs.)	12,500.00	51,467.00
Laborer 1 (10 or more yrs.)	12,500.00	52,994.00

Sr. Sanitation Inspector	12,500.00	55,532.00
Sanitation Inspector (0-9 yrs.)	12,500.00	54,004.00
Sanitation Inspector (10 or more yrs.)	12,500.00	55,532.00
Recycling Laborer	10,400.00	47,608.00
Building Maintenance Worker (0-9 yrs.)	22,000.00	37,987.00
Building Maint. Worker (10 or more yrs.)	22,000.00	38,987.00
Maint. Worker 2, Grounds (0-9 yrs.)	10,500.00	54,004.00
Maint. Worker 2, Grds. (10 or more yrs.)	10,500.00	55,532.00
Maintenance Repairer (0-9 yrs.)	10,500.00	54,004.00
Maintenance Repairer (10 or more yrs.)	10,500.00	55,532.00
Maint. Worker 1, Grounds (0-9 yrs.)	10,500.00	52,721.00
Maint. Worker 1, Grds. (10 or more yrs)	10,500.00	54,250.00

SECTION 2: SEVERABILITY: If any section, subsection, paragraph, sentence or other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance, but shall be confined in its effects to the section, subsection, paragraph, sentence or other part of this Ordinance directly involved in the controversy in which said judgment shall have been rendered and all other provisions of this Ordinance shall remain in full force and effect.

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

SECTION 4: 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 13th DAY OF AUGUST 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 10TH DAY OF SEPTEMBER 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. 011-2018 RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER XX (ZONING) OF THE CODE OF UPPER TOWNSHIP.** The Municipal Attorney explained that this Ordinance implements the requirements of the Fair Share Housing Settlement Agreement and the recommendations of the Master Plan Re-examination and the Housing Element approved by the Planning Board and the Township Committee.

Motion by Hobie Young, second by John Coggins, to introduce Ordinance 011-2018 with a public hearing and final adoption scheduled for August 27, 2018. During roll call vote all four Committeemen present voted in the affirmative.

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

ORDINANCE NO. 011-2018

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

WHEREAS, the Township Planning Board recently undertook a Master Plan Reexamination and adopted the 2018 Master Plan Reexamination Report on August 8, 2018 in accordance with N.J.S.A. 40:55D-89; and

WHEREAS, the Township Planning Board also adopted Master Plan revisions to the Township’s Housing Element and Fair Share Plan and Spending Plan on August 8, 2018; and

WHEREAS, the Township filed a Declaratory Judgment Action in Superior Court in July 2015 in accordance with the New Jersey Supreme Court’s March 10, 2015 decision commonly referred to as “Mount Laurel IV” and sought court approval of its Housing Element and Fair Share Plan and obtained a Court Order approving a Settlement Agreement between the Township and the Fair Share Housing Center on April 23, 2018; and

WHEREAS, the Township’s 2018 Master Plan Reexamination Report and the Township’s 2018 Housing Element and Fair Share Plan and Spending Plan incorporate the terms of the aforesaid Settlement Agreement as required pursuant to said Court Order; and

WHEREAS, the Township Committee desires to adopt local land use ordinance provisions incorporating the recommendations and provisions of the 2018 Master Plan Reexamination Report and the 2018 Housing Element and Fair Share Plan and Spending Plan as well as the terms of the court approved Settlement Agreement; and

WHEREAS, the Township Committee has referred this ordinance amendment to the Upper Township Planning Board pursuant to N.J.S.A. 40:55D-64 and N.J.S.A. 40:55D-26; and

WHEREAS, the Township Planning Board reviewed and discussed the proposed zoning ordinance amendment and adopted a resolution approving the proposed zoning ordinance amendment finding said amendment consistent with the 2018 Upper Township Master Plan Reexamination and Amended Master Plan; and

WHEREAS, this zoning ordinance revision and amendment is part of recommendations in connection with the periodic general reexamination of the Upper Township master plan as evidenced by the 2018 Master Plan Reexamination Report;

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

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

Revise Section 20-3.1 as follows:

20-3.1 Zoning Districts.

For the purpose of this Chapter the Township is hereby divided into various districts. Within the Pinelands Area, these districts are consistent with the Pinelands Management Areas set forth in N.J.A.C. 7:50, Subchapter 5.

Symbol	Zoning District
AR	Agriculture and Rural Density Residential
R	Center Residential
R2	Moderate Density Residential
RR	Resort Residential
RC	Resort Commercial
TCC	Town Center Core
TC	Town Center
CM2	Commercial District
CM4	Rural Density Commercial District
CMP	Commercial District Pinelands
C	Conservation
RD	Rural Development
PV	Pinelands Village
F3	Rural Density Forest
F10	Low Density Forest
F25	Forest Conservation

RP	Recreation and Park
RPPV	Recreation and Park Pinelands Village
M	Mining
U	Utility
TV	Tuckahoe Village
TR	Tuckahoe Riverfront
MH	Mobile Home
AHGR	Affordable Housing Group Home
MTCD	Marmora Town Center District

Revise Section 20-3.2 as follows:

20-3.2 Zoning Map.

The map is amended to reflect the zoning boundary changes as set forth on the revised Zoning Map of the Township of Upper prepared by Paul E. Dietrich, Sr., Upper Township Engineer, dated January 12, 2004 and revised through August 13, 2018. The Zoning Map is located at the end of Chapter XX.

Revise Section 20-4.7e as follows:

e. *Area and Yard Requirements.* The area and yard requirements pertaining to all permitted uses within the “TC” and “TCC” Districts are provided on Schedule C Area and Yard Requirements for Zone Districts except as modified or supplemented by this section.

1. The maximum building height shall be three (3) stories.
2. Standards for multifamily housing and townhouses are provided under subsection 20-4.7j.

Revise Section 20-4.20 as follows:

20-4.20 "MTCD" Marmora Town Center District.

a. *Purpose.* The purpose of the "MTCD" District is intended to promote a desirable mix of commercial, office, civic and inclusionary residential land uses within a vibrant, pedestrian-friendly, village environment with an emphasis on uses that service local needs. It is intended to encourage pedestrian flow throughout the area by generally permitting stores and shops and personal service establishments on the ground floor of buildings and promoting the use of upper floors for offices and inclusionary residential dwelling units in order to enhance the orientation of land uses toward pedestrian shopping and circulation within a village-style mixed-use environment. The district promotes a more dense development through the use of community wastewater treatment facilities or sanitary sewer connection. The MTCD District

is intended to create a variety of residential housing densities and options including affordable housing units. The MTCD district is further intended to promote non-residential development and balance the mix of residential to non-residential uses.

b. *Goals.* The goals of the "MTCD" District includes ensuring design compatibility with existing development that considers building height, materials, colors, landscaping and signage, sharing off-street parking and stormwater detention opportunities, providing off-street parking that is well-screened from public view; controlling means of vehicular access and coordinating internal pedestrian and vehicular traffic flows relating to existing and proposed development patterns. All development shall reflect traditional village planning and design principles, including:

1. Provide a layout of buildings, open spaces and parking lot edges that encourage sidewalk and pathway interconnections.
2. Provide for focal points such as small parks or squares and other open spaces, as appropriate, such that a sense of place is enhanced and strengthened.
3. Promote the construction of affordable housing.
4. Promote the transition of land development into a new district that exhibits the design features of a traditional mixed-use village neighborhood promoting pedestrian circulation, social gathering and interaction amongst commercial establishments supporting and servicing the residents of the community.
5. Create a district that offers a feeling of security.
6. Encourage a mix of inclusionary residences, stores and shops, personal service establishments, offices, workplaces and civic uses that are interwoven within a traditional mixed-use village neighborhood, all in close proximity.
7. Encourage a mix of uses that provide for predominately retail stores, offices, restaurants and personal service uses on the first floor or street level with office and residential uses located on upper floors.
 - (a) Promote the design and arrangement of buildings in a manner that advances "green building" concepts to achieve sustainability.
 - (b) Promote the creation of a district with architectural facade design and building scale typical for a mixed-use village neighborhood and representative of elements of Upper Township's historic character.
 - (c) Promote cross access and shared access to reduce the number of driveways along Route 9.

c. *Permitted Principal Uses.*

The permitted principal uses pertaining to the "MTCD" District are provided on Schedule B Commercial and Mixed Use Districts-Permitted Principal, Conditional and Accessory Uses except as modified or supplemented by this section.

1. Mixed-use projects shall provide a combination of residential and non-residential development in accordance with the following:
 - a. Mixed-use developments shall have at least 70% of the total habitable space for non-residential development uses and 30% of the total habitable space for residential development uses.
 - b. The residential may be upper level apartments or stand alone developments on the same parcel or contiguous parcel.
 - c. All development along Route 9 would be non-residential with the option for upper level residential. No stand alone residential building will be permitted along Route 9.
 - d. Phasing is required in accordance with Subsection “1.” below.
 - e. All residential must provide a set aside for affordable housing as required by Subsection “3f” below.
2. Within a mixed-use development the following non-residential uses are permitted:
 - a. Retail stores, restaurants and personal services uses.
 - b. General or professional offices.
 - c. Repair and servicing, indoors only, of any article for sale which is permitted in this district.
 - d. Banks and Similar Financial Institutions. Drive-through provided that such are compatible with the design of the building and are appropriately located at the side or rear of a building. Drive-through facilities serving such uses shall be permitted provided that the scale of the drive through windows and lanes is compatible with the design of the building and site design. A maximum of three (3) drive-through lanes shall be permitted (inclusive of lanes for ATMs).
3. Residential uses within a mixed-use development are required in accordance with the following:
 - a. A maximum residential density of 12 units per acre is permitted.
 - b. Residential uses shall be on the upper levels of a mixed-use building or on a contiguous parcel.
 - c. Residential uses are not permitted along the ground floor on Route 9.

- d. Residential uses shall require recreational amenities including but not limited to items such as pools, exercise rooms, outdoor recreational facilities or parks. The recreational amenities shall be part of any application for approval and reviewed by the Planning Board. The Board may permit entertainment or commercial recreational uses to fulfill this requirement as part of the mixed-use development.
- e. Residential units only permitted in mixed use projects with new non-residential construction.
- f. *Affordable Housing Requirements.* Each applicant for residential development shall provide a minimum of twenty (20) percent of all residential units as affordable units as required by the Township's housing plan and as determined by the New Jersey Committee on Affordable Housing ("COAH") regulations. To ensure that any units created by this ordinance generate affordable housing credits to be applied to the Township's affordable housing obligations, the affordable units within the Inclusionary Development shall comply with the Round 2 regulations of the New Jersey Council on Affordable Housing ("COAH"), the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC"), and all other applicable law, including a requirement that 13% of all affordable units are available to very low income households, and said Inclusionary Development shall be deed restricted for a period of at least 30 years. In the event COAH promulgates new applicable and lawful regulations, those new regulations shall control.

4. Parks, plazas and playgrounds.

5. Building structures and uses owned or operated by the Upper Township for municipal purposes.

d. *Permitted Accessory Uses.* The permitted accessory uses pertaining to the "MTCD" District are provided on Schedule B Commercial and Mixed Use Districts— Permitted Principal, Conditional and Accessory Uses except as modified or supplemented by this section.

1. Recreational and/or open space facilities, including, but not limited to, walkways, courtyards and plazas.

2. Off-street parking and loading located to the rear of principal buildings or appropriately screened from public view.

3. Signage standards shall be compatible to the architectural design of the buildings. Monument signs, wall and hanging signs shall be limited in size and compatible with the pedestrian scale of the center. Pylon signs are prohibited.

4. Street furnishings, planters, street lights, and exterior, garden type, shade structures (gazebos).

5. Sidewalk cafes associated with permitted restaurants.

6. Fences and walls, which shall complement the architectural style, type and design of the building and the overall project design.

7. Decks, patios and terraces, which shall complement the architectural style, type and design of the building and the overall project design.

e. *Area and Yard Requirements.* The area and yard requirements pertaining to all permitted uses within the "MTCD" District are provided on Schedule C Area and Yard Requirements for Zone Districts except as modified or supplemented by this section.

1. Within the Marmora Town Center District (MTCD) the following shall apply:

(a) The maximum front yard setback of structures shall be zero (0') feet from the build-to line along Route 9.

(b) The majority of the building must be at the build-to line, but twenty-five (25%) percent of the façade may be set back at a maximum of ten (10') feet to create one or more alcoves enclosed on three (3) sides. Outdoor dining, canopies and balconies are permitted within such alcove areas.

(c) The side yard (each side) shall be a minimum of zero (0') feet, if attached to an adjacent building or a minimum of five (5') feet if not attached to an adjacent building.

(d) The maximum building height shall be five (5) stories, except for buildings attached to a hotel use there shall be no maximum limit on stories.

2. Standards for multifamily housing and townhouses are provided under subsection 20-4.20i.

f. *Parking Standards.*

1. The following off-street parking standards in the MTCD District shall be subject to subsection 20-5.7 except that offices shall be provided at a ratio of four (4) spaces per one thousand (1,000) square feet gross floor area. Residential parking shall comply with New Jersey Residential Site Improvement Standards ("RSIS"). A reduction in overall parking requirements may be permitted for shared parking use in mixed use developments based upon appropriate documentation provided to the Planning Board at the time of site plan approval by a qualified traffic expert.

2. Where off-street parking areas are visible from existing public streets of the development, they shall be screened by landscaping or a low masonry wall.

3. Off-street parking areas within a shopping center may reduce the stall size from ten feet by twenty (10' x 20') feet to nine feet by eighteen (9' x 18') feet for fifty (50%) percent of the total spaces over one hundred (100) spaces.

4. Parking shall not be permitted in the front yard along any road.

5. For single uses or shopping centers that have more than a total of eighty thousand (80,000) square feet, seventy-five (75%) percent of the required parking shall be provided within a parking garage or other structure with two (2) or more stories.

6. Parking garages shall not be considered a building for the calculation of building coverage but must meet all other requirements for accessory setbacks and impervious coverage

limits. If the parking garage is attached to the principal building then that portion dedicated to the parking of vehicles shall not be included in the calculation of building coverage.

7. Parking garages shall be provided with an architectural facade that screens the structure and is compatible with the principal use on the lot and shall comply with the standards set forth in paragraph i. below to the maximum extent practicable.

g. *Minimum Off-Street Loading.*

1. Each commercial activity shall provide for off-street loading and unloading with adequate ingress and egress from streets and shall provide such area(s) at the side or rear of the building. Each space shall be at least fifteen by forty (15' x 40') feet. One (1) space shall be provided for the first seven thousand (7,000) square feet of gross floor area or fraction thereof in each building, and one (1) additional space for each additional ten thousand (10,000) square feet of gross floor area or fraction thereof. There shall be no loading or unloading from the street. Loading area requirements may be met by combining the floor areas of several activities taking place under one (1) roof and applying the above ratios.

2. There shall be at least one (1) trash or garbage pickup location provided by each building which shall be separated from the parking spaces by either a location within the building or in a pickup location outside the building.

3. The trash and/or garbage shall be stored in an enclosed container located in a manner to be obscured from view from parking areas, streets and adjacent residential uses or zoning districts by a masonry wall and planting.

h. *Architectural Design Standards.* All buildings shall be designed to convey a small-scale town or village character. Buildings shall contain the following design elements:

1. Building exteriors shall have vertical and/or horizontal offsets to create visual breaks on the exterior. Long, monotonous, uninterrupted walls or roof planes are not permitted. Building wall offsets, including projections such as balconies, canopies, and signs, recesses, and changes in floor level shall be used in order to add architectural interest and variety and to relieve the visual effect of a simple, long wall. Similarly, roof-line offsets, dormers, or gables shall be provided in order to provide architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof.

2. A variety of building setbacks, roof lines, color schemes, elevations and heights shall be developed, relative to adjacent structures, to avoid a repetitious and monotonous streetscape. At least one-half (1/2) of the developed facade must be two (2) stories in appearance.

3. The architectural treatment of the front facade shall be continued in its major features around all visibly exposed sides of a building. All sides of a building shall be architecturally designed to be consistent with regard to style, materials, colors and details. Blank wall or service area treatment of side and/or rear elevations visible from public view are discouraged.

4. The exteriors of all buildings in the development, including any permitted accessory buildings, shall be architecturally compatible and be constructed of quality materials.

5. Architectural detail, style, color, proportion and massing shall reflect the continuity of treatment through the district, obtained by maintaining the building scale or by subtly graduating changes; by maintaining bases courses; by maintaining cornice lines in buildings

of the same height; by use in surrounding buildings. Upper story windows shall be vertically aligned with the location of windows and doors on the ground level.

6. Ground floor retail, services, and restaurant uses shall have large pane display windows. Such windows shall be framed by the surrounding wall and shall not exceed seventy-five (75%) percent of the total ground level facade area.

7. An orderly relationship among windows, doors, porches and roof forms shall be provided for.

8. Natural materials such as wood and masonry are recommended. High-quality manmade siding materials are permitted. Stucco may be used as an accent in limited areas.

9. Pitched roofs (6 /12 to 12 /12) are recommended. Both gable and hipped roofs shall provide overhanging eaves on all sides that extend a minimum of one (1) foot beyond the building wall. Flat and mansard-type roofs are not permitted, however, such roof treatments may be allowed if the architectural detail is provided to give the appearance of a pitched roof.

10. All entrances to a building shall be defined and articulated by architecture compatible with the style, materials, colors and details of the building as well as shall the doors.

11. Corner buildings shall be designed to appear as landmark buildings, since they have at least two (2) front facades visibly exposed to the street. One possible treatment to achieve this goal would have buildings designed with additional height or architectural embellishments, such as corner towers, to emphasize their location.

12. Building facade shall create a defining wall along the streetscape. Covered archways (minimum eight (8') feet wide and maximum fifty (50') feet wide) connecting buildings, enabling pedestrian circulation, shall be permitted to achieve the defining wall.

13. Heating, ventilating and air-conditioning (HVAC) systems, exhaust pipes and stacks, satellite dishes and other telecommunications receiving devices shall be screened or otherwise specially treated to be inconspicuous as viewed from the public right-of-way and adjacent properties.

14. Street furnishings such as benches, street lamps, bicycle racks, trash receptacles, bus stop shelters, landscape planters and hanging baskets shall be provided.

15. Street-level store fronts and building entrances shall be open and inviting to pedestrians. Building entrance shall be enhanced by decorative pavements, detailed landscape and appropriate street furnishing.

16. Decorative paving shall be required for pedestrian crossings within parking areas and elsewhere.

i. *Residential Standards for Townhouses and Multifamily Buildings.*

1. Inclusionary Residential units are permitted in mixed-use projects only and may be either townhouse units or multi-family apartments. Residential units that are part of a mixed-use development may be on the upper levels or stand-alone on the same parcel or contiguous parcel and must be inclusionary pursuant to Section 3 above

2. Public water and a community wastewater treatment facility or sanitary sewer connection shall be provided.

3. Maximum density for residential dwelling units shall not exceed twelve (12) units per acre.

4. All common parking facilities shall be located at the rear of all dwelling units or in locations to be approved by the Planning Board. There shall be no parking or parking facilities in the required front yard setback of the property.

5. Townhouses.

(a) With respect to townhouses, the distance between two (2) adjacent buildings side to side shall not be less than thirty (30') feet. The distance between two (2) adjacent buildings rear to rear shall not be less than fifty (50') feet and side to rear shall not be less than thirty (30') feet.

(b) No townhouse building shall be designed for or occupied by more than eight (8) dwelling units.

(c) No townhouse building shall exceed one hundred eighty (180') feet in length in its longest dimension, provided; however, that buildings may exceed the foregoing length so long as they do not contain more than six (6) dwelling units. In addition, not more than two (2) consecutive units shall be designed without at least a five-foot offset in the building line.

(d) There shall be no fewer than two (2) exterior wall exposures for each unit, each of which shall be properly placed so as to provide thorough ventilation for each unit.

(e) Individual townhouse lots. Parcel may be subdivided into separate lots. Requirements for individual lots shall be as follows.

Minimum lot area	2,500 square feet
Maximum building coverage	60%
Maximum impervious coverage	70%
Minimum lot width	25 feet
Minimum lot frontage	25 feet
Minimum lot depth	100 feet
Maximum building height	3 stories
Minimum front yard setbacks	5 feet
Maximum front yard setbacks	20 feet
Minimum side yard setback (one/both)	0 feet/0 feet
Minimum rear yard setback	25 feet
Minimum unit width	20 feet
Accessory structures: (Minimum side yard and rear yard setback)	5 feet

6. Multifamily Buildings.

(a) A multifamily building shall not exceed one hundred eighty (180') feet in length; in addition, not more than two (2) consecutive units shall be designed without at least a five-foot offset in the building line.

(b) The distance between multifamily buildings shall be a minimum of fifty (50') feet.

(c) Area and yard setbacks shall comply with Schedule C—Area and Yard Requirements for Zone Districts except as modified under subsection 20-4.20.e and 20-4.20.i.

j. *Open Space Plaza Design Standards.*

1. One (1) open space plaza shall be provided directly adjacent to a principal structure for each eighty (80,000) square feet of nonresidential building.
2. Open space plaza shall meet the following standards.
 - (a) Encompass two (2%) percent of the lot area but shall not be less than two thousand (2,000) square feet in size.
 - (b) One (1) tree per one thousand two hundred fifty (1,250) square feet of plaza.
 - (c) Planting bed area of one hundred fifty (150) square feet per one thousand two hundred fifty (1,250) square feet of plaza.
 - (d) Pedestrian-scaled lighting must maintain an average of 0.50 foot candle illumination within the plaza.
 - (e) Benches and picnic tables with one (1) seat or twenty-four (24") inches of bench area per two hundred (200) square feet of plaza.
 - (f) One (1) trash and recycling receptacle per two thousand (2,000) square feet of plaza.
 - (g) One (1) bike rack per eight thousand (8,000) square feet of plaza.
 - (h) Plazas over eight thousand (8,000) square feet shall provide one (1) piece of public art or water feature.
3. The open space plaza shall be maintained by the property owner.

k. Outside sales display area for commercial uses shall be permitted subject to the following:

1. Display area shall be limited to fifty (50) square feet for every fifty (50') feet of road frontage and not to exceed a total of two hundred (200) square feet.
2. Items within the display area shall not exceed a height of six (6') feet.
3. Items shall not be located within the sight triangle of any driveway or roadway intersection or inhibit pedestrian or vehicle circulation.
4. Temporary display areas shall be permitted two (2) nonconsecutive 45-day periods per year. Temporary zoning permit shall be required for each period at least ten (10) days prior to the start of the temporary display area.

l. *Phasing.*

1. A phasing plan is required within the MTCDD zone for each development tract as part of the site plan approval. The phasing plan shall demonstrate that there is a ratio of 70% non-residential habitable area to 30% residential habitable area before any approval may be granted for the proposed mixed-use development. The permitted residential density is 12 units per acre.
2. A construction phasing plan is required as part of a site plan approval. The construction phasing plan shall provide for the completion of non-residential to residential in accordance with the following:

- a. 25% of the Non-Residential Space shall be completed with a certificate of occupancy before any residential units are occupied.
- b. 50% of the Non-Residential Space shall be completed with a certificate of occupancy before 25% of the Residential units are completed and occupied.
- c. 75% of the Non-Residential Space shall be completed with a certificate of occupancy before 50% of the Residential units are completed and occupied.
- d. 100% of the Non-Residential Space shall be completed with a certificate of occupancy before 75% of the Residential units are completed and occupied.
- e. The phasing for the Affordable Housing Units shall be in accordance with the Uniform Housing Affordability Controls (N.J.A.C. 5:80) and Section 20-14 of this ordinance.

3. The phasing of the commercial and residential may permit the commercial to be completed prior to the residential. The development shall include a site plan for the residential development at the required density for future construction.

m. On-site Security.

On-site security plans consisting of personnel and/or systems shall be included with all applications for development. The plans shall be coordinated and approved by the Director of the Department of Public Safety. The use of personnel or systems shall be based upon the size of the development as determined appropriate by the Director of the Department of Public Safety and as may be modified by the Planning Board.

Revise Section 20-5.3a as follows:

20-5.3 Fences.

- a. *In the "R," "R2," "AR," "MTCD," "TC," "TCC," "RR," "RC," "C," "PV," "RD," "F-3," "F-10," "F-25," "TV," "TR" Zones.* No fence shall be erected of barbed wire, topped with metal spikes or constructed of any material or in any manner which may be dangerous to persons or animals. Fences or walls permitted under this subsection shall not be erected or altered to be over four (4') feet in height in the front yard areas and six (6') feet in height in the side and rear yard areas.

Revise Section 20-5.9 as follows:

20-5.9 Principal Use.

- a. Structures. No more than one (1) principal structure shall be permitted on one (1) lot, except as allowed in the MTCD, TC, TCC, CM2, CM4 and CMP or otherwise specified for in a particular zoning district.

b. Use. No more than one (1) principal use shall be located on one (1) lot, except for forestry, agriculture, horticulture, fish and wildlife management, recreational development or agricultural lands and as allowed in the MTCD, TC, TCC, CM2, CM4 and CMP zones or otherwise specified for in a particular zoning district.

Revise Section 20-5.10 as follows:

20-5.10 Signs.

a.2. Freestanding signs, where permitted, shall be supported by one (1) or more columns or uprights which are firmly embedded in the ground, except within the MTCD, TC and TCC zone districts, pole signs shall not be permitted. Exposed guy wires, chains or other connections shall not be made in permanent support of the freestanding signs.

b.3. Commercial "MTCD," "TC," "TCC," "CM2," "CM4," and "CMP" District (lot size under three (3) acres).

(a) Attached signs: One (1) unlighted or lighted sign for each occupant of the building. The total area of the sign shall not exceed ten (10%) percent of the areas of the face of the wall upon which such sign is attached or thirty (30) square feet, whichever is smaller. Where building(s) is (are) designed for rear or side entrances, one (1) unlighted sign may be attached flat against the building at the rear and side entrances, each sign not to exceed an area equivalent to half that of the sign on the front of the building.

(b) Freestanding signs: One (1) unlighted or lighted freestanding sign for each principal building or group of attached principal buildings (except auto service stations) except all freestanding signs in the MTCD, TC or TCC zones shall be monument signs.

(1) Height: Thirty-five (35') feet or the height of the principal building, whichever is shorter except within the MTCD, TC or TCC zone where the height shall not exceed eight (8') feet.

(2) Setback: At least twenty (20') feet from all street lines and fifty (50') feet from all side property lines. Where existing development or roadway alignment prevent adequate visibility of signs meeting the setback requirements of this Chapter, signs may be constructed up to the street line provided that adequate sight distance is provided and further provided that no portion of any sign extends beyond the street line.

(3) Area:

Lot frontage: <150' Not to exceed thirty-two (32) square feet.

Lot frontage: >= 150' Not to exceed seventy-five (75) square feet.

b.4. Commercial "MTCD," "TC," "TCC," "CM2," "CM4," and "CMP" District (lot size of three (3) acres).

(a) Attached signs: One (1) unlighted or lighted sign for each occupant of the building. The total sign area of the sign shall not exceed ten (10%) percent of the areas of the face of the store wall upon which such sign is attached or seventy-five (75) square feet, whichever is smaller. Where building(s) is (are) designed for rear or side entrances, one (1) unlighted sign may be attached flat against the building at the rear and side entrances, each sign not to exceed an area equivalent to half that of the sign on the front of the building.

(b) Freestanding signs: One (1) unlighted or lighted freestanding sign for each principal building or shopping center except all freestanding signs in the MTCD, TC or TCC zones shall be monument signs.

(1) Height: Thirty- five (35') feet or the height of the principal building, whichever is shorter except within the MTCD, TC or TCC zone where the height shall not exceed eight (8') feet.

(2) Setback: At least thirty (30') feet from any street or lot line. Where existing development or roadway alignment prevent adequate visibility of signs meeting the setback requirements of this Chapter, signs may be constructed up to the street line provided that adequate sight distance is provided and further provided that no portion of any sign extends beyond the street line.

(3) Area:

Lot frontage: <250' Not to exceed seventy-five (75) square feet.

Lot frontage: >= 250' Not to exceed one hundred (100) square feet.

Replace Section 20-14 as follows:

20-14 Affordable Housing

Section 20-14.1 General Program Purposes, Procedures

A. Affordable Housing Obligation.

(1) This section of the Township Code sets forth regulations regarding the low and moderate income housing units in the Township consistent with the provisions known as the "Substantive Rules of the New Jersey Committee on Affordable Housing", *N.J.A.C. 5:93* et seq., the Uniform Housing Affordability Controls ("UHAC"), *N.J.A.C. 5:80-26.1* et seq. except where modified by the terms of a Settlement Agreement between the Township and Fair Share Housing Center ("FSHC") such that the statutory requirement to provide very-low income units equal to 13% of affordable units approved and constructed after July 1, 2008, to be affordable to households at 30% of the regional median income, overrides the UHAC requirement that 10% of all low- and moderate-income units must be affordable at 35% of the regional median income, and the Township's constitutional obligation to provide a fair share of affordable housing for low and moderate income households. In addition, this section applies requirements for very low income housing as established in P.L. 2008, c.46 (the "Roberts Bill", codified at *N.J.S.A. 52:27D-329.1*).

(2) This Ordinance is intended to assure that very-low, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very-low, low- and moderate-income households shall occupy these units. This Ordinance shall apply to all inclusionary developments and 100% affordable developments (including those funded with low-income housing tax credit financing) except where inconsistent with applicable law.

(3) The Upper Township Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at *N.J.S.A. 40:55D-1*, et seq. The Plan has also

been endorsed by the Township Committee of the Township of Upper. The Fair Share Plan describes the ways the Township shall address its fair share for low- and moderate-income housing as determined by the Superior Court and documented in the Housing Element.

(4) This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of *N.J.A.C. 5:93*, as may be amended and supplemented.

(5) The Township shall file monitoring and status reports with the Superior Court and place the reports on its municipal website. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring evaluation report prepared by the Special Master in accordance with *N.J.A.C. 5:91* shall be available to the public at the Upper Township Municipal Building, 2100 Tuckahoe Road, Petersburg, New Jersey 08270.

(6) On or about September 27 of each year through the end of the period of Third Round Judgment of Repose, the Township will provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to all parties to the Township's Court-approved Settlement Agreements, using forms previously developed for this purpose by the Committee on Affordable Housing or any other forms endorsed by the Special Master and Fair Share Housing Center ("FSHC").

(7) The Fair Housing Act includes two provisions regarding action to be taken by the Township during the ten-year period of protection provided in the Township's agreement with FSHC. The Township agrees to comply with those provisions as follows:

(a) By July 1, 2020, the Township must prepare a midpoint realistic opportunity review, as required pursuant to N.J.S.A. 52:27D-313, which the Township will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. Such posting shall invite any interested party to submit comments to the municipality, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues. In the event the Court determines that a site or mechanism no longer presents a realistic opportunity and should be replaced or supplemented, then the municipality shall have the opportunity to supplement or revise its plan to correct any deficiency.

(b) Within 30 days of September 27, 2020 and September 27, 2023 the Township shall prepare a review of compliance with the very low income housing requirements required by N.J.S.A. 52:27D-329.1 and its Settlement Agreement with Fair Share Housing Center. The Township will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein and in the Township's Settlement Agreement with FSHC. Such posting shall invite any interested party to submit comments to the municipality and FSHC on

the issue of whether the municipality has complied with its very low income housing obligation.

(8) Any project that has received approval to provide affordable housing prior to August 27, 2018 shall have to continue to provide affordable housing in accordance with their approved site plan unless amended by the Planning Board or Zoning Board of Adjustment.

B. Definitions. As used herein the following terms shall have the following meanings:

“Accessory apartment” means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

“Act” means the Fair Housing Act of 1985, P.L. 1985, c. 222 (*N.J.S.A. 52:27D-301 et seq.*).

“Adaptable” means constructed in compliance with the technical design standards of the Barrier Free Subcode, *N.J.A.C. 5:23-7*.

“Administrative agent” means the entity responsible for the administration of affordable units in accordance with this ordinance, *N.J.A.C. 5:91*, *N.J.A.C. 5:93* and *N.J.A.C. 5:80-26.1 et seq.*

“Affirmative marketing” means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to *N.J.A.C. 5:80-26.15*.

“Affordability average” means the average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

“Affordable” means, a sales price or rent within the means of a low- or moderate-income household as defined in *N.J.A.C. 5:93-7.4*; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in *N.J.A.C. 5:80-26.6*, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in *N.J.A.C. 5:80-26.12*, as may be amended and supplemented.

“Affordable development” means a housing development all or a portion of which consists of restricted units.

“Affordable housing development” means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

“Affordable housing program(s)” means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality’s fair share obligation.

“Affordable unit” means a housing unit proposed or created pursuant to the Act, credited pursuant to *N.J.A.C. 5:93*, and/or funded through an affordable housing trust fund.

“Agency” means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (*N.J.S.A. 55:14K-1*, et seq.).

“Age-restricted unit” means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80% of the units are occupied by one person that is 55 years or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

“Alternative living arrangement” means a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangement includes, but is not limited to: transitional facilities for the homeless, Class A, B, C, D, and E boarding homes as regulated by the New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

“Assisted living residence” means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

“Certified household” means a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

“COAH” means the Committee on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (*N.J.S.A. 52:27D-301* et seq.).

“DCA” means the State of New Jersey Department of Community Affairs.

“Deficient housing unit” means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

“Developer” means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to *N.J.S.A. 40:55D-1 et seq.*

"Fair Share Plan" means the plan that describes the mechanisms, strategies and the funding sources, if any, by which the Township proposes to address its affordable housing obligation as established in the Housing Element, including the draft ordinances necessary to implement that plan, and addresses the requirements of *N.J.A.C. 5:93-5*.

"Housing Element" means the portion of the Township's Master Plan, required by the Municipal Land Use Law ("MLUL"), *N.J.S.A. 40:55D-28b(3)* and the Act, that includes the information required by *N.J.A.C. 5:93-5.1* and establishes the Township's fair share obligation.

“Inclusionary development” means a development containing both affordable units and market rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

“Low-income household” means a household with a total gross annual household income equal to 50% or less of the median household income.

“Low-income unit” means a restricted unit that is affordable to a low-income household.

“Major system” means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

“Market-rate units” means housing not restricted to low- and moderate-income households that may sell or rent at any price.

“Median income” means the median income by household size for the applicable county, as adopted annually by COAH or approved by the NJ Superior Court.

“Moderate-income household” means a household with a total gross annual household income in excess of 50% but less than 80% of the median household income.

“Moderate-income unit” means a restricted unit that is affordable to a moderate-income household.

“Non-exempt sale” means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses

ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary and the transfer of ownership by court order.

"Random selection process" means a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

"Regional asset limit" means the maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by adopted/approved Regional Income Limits.

"Rehabilitation" means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, *N.J.A.C. 5:23-6*.

"Rent" means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

"Restricted unit" means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of *N.J.A.C. 5:80-26.1*, as may be amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

"Special master" means an expert appointed by a judge to make sure that judicial orders are followed. A master's function is essentially investigative, compiling evidence or documents to inform some future action by the court.

"UHAC" means the Uniform Housing Affordability Controls set forth in *N.J.A.C. 5:80-26.1 et seq.*

"Very low-income household" means a household with a total gross annual household income equal to 30% or less of the median household income.

"Very low-income unit" means a restricted unit that is affordable to a very low-income household.

"Weatherization" means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

C. New Construction. The following requirements shall apply to all new or planned developments that contain low- and moderate- income housing units.

(1) Phasing. Final site plan or subdivision approval shall be contingent upon the affordable housing development meeting the following phasing schedule for low and moderate income units whether developed in a single phase development, or in a multi-phase development:

Percentage of Low- Moderate- Income	Maximum Percentage of Minimum Market-Rate Units and <u>Completed</u> <u>Units Completed</u>
	25 0
	25+1 10
	50 50
	75 75
	90 100

(2) Design. In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.

(3) Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.

(4) Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:

(a) The fair share obligation shall be divided equally between low- and moderate- income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit.

(b) In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units.

(c) Within rental developments, of the total number of affordable rental units, at least 13% shall be affordable to very low income households.

(d) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:

(i) The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;

(ii) At least 30% of all low- and moderate-income units shall be two bedroom units;

(iii) At least 20% of all low- and moderate-income units shall be three bedroom units; and

(iv) The remaining units may be allocated among two and three bedroom units at the discretion of the developer.

(e) Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

(5) Accessibility Requirements:

(a) The first floor of all new restricted townhouse dwelling units and all restricted multistory dwelling units attached to at least one (1) other dwelling unit shall be subject to the technical design standards of the Barrier Free Subcode, *N.J.A.C. 5:23-7*.

(b) All restricted townhouse dwelling units and all restricted multistory dwelling units attached to at least one (1) other dwelling unit shall have the following features:

(i) An adaptable toilet and bathing facility on the first floor;

(ii) An adaptable kitchen on the first floor;

(iii) An interior accessible route of travel on the first floor;

(iv) An interior accessible route of travel shall not be required between stories within an individual unit;

(v) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and

(vi) An accessible entranceway as set forth at P.L. 2005, c. 350 (*N.J.S.A. 52:27D-311a et seq.*) and the Barrier Free Subcode, *N.J.A.C. 5:23-7*, or evidence that the Township has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:

[1] Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.

[2] To this end, the builder of restricted units shall deposit funds within the Township of Upper's affordable housing trust fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.

[3] The funds deposited under paragraph [2] herein, shall be used by the Township for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.

[4] The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Township of Upper.

[5] Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, *N.J.A.C. 5:23-7*, and that the cost estimate of such conversion is reasonable, payment shall be made to the Township of Upper's affordable housing trust fund in care of the Municipal Treasurer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.

[6] Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, *N.J.A.C. 5:23-7*.

(6) Maximum Rents and Sales Prices.

(a) In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and by the Superior Court, utilizing the regional income limits established.

(b) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52% of median income.

(c) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units.

(i) At least 13% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income.

(d) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.

(e) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be met:

(i) A studio or efficiency unit shall be affordable to a one-person household;

(ii) A one-bedroom unit shall be affordable to a one and one-half person household;

- (iii) A two-bedroom unit shall be affordable to a three-person household;
 - (iv) A three-bedroom unit shall be affordable to a four and one-half person household; and
 - (v) A four-bedroom unit shall be affordable to a six-person household.
- (f) In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be met:
- (i) A studio or efficiency unit shall be affordable to a one-person household;
 - (ii) A one-bedroom unit shall be affordable to a one and one-half person household; and
 - (iii) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
- (g) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under *N.J.A.C. 5:80-26.4*, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of *N.J.A.C. 5:80-26.3*, as may be amended and supplemented.
- (h) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate household size as determined under *N.J.A.C. 5:80-26.4*, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of *N.J.A.C. 5:80-26.3*, as may be amended and supplemented.
- (i) The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

Income limits for all units for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to *N.J.A.C. 5:80-26.1* shall be updated by the Township annually within 30 days of the publication of determinations of median income by HUD as follows:

(i) Regional income limits shall be established for the Region 6 based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in Region 6. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

(ii) The income limits calculated each year shall be the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for the relevant fiscal year, and shall be utilized until the Township updates the income limits after HUD has published revised determinations of median income for the next fiscal year.

(iii) The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Township annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

(j) The rent levels of very-low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.

(k) Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

C. Condominium and Homeowners Association Fees.

For any affordable housing unit that is part of a condominium association and/or homeowner's association, the Master Deed shall reflect that the association fee assessed for each affordable housing unit shall be established at 100% of the market rate fee.

Section 20-14.2. Affordable Unit Controls and Requirements

A. Purpose. The requirements of this section apply to all developments that contain affordable housing units, including any currently unanticipated future developments that will provide low- and moderate- income housing units.

B. Affirmative Marketing.

(1) The Township shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with *N.J.A.C. 5:80-26.15*, as may be amended and supplemented.

(2) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 6 and covers the period of deed restriction.

(3) The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 6, comprised of Atlantic, Cape May, Cumberland and Salem Counties.

(4) The Administrative Agent designated by the Township shall assure the affirmative marketing of all affordable units is consistent with the Affirmative Marketing Plan for the municipality.

(5) In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

(6) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.

(7) The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Township of Upper.

C. Occupancy Standards.

(1) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:

- (a) Provide an occupant for each bedroom;
- (b) Provide separate bedrooms for parents and children;
- (c) Provide children of different sexes with separate bedrooms; and
- (d) Prevent more than two persons from occupying a single bedroom.

(2) Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

D. Selection of Occupants of Affordable Housing Units.

(1) The administrative agent shall use a random selection process to select occupants of low- and moderate- income housing.

(2) A waiting list of all eligible candidates will be maintained in accordance with the provisions of *N.J.A.C. 5:80-26 et seq.*

E. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

(1) Control periods for restricted ownership units shall be in accordance with *N.J.A.C. 5:80-26.5*, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability.

(2) Rehabilitated owner-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.

(3) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.

(4) The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.

(5) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under *N.J.A.C. 5:80-26.5(a)*, as may be amended and supplemented.

F. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices. Price restrictions for restricted ownership units shall be in accordance with *N.J.A.C. 5:80-26.1*, as may be amended and supplemented, including:

- (1) The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- (2) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- (3) The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
- (4) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

G. Buyer Income Eligibility.

- (1) Buyer income eligibility for restricted ownership units shall be in accordance with *N.J.A.C. 5:80-26.1*, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.
- (2) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33% of the household's certified monthly income.

H. Limitations on indebtedness secured by ownership unit; subordination.

- (1) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- (2) With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with *N.J.A.C.5:80-26.6(b)*.

I. Control Periods for Restricted Rental Units.

(1) Control periods for restricted rental units shall be in accordance with *N.J.A.C. 5:80-26.11*, and each restricted rental unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability.

(a) Restricted rental units created as part of developments receiving nine percent (9%) Low Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period.

(2) Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.

(3) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Cape May. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.

(4) A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:

(a) Sublease or assignment of the lease of the unit;

(b) Sale or other voluntary transfer of the ownership of the unit; or

(c) The entry and enforcement of any judgment of foreclosure.

J. Price Restrictions for Rental Units; Leases.

(1) A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.

(2) No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.

(3) Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

K. Tenant Income Eligibility.

- (1) Tenant income eligibility shall be in accordance with *N.J.A.C. 5:80-26.13*, as may be amended and supplemented, and shall be determined as follows:
 - (a) Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income.
 - (b) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
 - (c) Moderate-income rental units shall be reserved for households with a gross household income less than 80% of median income.
- (2) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to *N.J.A.C. 5:80-26.16*, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 - (a) The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 - (b) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 - (c) The household is currently in substandard or overcrowded living conditions;
 - (d) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - (e) The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- (3) The applicant shall file documentation sufficient to establish the existence of the circumstances in (2)a through e above with the Administrative Agent, who shall counsel the household on budgeting.

L. Conversions.

Each housing unit created through the conversion of a non-residential structure shall be considered a new housing unit and shall be subject to the affordability controls for a new housing unit.

M. Alternative Living Arrangements.

(1) The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:

(a) Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Court;

(b) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).

(2) With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30 year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Court.

(3) The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

Section 20-14.3. Administration.

A. Municipal Housing Liaison.

(1)

The position of Municipal Housing Liaison for the Township of Upper is hereby established. The Municipal Housing Liaison shall be appointed by duly adopted resolution of the Governing Body and be subject to the approval by the Superior Court.

(2)

The Municipal Housing Liaison must be either a full-time or part-time employee of the Township of Upper.

(3)

The Municipal Housing Liaison must meet the requirements for qualifications, including initial and periodic training found in *N.J.A.C. 5:93*.

(4)

The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Township of Upper, including the following responsibilities which may not be contracted out to the Administrative Agent:

(a)

Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;

(b)

The implementation of the Affirmative Marketing Plan and affordability controls.

(c)

When applicable, supervising any contracting Administrative Agent.

(d)

Monitoring the status of all restricted units in the Township of Upper's Fair Share Plan;

(e)

Compiling, verifying and submitting annual reports as required by the Superior Court;

(f)

Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and

(g)

Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by the Superior Court.

B. Administrative Agent.

(1)

The Township shall designate by resolution of the Governing Body, subject to the approval of the Superior Court, one or more Administrative Agents to administer newly constructed affordable units in accordance with *N.J.A.C. 5:93* and UHAC.

(2)

An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Superior Court. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).

(3)

The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manual, including those set forth in *N.J.A.C. 5:80-26.14, 16 and 18* thereof, which includes:

(a)

Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Superior Court;

(b)

Affirmative Marketing;

(c)

Household Certification;

(d)

Affordability Controls;

(e)

Records retention;

(f)

Resale and re-rental;

(g)

Processing requests from unit owners; and

(h)

Enforcement, although the ultimate responsibility for retaining controls on the units rests with the municipality.

(i)

The Administrative Agent shall, as delegated by the Governing Body, have the authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

C. Enforcement of Affordable Housing Regulations.

(1)

Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

(2)

After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:

(a)

The municipality may file a court action pursuant to *N.J.S.A. 2A:58-11* alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:

(i) A fine of not more than \$500.00 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;

(ii) In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Township of Upper Affordable Housing Trust Fund of the gross amount of rent illegally collected;

(iii) In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.

(b)

The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.

(3)

Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.

(4)

The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

(5)

Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

(6)

If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.

(7)

Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.

(8)

The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

D. Appeals. Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with the Township.

Section 20-14.4 Affirmative Marketing Plan

A. In accordance with the rules and regulations pursuant to N.J.A.C. 5:94 et seq. and the New Jersey Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26 et seq., the Township of Upper adopts the following as an affirmative marketing plan.

(1) All affordable housing units shall be marketed in accordance with the provisions herein.

(2) The Township of Upper has an affordable housing obligation. This subsection shall apply to all developments that contain proposed low- and moderate-income units and any future developments that may occur.

(3) In implementing the affirmative marketing program, the Municipal Housing Liaison shall undertake all of the following strategies:

(a) Publication of one advertisement in a newspaper of general circulation within the Housing Region.

(b) Broadcast of one advertisement by a radio or television station broadcasting throughout the Housing Region.

(c) At least one additional regional marketing strategy using one of the other sources listed below.

(4) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children, to housing units which are being marketed by a developer or sponsor of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward the COAH Housing Region in which the municipality is located and covers the period of deed restriction. The Township of Upper is in the Housing Region 6 consisting of Atlantic, Cape May, Cumberland and Salem Counties. The affirmative marketing program is a continuing program and shall meet the following requirements:

(a) All newspaper articles, announcements and requests for applications for low- and moderate-income units shall appear in the following daily regional newspaper/publication:

(i) The Atlantic City Press.

(ii) The Herald Times.

(b) The primary marketing shall take the form of at least one press release sent to the above publication and a paid display advertisement in the above newspaper. Additional advertising and publicity shall be on an "as needed" basis. The developer shall disseminate all public service announcements and pay for display advertisements. The developer shall provide proof of publication to the Housing Administrator. The Housing Administrator shall approve all press releases and advertisements in advance. The advertisement shall include a description of the:

(i) Location of the units;

(ii) Direction to the units;

(iii) Range of prices for the units;

(iv) Size, as measured in bedrooms, of units;

(v) Maximum income permitted to qualify for the units;

(vi) Location of applications;

- (vii) Business hours when interested households may obtain an application; and
- (viii) Application fees, if any.
- (c) All newspaper articles, announcements and requests for applications for low- and moderate-income housing shall appear in the following neighborhood-oriented weekly newspapers within the region:
 - (i) Atlantic City Press.
 - (ii) Cape May County Herald.
 - (iii) The Herald Times.
- (d) The following regional cable television station or regional radio station shall be used. The developer must provide satisfactory proof of public dissemination:
 - (i) South Jersey News Channel.
 - (ii) New Jersey 101.5 FM.
 - (iii) WNJZ 90.3 Public Radio (WHYY).
- (e) The following is the location of applications, brochure(s), sign(s) and/or poster(s) used as part of the affirmative marketing program:
 - (i) Township of Upper Municipal Building.
 - (ii) Cape May County Public Library and Branches.
 - (iii) Upper Township Web site.
 - (iv) Developer's sales office.
 - (v) Municipal libraries and municipal administrative buildings in the region.
 - (vi) Cape May County Office of Municipal and County Government Services.
 - (vii) Cape May County Housing Authority.
- (f) The following is a listing of community contact person(s) and/or organizations(s) in Atlantic, Cape May, Cumberland and Salem that will aid in the affirmative marketing program with particular emphasis on contracts that will reach out to groups that are least likely to apply for housing within the region:

- (i) Lions Club.
 - (ii) Habitat for Humanity.
 - (iii) Rotary Club.
 - (iv) Houses of worship.
 - (v) New Jersey Housing Resource Center.
 - (vi) Fair Share Housing Center
 - (vii) The New Jersey State Conference of the NAACP
 - (viii) Latino Action Network
 - (ix) Mainland/Pleasantville, Mizpah, Atlantic City and Cape May County branches of the NAACP
- (g) Quarterly flyers and applications shall be sent to each of the following agencies for publication in their journals and for circulation among their members:
- (i) Atlantic County Board of Realtors
 - (ii) Cape May County Board of Realtors
 - (iii) Cumberland County Board of Realtors
 - (iv) Salem County Board of Realtors
- (5) Applications shall be mailed to prospective applicants upon request. Also, applications shall be available at the developer's sales/rental office.
- (6) Additionally, quarterly informational circulars and applications shall be sent to the chief administrative employees of each of the following agencies in the counties of Atlantic, Cape May, Cumberland and Salem:
- (a) Welfare or social services board
 - (b) Rental assistance office (local office of DCA)
 - (c) Office on Aging
 - (d) Housing Agency or Authority
 - (e) Library

(f) Area community action agencies

(7) A random selection method to select occupants of low- and moderate-income housing will be used by the Municipal Housing Liaison, in conformance with N.J.A.C. 5:80-26.16 (1).

B. The Municipal Housing Liaison is the person responsible to administer the program. The Municipal Housing Liaison has the responsibility to income qualify low- and moderate-income households; to place income-eligible households in low- and moderate-income units upon initial occupancy; to provide for the initial occupancy of low- and moderate-income units with income-qualified households; to continue to qualify households for reoccupancy of units as they become vacant during the period of affordability controls; to assist with outreach to low- and moderate-income households; and to enforce the terms of the deed restriction and mortgage loan as per N.J.A.C. 5:80-26. The Municipal Housing Liaison within the Township of Upper is the designated housing officer to act as liaison to the Township Administrator. Also, the Municipal Housing Liaison shall direct qualified low- and moderate-income applicants to counseling services on subjects such as budgeting, credit issues, mortgage qualifications, rental lease requirements and landlord/tenant law.

C. All developers of low- and moderate-income housing units shall be required to assist in the marketing of the affordable units in their respective developments.

D. The marketing program shall commence at least 120 days before the issuance of either temporary or permanent certificates of occupancy. The marketing program shall continue until all low-income housing units are initially occupied and for as long as affordable units are deed restricted and occupancy or reoccupancy of units continue to be necessary.

E. The Municipal Housing Liaison will comply with monitoring and reporting requirements as per N.J.A.C. 5:80-26.

Revise Schedule B and Schedule C to Chapter XX in accordance with the revised Schedule B and Schedule C dated August 13, 2018 and located at the end of Chapter XX.

SECTION 2: EFFECTIVE DATE: This ordinance shall take effect immediately upon the following:

(a) Certification by the Pinelands Commission in accordance with N.J.A.C. 7:50

Subchapter 3 for sections affecting the Pinelands Management Zone; and

(b) Publication as required by law.

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

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

SECTION 5: CODIFICATION: This Ordinance shall be codified 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 13TH DAY OF AUGUST, 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 27TH 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. **Country Shore Women’s Club request use of Upper Township Community Center and to hold a Bingo #BA-502 and a Raffle #RA-501 on October 20, 2018.** Motion by Hobie Young, second by John Coggins, to approve the request. During roll call vote all four Committeemen present voted in the affirmative.
18. **Upper Township Rescue request to hold a Trunk or Treat on Tuesday, October 23, 2018 (Rain date October 24) at Amanda’s Field.** Motion by Hobie Young, second by John Coggins, to approve the request. During roll call vote all four Committeemen present voted in the affirmative.
19. **All in Sports request use of Amanda’s Field – Bett’s Field for a season of Men’s Flag Football beginning on August 19, 2018 and ending on December 23, 2018.** Motion by John Coggins, second by Curtis Corson, to conditionally approve the request contingent upon receipt of an updated certificate of insurance and application and escrow fees to be formalized in a resolution at a future meeting. During roll call vote all four Committeemen present voted in the affirmative.

UNFINISHED BUSINESS

DISCUSSION

PAYMENT OF BILLS

“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 four Committeemen present voted in the affirmative.

Bills approved for payment: \$369,114.96

Payroll: \$217,737.25

REPORT OF MUNICIPAL DEPARTMENTS

18. **Animal Control**
19. **Construction Code**
20. **Clerk’s Office**
21. **Division of EMS**
22. **Finance Office**
23. **Municipal Court**
24. **Tax Office**
25. **Tax Collector Certification of mailing of 2018 Final / 2019 Preliminary tax bills and advice copies.**
26. **Upper Township Green Team Minutes**

Motion by Curtis Corson, second by Hobie Young, to accept the reports as submitted. During roll call vote all four Committeemen present voted in the affirmative.

PUBLIC COMMENT

Elaine Holsomback, 20 Black Oak Drive, Palermo presented the Township Committee with a Petition containing 550 signatures to request the installation of ADA Approved Beach Path Mats or Mobi Mats on the Strathmere Beaches.

Peter Schuler, Petersburg, spoke regarding Ordinance No. 008-2018 adopted this evening and questioned if the Township is required to adopt State Statues by Ordinance. The Municipal Attorney explained that the Township is not required to adopt any Ordinance. And further explained that Ordinance 008-2018 was implemented to protect the health and safety of the Community.

Jon Kevin Grubb, Upper Township, spoke regarding the Adoption of Ordinance No. 008-2018 and requests for public records. He asked if someone requests the name of a complainant can the name be released. The Township Attorney explained that if the request is for a copy of a written complaint the Township would have to review the request and make a determination whether or not to release the name. He explained that under certain circumstances the government entity may withhold the name of the complainant, for example if there is a concern that there may be retaliation against the individual whose name is being released then in order to protect that individual the government entity may withhold the name.

Motion by Ed Barr second by John Coggins, to close the public comment portion of the meeting until after item No. 11 on the agenda a Resolution Adopting the Third Round 2018 Housing Element and Fair Share Plan and the introduction of Ordinance No. 011-2018 Re: An Ordinance Amending Revised General Ordinance Chapter XX (Zoning) of the Code of Upper Township. During roll call vote all four Committeemen present voted in the affirmative.

The Public Comment portion of the meeting was then reconvened following the adoption of Resolution No. 233-2018 Governing Body Resolution Adopting the Third Round 2018 Housing Element and Fair Share Plan and the introduction of Ordinance No. 011-2018 Re: An Ordinance Amending Revised General Ordinance Chapter XX (Zoning) of the Code of Upper Township.

PUBLIC COMMENT

Blanche Adams, Upper Township Business Association, questioned if under Ordinance No. 011-2018 Re: Amending Revised General Ordinance Chapter XX (Zoning) of the Code of Upper Township if the mandatory mixed use in the Marmora Town Center will still be required if there are no sewers. The Municipal Attorney explained that this will still be required for all new construction.

Jon Kevin Grubb, Upper Township, questioned his right to address the Mayor regarding his concerns with an Ordinance. The Municipal Attorney explained that state law requires a quorum for the introduction and adoption of an Ordinance, the Mayor is just one of five votes. If you wish to contact the Mayor his contact information can be found on our Township website.

Jack Griffin, Upper Township, questioned the need for the appointment of Adams, Rehmann & Heggan as a Licensed Site Remediation Professional. The Municipal Attorney explained that the firm was hired to do a site investigation on a property where cars have been stored that is the subject of a tax lien foreclosure to ensure that there are no environmental concerns.

CLOSED SESSION

27. 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. 234-2018
MOTION GOING INTO CLOSED SESSION
AUGUST 13, 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 - Animal Control
3. Contract negotiation - Special Counsel for Employment and Labor Law matters
4. Contract negotiation - Conflict Tax Assessor

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.

Moved by: John Coggins

Motion seconded by: Edward Barr

During roll call vote all four 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 four Committeemen present voting in the affirmative.

ADJOURNMENT

There being no further business this evening the meeting was adjourned at 9:30 P.M., with a motion by John Coggins, second by Edward Barr, and all four Committeemen present voting in the affirmative. The next regular meeting is scheduled for August 27, 2018 at 7:30 P.M.

Minutes prepared by,

Barbara L. Young, RMC
Municipal Clerk

Bill List

71954 08/13/18 A0004 A COMMERCIAL OFFICE CLEANERS 875.00 3038
71955 08/13/18 A0025 ADVANTAGE RENTAL ACE HARDWARE 255.73 3038
71956 08/13/18 A0035 AIRLINE HYDRAULIC CORP. 29.52 3038
71957 08/13/18 A0091 ATLANTIC CITY ELECTRIC 24,429.69 3038
71958 08/13/18 A0175 Adams Rehmann & Haggan Assoc 7,524.00 3038
71959 08/13/18 A0212 ANCERO, LLC 8,965.04 3038
71960 08/13/18 A0219 ALTERNATIVE MICROGRAPHICS, INC 19,606.36 3038
71961 08/13/18 B0035 BELMONT & CRYSTAL SPRINGS 161.01 3038
71962 08/13/18 B0052 BENNETT BATTERIES,LLC. 488.00 3038
71963 08/13/18 B0093 BARRY,CORRADO,GRASSI & 350.00 3038
71964 08/13/18 B0182 BRIGGS LAW OFFICE, P.C. 473.40 3038
71965 08/13/18 B0201 BUCK'S ELECTRICAL SERVICE, INC 4,597.00 3038
71966 08/13/18 B0220 BERGEY'S TRUCK CENTERS 705.30 3038
71967 08/13/18 B0239 BAILEY, WILLIAM MICHAEL 1,583.32 3038
71968 08/13/18 B0248 BARNES LAW GROUP LLC 780.00 3038
71969 08/13/18 C0048 CAPE MAY COUNTY MUA 39,003.59 3038
71970 08/13/18 C0060 CAPRIONI'S PORTABLE TOILETS 2,290.25 3038
71971 08/13/18 C0068 COMCAST 856.13 3038
71972 08/13/18 C0116 CINTAS CORPORATION 158.14 3038
71973 08/13/18 C0143 CODY'S POWER EQUIPMENT 377.61 3038
71974 08/13/18 C0171 COLONIAL ELECTRIC SUPPLY CO. 632.69 3038
71975 08/13/18 C0223 CASA PAYROLL SERVICE 273.25 3038
71976 08/13/18 C0230 CATAMARAN MEDIA COMPANY 190.25 3038
71977 08/13/18 C0279 CASA REPORTING SERVICES LLC 193.75 3038
71978 08/13/18 C0296 COMCAST BUSINESS COMMUNICATION 2,794.52 3038
71979 08/13/18 D0040 DELTA DENTAL OF N.J. INC. 6,367.35 3038
71980 08/13/18 E0012 EHRlich PEST CONTROL INC 89.00 3038
71981 08/13/18 E0020 ELMER DOOR CO. 2,300.00 3038
71982 08/13/18 G0016 GARDNER HARDWARE INC. 172.33 3038
71983 08/13/18 G0035 GENRON FIRE PROTECTION 79.30 3038
71984 08/13/18 G0086 W.W. GRAINGER, INC. 588.07 3038
71985 08/13/18 G0141 GENTILINI CHEVROLET 224.34 3038
71986 08/13/18 G0147 GREATAMERICA FINANCIAL SVCS. 170.00 3038

71987 08/13/18 G0157 GRANTURK EQUIPMENT CO., INC. 1,465.85 3038
71988 08/13/18 G0182 GOLDENBERG, MACKLER & SAYEGH 50.00 3038
71989 08/13/18 H0018 HAROLD RUBIN L & H SUPPLY 816.77 3038
71990 08/13/18 H0073 HOME DEPOT CRC/GEFCF 69.55 3038
71991 08/13/18 H0095 HORIZON BCBSNJ 165,059.39 3038
71992 08/13/18 H0148 THOMAS H. HEIST INS AGENCY INC 500.00 3038
71993 08/13/18 J0016 JERSEY SHORE PARTNERSHIP, INC 100.00 3038
71994 08/13/18 J0079 JAMES WYERS LANDSCAPING, LLC 345.00 3038
71995 08/13/18 K0086 K D NATIONAL FORCE SECURITY 1,543.50 3038
71996 08/13/18 L0007 LC EQUIPMENT, INC. 42.00 3038
71997 08/13/18 L0135 LOUGHLIN, LINDA 126.09 3038
71998 08/13/18 L0138 LOGAN TWP MUNICIPAL COURT 140.00 3038
71999 08/13/18 M0012 McCAULEY, RICHARD 239.98 3038
72000 08/13/18 M0016 McAFEE, MEGAN 500.00 3038
72001 08/13/18 M0032 MARINE RESCUE PRODUCTS,INC. 113.90 3038
72002 08/13/18 M0080 McMANIMON, SCOTLAND & BAUMANN 1,708.39 3038
72003 08/13/18 M0081 MID-ATLANTIC WASTE SYSTEMS 104.88 3038
72004 08/13/18 M0121 McCROSSON, JANET 107.23 3038
72005 08/13/18 M0180 MED-TECH RESOURCE,LLC 337.50 3038
72006 08/13/18 M0277 MONY LIFE INSURANCE COMPANY 190.89 3038
72007 08/13/18 M0291 MILDREDS STRATHMERE RESTAURANT 1,000.00 3038
72008 08/13/18 N0004 NJ-AMERICAN WATER CO. 214.52 3038
72009 08/13/18 N0143 NATIONAL TIME SYSTEMS 550.00 3038
72010 08/13/18 P0032 PEDRONI FUEL CO. 2,565.64 3038
72011 08/13/18 P0175 PRIEST JR., ANTHONY 100.00 3038
72012 08/13/18 R0030 RIGGINS, INC. 6,939.70 3038
72013 08/13/18 R0101 R.R. DONNELLEY & SONS 73.50 3038
72014 08/13/18 R0115 RID PEST CONTROL INC. 55.00 3038
72015 08/13/18 S0001 SAM'S CLUB 45.58 3038
72016 08/13/18 S0020 SUPPLY WORKS 924.42 3038
72017 08/13/18 S0031 SCHULER SECURITY, INC. 579.00 3038
72018 08/13/18 S0056 SEASHORE ASPHALT CORPORATION 1,177.08 3038
72019 08/13/18 S0057 SERVICE TIRE TRUCK CENTERS 5,620.01 3038
72020 08/13/18 S0097 SMH CPR TRAINING CENTER 440.00 3038
72021 08/13/18 S0122 SOMERS POINT LUMBER INC. 1,771.49 3038
72022 08/13/18 S0130 SOUTH JERSEY CHIEFS ASSOC. 38.00 3038
72023 08/13/18 S0134 SO. JERSEY GAS COMPANY 209.15 3038
72024 08/13/18 S0185 STOCKTON STATE COLLEGE 5,529.90 3038
72025 08/13/18 S0209 STAPLES ADVANTAGE 409.98 3038
72026 08/13/18 S0239 SHORE VET. ANIMAL CONTROL LLC 2,350.00 3038
72027 08/13/18 S0253 SAMPLE MEDIA, INC. 534.50 3038
72028 08/13/18 S0292 JEFFREY SURENIAN & ASSOC. LLC 228.50 3038
72029 08/13/18 S0329 SERIOUSLY TOTAL VIDEO 250.00 3038
72030 08/13/18 T0028 TRACTOR SUPPLY COMPANY CREDIT 218.49 3038
72031 08/13/18 T0032 THE PRESS OF ATLANTIC CITY 1,406.62 3038
72032 08/13/18 T0129 TRUGREEN CHEMLAWN 7,028.37 3038
72033 08/13/18 T0168 TOWNSHIP OF UPPER 290.01 3038
72034 08/13/18 T0180 TRI-COUNTY PEST CONTROL, INC 25.00 3038
72035 08/13/18 U0067 UT HEALTH REIMB. ACCOUNT 1,931.55 3038
72036 08/13/18 V0013 VERIZON WIRELESS 1,156.60 3038
72037 08/13/18 V0022 VERIZON 482.50 3038
72038 08/13/18 V0024 VAL-U AUTO PARTS L.L.C. 0.00 08/13/18 VOID 0
72039 08/13/18 V0024 VAL-U AUTO PARTS L.L.C. 1,437.23 3038
72040 08/13/18 V0025 V.E. RALPH & SON,INC. 760.06 3038
72041 08/13/18 V0026 VITAL COMMUNICATIONS, INC. 100.00 3038
72042 08/13/18 V0027 VANORDER, ROGER 126.99 3038
72043 08/13/18 W0030 WEST PUBLISHING CO. 486.41 3038
72044 08/13/18 W0087 W.B. MASON EGG HARBOR 1,089.40 3038
72045 08/13/18 X0008 XEROX FINANCIAL SERVICES 662.40 3038
72046 08/13/18 Y0008 YOUNG, DANIEL J. ESQUIRE PC 19,162.50 3038

Total: \$369,114.96