

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

ORDINANCE NO. 011-2020

**RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER
XVIII (FLOOD DAMAGE CONTROL) OF THE CODE OF UPPER TOWNSHIP**

WHEREAS, Upper Township participates in the National Flood Insurance Program (NFIP) and the Community Rating System (CRS); and

WHEREAS, Upper Township wishes to establish higher regulatory standards than the minimum standards of the NFIP; and

WHEREAS, the higher regulatory standards will result in less future damage for structures in the Special Flood Hazard Area and will help lower insurance premiums for residents of Upper Township;

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 18 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:

Add the following to 18-2 **DEFINITIONS**:

CRITICAL FACILITY

A structure or other improvement that, because of its function, size, service area, or uniqueness, has the potential to cause serious bodily harm, extensive property damage, or disruption of vital socioeconomic activities if it is destroyed or damaged or if its functionality is impaired . Critical facilities include health and safety facilities, utilities, government facilities, and hazardous materials facilities. For the purposes of a local regulation, a community may also use the International Codes' definition for Category III and IV buildings.

Revise the following Section 18-4 **ADMINISTRATION**:

18-4.1 Establishment of Development Permit and Flood Compliance Certificate

- a. Establishment of Development Permit. A development permit shall be obtained before construction or development begins, including placement of manufactured homes, within any area of special flood hazard established in subsection 18-3.2. Application for a development permit shall be made on forms furnished by the Construction Official and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the areas in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;

2. Elevation in relation to mean sea level to which any structure has been floodproofed;
3. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in subsection 18-5.2, paragraph b;
4. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
5. Elevation Certificate. Shall be provided after the foundation is completed and when construction is completed before the issuance of a Certificate of Occupancy is issued.
6. Existing and proposed grades shall be shown along any buildings, property lines, sidewalk, curb, pavement and grades shall be shown ten (10') feet beyond the property line to show there will be no negative impact of the proposed development on neighboring properties.

b. Flood Compliance Certificate

1. A Flood Compliance Certificate is required of all residential dwelling units including one-family, two-family, three-family and multiple-family, and individual condominium and cooperative units contained therein prior to the transfer of title of a residential dwelling.
2. A Flood Compliance Certificate shall not be required if:
 - (a) A Certificate of Occupancy has been issued in connection with new construction of the residential dwelling within one (1) year of the transfer of title.
 - (b) If, prior to the closing and transfer of title, the prospective owner provides a notarized affidavit to the Zoning Office that the property will be demolished within ninety (90) days of the transfer of title, and that the property will not be occupied during that period of time. If demolition has not occurred prior to the expiration of the ninety (90) day period, and the owner has not requested, in writing, to extend the ninety (90) day period, or the property is occupied during the initial or extended ninety (90) day period, the owner shall immediately obtain a Flood Compliance Certificate.
3. It shall be the responsibility of the seller of the residential dwelling to obtain the Flood Compliance Certificate prior to the transfer of title. The seller shall make application to the Floodplain Manager, on forms provided by the Floodplain Manager, for the certificate. The seller shall make his/her residential dwelling available for inspection by employees of the Floodplain Manager, upon appointment, during regular business hours, Monday through Friday, from 8:30 a.m. to 4:00 p.m. The Floodplain Manager shall notify the seller of the result of the inspection within three (3) business days of the inspection. If the inspection demonstrates that a Flood Compliance Certificate should be issued, it shall be issued by the Floodplain Manager within three (3) business days of the inspection.
4. The inspection of the residential dwelling shall be made to determine that there has been no substantial or material change from nonhabitable space to habitable space as identified in the building plans upon which the Certificate of Occupancy was issued for the residential dwelling, and that there is not any other substantial or material deviation from the building plans upon which the Certificate of Occupancy was issued for the residential dwelling.
 1. Any residential dwelling receiving a Certificate of Occupancy prior to January 1, 1999 will be presumed to have met the requirements of this Ordinance for the issuance of Flood Compliance Certificate. The Township, or any other person challenging this preemptive validity, must show by clear and convincing evidence that the Flood Compliance Certificate should not be issued.
5. The fee for inspection of any structure subject to the requirements of this section shall

be \$100.00.

6. Any violation of the provisions of this Ordinance shall be subject to the penalties set forth under subsection 3.3.

18-4.2 Designation of Local Administrator. (no change)

18-4.3 Duties and Responsibilities of the Local Administrator. (no change)

18-4.4 Variance Procedure. (no changes).

Add the following new subsection 18-5.2d. to **Specific Standards:**

d. Critical Facility

1. Flood protection elevation shall be the 0.2% Flood Elevation based on the special flood hazard established in subsection 18-3.2.
2. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor, including basement and utilities (electrical, heating, ventilation, plumbing, duct work and air-conditioning equipment), be elevated to or above the flood protection elevation;

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

ATTEST:


BARBARA L. YOUNG, Township Clerk


RICHARD PALOMBO, Mayor

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 **26th DAY OF OCTOBER, 2020** AND WAS TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD EXCLUSIVELY BY ELECTRONIC MEANS, ON THE **23rd DAY OF NOVEMBER, 2020** AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY, AT WHICH TIME SAID ORDINANCE WAS ADOPTED.

BARBARA L. YOUNG, TOWNSHIP CLERK
TOWNSHIP OF UPPER

Legislative History:

Introduced: October 26, 2020

Publication: October 30, 2020

Newspaper(s): The Press of Atlantic City

Second Reading and Public Hearing: November 23, 2020

Final Adoption: November 23, 2020

Final Publication Date: November 27, 2020

I certify that the foregoing Ordinance was finally adopted by the Township Committee of the Township of Upper on November 23, 2020 and notice of adoption was thereafter published pursuant to law in the Press of Atlantic City on November 30, 2020.


BARBARA L. YOUNG, Township Clerk