

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
ORDINANCE**

ORDINANCE NO. 026-2022

**RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER
IXX (LAND SUBDIVISION, SITE PLAN AND LAND USE ADMINISTRATION) AND
CHAPTER XX (ZONING) OF THE CODE OF UPPER TOWNSHIP**

WHEREAS, Township Committee requested the Upper Township Planning Board to make recommendations for revised ordinances for several quality of life issues and elements to comply with the Plan Endorsement's Planning and Implementation Agenda; and

WHEREAS, on July 21, 2022, the Upper Township Planning Board had a general discussion about the request from Township Committee and appointed a subcommittee to develop revisions to the Township ordinance; and

WHEREAS, after several subcommittee meetings the proposed revisions were presented at the September 15, 2022 Planning Board meeting and the Planning Board made a recommendation to forward the proposed revisions to Township Committee for consideration; and

WHEREAS, the Township Committee, after review of Planning Board Special Resolution 04-2022, agrees that Chapter IXX and XX of the Code of Upper Township should be amended as recommended by the Upper Township Planning Board.

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 19 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 **Section 19-4.2a Site Plan Review Required**

10. Notwithstanding the foregoing, site plan review shall not be required for any project undertaken for the installation of Electric Vehicle Supply/Service Equipment (EVSE) or Make-Ready spaces at an existing gasoline service station, an existing retail establishment, or any other existing building. Such EVSE installation shall not be subject to other land use board review, shall not require variance relief pursuant to C.40:55D-1 et seq. or any other law, rule, or regulation, and shall be approved through the issuance of a zoning permit by the administrative officer, provided the application meets the following requirements:
 - (a) the proposed installation does not violate bulk requirements applicable to the property or the conditions of the original final approval of the site plan or subsequent approvals for the existing gasoline service station, retail establishment, or other existing building;
 - (b) all other conditions of prior approvals for the gasoline service station, the existing retail establishment, or any other existing building continue to be met; and
 - (c) the proposed installation complies with the construction codes adopted in or promulgated pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217

- (C.52:27D-119 et seq.), any safety standards concerning the installation, and any State rule or regulation concerning electric vehicle charging stations.
- (d) within the Pinelands Area, the proposed installation complies with the minimum environmental standards of the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-6.1 et seq.).
 - (e) in the Pinelands Area, an application pursuant to this sub-sections (a) through (d) above shall also require the submission of a Certificate of Filing issued by the New Jersey Pinelands Commission, unless the proposed development meets the criteria of Section 20-11.5a2(g) of the Code of Upper Township.

SECTION 2. 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:

Add the following to **Section 20-2.1 Definitions of Township Wide Application:**

Charging Level - The amount of voltage provided to charge an electric vehicle varies depending on the type of EVSE as follows:

- 1) Level 1 operates on a fifteen (15) to twenty (20) amp breaker on a one hundred twenty (120) volt AC circuit.
- 2) Level 2 operates on a forty (40) to one hundred (100) amp breaker on a two hundred eight (208) or two hundred forty (240) volt AC circuit.
- 3) Direct-current fast charger (DCFC) operates on a sixty (60) amp or higher breaker on a four hundred eighty (480) volt or higher three phase circuit with special grounding equipment. DCFC stations can also be referred to as rapid charging stations that are typically characterized by industrial grade electrical outlets that allow for faster recharging of electric vehicles.

Electric vehicle - Any vehicle that is licensed and registered for operation on public and private highways, roads, and streets; and operates either partially or exclusively using an electric motor powered by an externally charged on-board battery.

Electric Vehicle Supply/Service Equipment or (EVSE) - The equipment, including the cables, cords, conductors, connectors, couplers, enclosures, attachment plugs, power outlets, power electronics, transformer, switchgear, switches and controls, network interfaces, point of sale equipment, and associated apparatus designed and used for the purpose of transferring energy from the electric supply system to a plug-in electric vehicle. "EVSE" may deliver either alternating current or, consistent with fast charging equipment standards, direct current electricity. "EVSE" is synonymous with "electric vehicle charging station."

Glare - The sensation produced by luminance within the visual field that is sufficiently greater than the luminance to which the eyes are adapted to cause annoyance, discomfort or loss in visual performance and visibility.

IESNA - Illuminating Engineering Society of North America. An organization that recommends standards for the lighting industry.

Light Trespass - Any form of artificial illuminance emanating from a light fixture or illuminated sign that penetrates other property and creates a nuisance, as specified in Section 3.

Make-Ready Parking Space - means the pre-wiring of electrical infrastructure at a parking space, or set of parking spaces, to facilitate easy and cost-efficient future installation of Electric Vehicle Supply Equipment or Electric Vehicle Service Equipment, including, but not limited to, Level Two EVSE and direct current fast chargers. Make Ready includes expenses related to service panels, junction boxes, conduits, wiring, and other components necessary to make a particular location able to accommodate Electric Vehicle Supply Equipment or Electric Vehicle Service Equipment on a "plug and play" basis. "Make-Ready" is synonymous with the term "charger ready," as used in P.L.2019, c.362 (C.48:25-1 et al.).

Objectionable Direct Glare Source - Glare resulting from excessive levels of illumination or insufficiently shielded light sources emanating from light fixtures in the field of view where the lens, lamp or reflector is offensively visible at the location described in the ordinance.

Outdoor Light Fixture - An electrically powered illuminating device containing a total light source of more than 1800 initial lumens per fixture or any spot or flood luminaire with a reflector contained in the lamp component such as a parabolic aluminized reflector (PAR) lamp, of more than 900 initial lumens, which is permanently installed outdoors, including but not limited to, devices used to illuminate any site, architectural structure, or sign.

Private EVSE - EVSE that has restricted access to specific users (e.g., single and two-family homes, executive parking, and fleet parking with no access to the general public).

Publicly-accessible EVSE - EVSE that is publicly available (e.g., park & ride, public parking lots and garages, on-street parking, shopping center parking, non-reserved parking in multi-family parking lots, etc.).

Shielded Light Fixture - A light fixture with cutoff optics that allows no direct light emissions above a vertical cutoff angle of 90 degrees above nadir (straight down at perfect vertical), through the light fixture's lowest light emitting part. Any structural part of the light fixture providing this cutoff angle must be permanently affixed.

Replace **Section 20-4.5d3 Stormwater Control** as follows:

3. Pervious paving system shall be required for all driveway and sidewalk area and shall be constructed in accordance with Section 20-5.17.

Add the following to **Section 20-4.5 Resort Districts: "RR" Resort Residential and "RC" Resort Commercial**.

- e. Subsequent to the effective date of this Ordinance landscaping stones on all development, as defined herein, shall be regulated as follows:
 1. Landscaping stone is not permitted in the area between the sidewalk and curb.
 2. Landscaping stones are not permitted in the front yard or side yard.
 3. Landscaping stones located in the rear yard shall be contained by permanent edging and placed over filter fabric. Plastic or other impermeable material is prohibited as a weed barrier.
 4. Landscaping stone size shall be between one and one-half inch and three inches in diameter.

Add the following to **Section 20-5.1 Accessory Structures**:

- g. Size of Accessory Structure. No accessory structure on a residentially used lot shall be larger in area or volume than the principal structure.

Add the following to **Section 20-5.7 Parking**

- d. Requirements for New Installation of Electric Vehicle Supply/ Service Equipment (EVSE) and Make-Ready Parking Spaces. EVSE or Make-Ready parking spaces shall be considered a permitted accessory use and permitted accessory structure in all zoning or use districts and shall not require a variance pursuant to C.40:55D-70.
 1. As a condition of preliminary site plan approval, for each application involving a multiple dwelling with five or more units of dwelling space, which shall include a multiple dwelling that is held under a condominium or cooperative form of ownership, a mutual housing corporation, or a mixed-use development, the developer or owner, as applicable, shall:
 - i. prepare as Make-Ready parking spaces at least 15 percent of the required off-street parking spaces, and install EVSE in at least one-third of the 15 percent of Make-Ready parking spaces;
 - ii. within three years following the date of the issuance of the certificate of occupancy, install EVSE in an additional one-third of the original 15 percent of Make-Ready parking spaces; and
 - iii. within six years following the date of the issuance of the certificate of occupancy, install EVSE in the final one-third of the original 15 percent of Make-Ready parking spaces.

- iv. Throughout the installation of EVSE in the Make-Ready parking spaces, at least five percent of the electric vehicle supply equipment shall be accessible for people with disabilities.
 - v. Nothing in this subsection shall be construed to restrict the ability to install electric vehicle supply equipment or Make-Ready parking spaces at a faster or more expansive rate than as required above.
2. As a condition of preliminary site plan approval, each application involving a parking lot or garage not covered in 1. above shall:
- i. Install at least two Make-Ready parking spaces if there will be 51 to 75 off-street parking spaces.
 - ii. Install at least three Make-Ready parking spaces if there will be 76 to 100 off-street parking spaces.
 - iii. Install at least four Make-Ready parking spaces, at least one of which shall be accessible for people with disabilities if there will be 101 to 150 off-street parking spaces.
 - iv. Install at least four percent of the total parking spaces as Make-Ready parking spaces, at least five percent of which shall be accessible for people with disabilities, if there will be more than 150 off-street parking spaces.
 - v. In lieu of installing Make-Ready parking spaces, a parking lot or garage may install EVSE to satisfy the requirements of this subsection.
 - vi. Nothing in this subsection shall be construed to restrict the ability to install electric vehicle supply equipment or Make-Ready parking spaces at a faster or more expansive rate than as required above.
 - vii. Notwithstanding the provisions of this Section, a retailer that provides 50 or fewer off-street parking spaces or the developer or owner of a single-family home or multi-unit facility with 5 or less units shall not be required to provide or install any electric vehicle supply equipment or Make-Ready parking spaces.

3. Minimum Parking Requirements

- i. All parking spaces with EVSE and Make-Ready equipment shall be included in the calculation of minimum required parking spaces, pursuant to this section.
- ii. A parking space prepared with EVSE or Make-Ready equipment shall count as at least two parking spaces for the purpose of complying with a minimum parking space requirement. This shall result in a reduction of no more than 10 percent of the total required parking.
- iii. All parking space calculations for EVSE and Make-Ready equipment shall be rounded up to the next full parking space.
- iv. Additional installation of EVSE and Make-Ready parking spaces above what is required in this Section d. may be encouraged but shall not be required in development projects.
- v. Location and layout of EVSE and Make-Ready parking spaces is expected to vary based on the design and use of the primary parking area. It is expected flexibility will be required to provide the most convenient and functional service to users. Standards and criteria should be considered guidelines and flexibility should be allowed when alternatives can better achieve objectives for provision of this service.
- vi. Installation:
 - 1) Installation of EVSE and Make-Ready parking spaces shall meet the electrical subcode of the Uniform Construction Code, N.J.A.C. 5:23-3.16.
 - 2) Each EVSE or Make-Ready parking space that is not accessible for people with disabilities shall be not less than 9 feet wide and 18 feet in length. Exceptions may be made for existing parking spaces or parking spaces that were part of an application that received prior site plan approval.
 - 3) To the extent practicable, the location of accessible parking spaces for people with disabilities with EVSE and Make-Ready equipment shall comply with the general accessibility requirements of the Uniform Construction Code, N.J.A.C. 5:23, and other applicable accessibility standards.
 - 4) Each EVSE or Make-Ready parking space that is accessible for people with disabilities shall comply with the sizing of accessible parking space requirements

in the Uniform Construction Code, N.J.A.C. 5:23, and other applicable accessibility standards.

vii. EVSE Parking:

- 1) Publicly-accessible EVSE shall be reserved for parking and charging electric vehicles only. Electric vehicles shall be connected to the EVSE. Property owner shall determine time limits and any such limits shall be posted.
- 2) Electric vehicles may be parked in any parking space designated for parking, subject to the restrictions that would apply to any other vehicle that would park in that space.

viii. Safety

- 1) Each publicly-accessible EVSE shall be located at a parking space that is designated for electric vehicles only and identified by green painted pavement and/or curb markings, a green painted charging pictograph symbol, and appropriate signage pursuant to Section 5. below.
- 2) Where EVSE is installed, adequate site lighting and landscaping shall be provided.
- 3) Adequate EVSE protection such as concrete-filled steel bollards shall be used for publicly-accessible EVSE. Non-mountable curbing may be used in lieu of bollards if the EVSE is set back a minimum of 24 inches from the face of the curb. Any stand-alone EVSE bollards should be 3 to 4 feet high with concrete footings placed to protect the EVSE from accidental impact and to prevent damage from equipment used for snow removal.
- 4) EVSE outlets and connector devices shall be no less than 36 inches and no higher than 48 inches from the ground or pavement surface where mounted and shall contain a cord management system as described in e. below. Equipment mounted on pedestals, lighting posts, bollards, or other devices shall be designated and located as to not impede pedestrian travel, create trip hazards on sidewalks, or impede snow removal.
- 5) Each EVSE shall incorporate a cord management system or method to minimize the potential for cable entanglement, user injury, or connector damage. Cords shall be retractable or have a place to hang the connector and cord a safe and sufficient distance above the ground or pavement surface. Any cords connecting the charger to a vehicle shall be configured so that they do not cross a driveway, sidewalk, or passenger unloading area.
- 6) Where EVSE is provided within a pedestrian circulation area, such as a sidewalk or other accessible route to a building entrance, the EVSE shall be located so as not to interfere with accessibility requirements of the Uniform Construction Code, N.J.A.C. 5:23, and other applicable accessibility standards.
- 7) Publicly-accessible EVSEs shall be maintained in all respects, including the functioning of the equipment. A 24-hour on-call contact shall be provided on the equipment for reporting problems with the equipment or access to it. To allow for maintenance and notification, Township of Upper shall require the owners/designee of publicly-accessible EVSE to provide information on the EVSE's geographic location, date of installation, equipment type and model, and owner contact information.

ix. Signs

- 1) Publicly-accessible EVSE shall have posted regulatory signs, as identified in this section, allowing only charging electric vehicles to park in such spaces. For purposes of this section, "charging" means that an electric vehicle is parked at an EVSE and is connected to the EVSE. If time limits or vehicle removal provisions are to be enforced, regulatory signs including parking restrictions shall be installed immediately adjacent to and visible from the EVSE. For private EVSE, installation of signs and sign text is at the discretion of the owner.
- 2) All regulatory signs shall comply with visibility, legibility, size, shape, color, and reflectivity requirements contained within the Federal Manual on Uniform Traffic Control Devices as published by the Federal Highway Administration.
- 3) Wayfinding or directional signs, if necessary, shall be permitted at appropriate decision points to effectively guide motorists to the EVSE parking space(s). Wayfinding or directional signage shall be placed in a manner that shall not

interfere with any parking space, drive lane, or exit and shall comply with b. above.

- 4) In addition to the signage described above, the following information shall be available on the EVSE or posted at or adjacent to all publicly-accessible EVSE parking spaces:
 - 5) Hour of operations and/or time limits if time limits or tow-away provisions are to be enforced by the municipality or owner/designee;
 - 6) Usage fees and parking fees, if applicable; and
 - 7) Contact information (telephone number) for reporting when the equipment is not operating or other problems.
- x. Usage Fees
- 1) Private EVSE: Nothing in this ordinance shall be deemed to preclude a private owner/designee of an EVSE from collecting a fee for the use of the EVSE, in accordance with applicable State and Federal regulations. Fees shall be available on the EVSE or posted at or adjacent to the EVSE parking space.

Add the following to **Section 20-5.17 Pervious Paving Systems**

Pervious paving systems are encouraged and are recommended to help reduce stormwater runoff. If a pervious paving system is designed in accordance with the following standards, only twenty-five percent (25%) of the area of said pervious paving system shall count towards the impervious coverage limit of the zone that the property is located in. The following requirements shall apply to a pervious paving system:

- a. The pervious paving system shall be designed and certified by a registered engineer or landscape architect.
- b. The pervious paving system shall be designed in accordance with N.J.A.C. 7:8 Stormwater Management Rules and NJ Stormwater Best Management Practices Manual Chapter 9.6 Pervious Paving System, except that residential developments only have to design the storage volume for the water quality storm.
- c. In nonresidential and mixed-use developments, pervious pavement or pervious pavement systems, except pervious asphalt or pervious concrete, shall not be used for access and circulation drives, driveways, parking aisles, accessible parking spaces, or loading spaces.
- d. The use of pervious pavement or pervious pavement systems shall be prohibited in areas on a lot used for the dispensing of gasoline or other engine fuels or where hazardous liquids may be absorbed into the soil.
- e. The use of pervious pavement or pervious pavement systems shall be adequately maintained so that the specified level of perviousness continues over time.
- f. No barrier to natural percolation of water shall be installed beneath such material.
- g. Open grid pavers must be installed on a sand base, without liner, in order to be considered pervious. Solid surface pavers. (e.g., Brick or brick appearing pavers as opposed to open grid pavers) do not qualify for any reduction in impervious area, regardless of type of base material used.
- h. During construction the system shall be inspected by the municipal engineer.

Replace **Section 20-6.3a Height Limits** as follows:

- a. No principal or accessory building or structure shall exceed the height limits as prescribed in § 20-4.

Replace **Schedule 3 - Note 1** as follows:

No principal or accessory building or structure shall exceed maximum specified height, except that churches shall not exceed 55 feet in height and except further as allowed in Subsection 20-6.3.

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.

ATTEST:

JOANNE R. HERRON, Deputy Clerk

CURTIS T. CORSON, Jr., Mayor

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR A FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE **11th DAY OF OCTOBER, 2022**, AND A NOTICE WAS PUBLISHED FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING HELD ON THE **14th DAY OF NOVEMBER, 2022**, DURING WHICH TIME AN AMENDMENT TO THE ORDINANCE WAS APPROVED AND THE ORDINANCE, AS AMENDED, WAS TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE **28th DAY OF NOVEMBER, 2022 AT 7:00 P.M.** AT THE TOWNSHIP HALL PETERSBURG, NEW JERSEY, AT WHICH TIME SAID ORDINANCE WAS ADOPTED.

JOANNE R. HERRON, DEPUTY CLERK
TOWNSHIP OF UPPER

Legislative History:

Introduced: October 11, 2022

Publication: October 17, 2022

Newspaper(s): The Press of Atlantic City

Second Reading and Public Hearing: November 14, 2022

Approval of Amendment: November 14, 2022

Publication of Amendment: November 23, 2022

Second Public Hearing: November 28, 2022

Final Adoption: November 28, 2022

Final Publication Date: December 1, 2022

I certify that the foregoing Ordinance was finally adopted by the Township Committee of the Township of Upper on November 28, 2022 and notice of adoption was thereafter published pursuant to law in the Press of Atlantic City on December 1, 2022.

JOANNE R. HERRON, Deputy Clerk