

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

**ORDINANCE NO. 008-2024**

**AN ORDINANCE ADDING CHAPTER 13, SECTION 5 (VACATION OF PUBLIC STREET,  
HIGHWAY, RIGHT-OF-WAY, OR OTHER PUBLIC PLACE)  
TO THE CODE OF UPPER TOWNSHIP**

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**WHEREAS**, the Township Committee of the Township of Upper has determined that there is a need to establish procedures to be followed for requests to vacate a public street, highway, right-of-way, or other public place within the Township; and

**WHEREAS**, the requirements of N.J.S.A. 40:67-19 set forth general rules governing the vacating of public streets, highways, rights-of-way, or other public places by municipalities within the State, but the Township Committee of the Township of Upper wishes to set forth more detailed requirements in accordance with N.J.S.A. 40:67-19 so as to insure that the process of vacating a public street, highway, right-of-way, or other public place is accomplished in an orderly manner and with appropriate public notice and participation in the process by all persons who are potentially affected by the vacation; and

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

**SECTION 1.** Chapter 13 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 Section 13.5: VACATION OF PUBLIC STREET, HIGHWAY, RIGHT-OF-WAY, OR OTHER PUBLIC PLACE as follows:

**13.5 VACATION OF PUBLIC STREET, HIGHWAY, RIGHT-OF-WAY, OR OTHER PUBLIC PLACE.**

13.5.1 Application information and fee.

A. Any person who is desirous of applying to the Township of Upper for the vacation of any street, highway, right-of-way or other public place heretofore dedicated to the Township shall be required to complete a vacation application, on a form to be promulgated by the Township Clerk, and shall file the same with the Township Clerk, together with a fee in the amount of \$100, which shall be payable to the Township of Upper. The vacation application shall call for the following information:

- (1) The name, address, telephone number, and email address of the person applying for such vacation.
- (2) If such person is represented by an attorney, the name, address, telephone number, and email address of such attorney and/or the name, address and telephone number of any other person to be contacted on behalf of the applicant.
- (3) The name and a general description of the street, highway, right-of-way or other public place to be vacated.
- (4) If the applicant is a corporation, partnership or other entity, the name and address of each person holding an interest of 10% or more on the ownership of such corporation, partnership or other entity.
- (5) A list of the Block and Lot numbers of all property adjoining the area to be vacated, together with a list of the names and addresses of the assessed owners of such adjoining properties.
- (6) A narrative description of the current use of the area to be vacated.
- (7) A narrative description of the applicant's intended use of the area to be vacated.

(8) A description of any improvement on the area to be vacated, including but not limited to paving, gravel, utilities or structures.

B. The applicant shall furnish with the application a reproduction of the Tax Map, showing the area surrounding the area to be vacated, as well as all intersecting roads, adjoining parcels, the current zoning of all properties adjoining the area to be vacated, and, where application has been made for the vacation of any street, highway or other right-of-way, the reproduction shall show the entire length of such street, highway or right-of-way.

C. The applicant shall furnish with the application executed forms to be furnished by the Township, which shall indicate the consent of the owners of each property adjoining the area to be vacated. In the event consent cannot be obtained from any property owners, the applicant shall file a written statement indicating what efforts the applicant has undertaken to obtain consent. The applicant shall furthermore provide written proof of certified mailing of the application to all owners of property adjoining the area to be vacated who have not completed a consent form.

D. The application shall be executed by the applicant or the applicant's representative, indicating that the information set forth or attached to the application is true and accurate.

#### 13.5.2 - Review of application.

Upon receipt of a completed application, the Township Clerk shall forward a copy of the same to the Planning Board. The Planning Board shall thereafter review such application and forward its written recommendation to the Township Committee.

#### 13.5.3 - Committee determination; notification.

Upon receipt of the Planning Board's recommendation, the matter shall be submitted to the Township Committee for final approval. The Township Clerk shall notify the applicant, in writing, of the Township Committee's determination as to action on the application.

#### 13.5.4 - Favorable determination; additional fees.

A. Where the applicant has been notified that the Township Committee has determined to act favorably on the application, the applicant shall forthwith provide the Township Clerk with a metes and bounds description of the area to be vacated, prepared and sealed by a surveyor, to be used for the preparation of the vacation Ordinance, together with such other information as may be requested by the Township Committee in its notification to the applicant.

B. Upon introduction of the vacation Ordinance, the Township clerk shall send by certified mail, return receipt requested, notice of the introduction and date and time of the public hearing of said Ordinance to all property owners within 200 feet of the proposed vacated area.

C. After passage of the Ordinance, a statement of the following costs shall be prepared by the Township Clerk and mailed certified to the applicant. The costs shall be due within 30 days after said mailing and shall be payable to the Township of Upper.

(1) A sum equal to the legal and engineering costs associated with the application review by the Planning Board and the preparation of the Ordinance enacted by the Township Committee in connection with the proposed vacation; and

(2) A sum equal to the costs of the certified mailing of the notice of the introduced Ordinance and date and time of public hearing to all property owners within 200 feet of the proposed vacation; and

(3) A sum equal to the costs of advertising the introduction and notice of final adoption of such Ordinance; and

(4) A sum equal to the recording costs of the ordinance enacted by the Township Committee; and

(5) A sum in the amount of \$100.00 for the revision to the official tax map of the Township of Upper.

#### 13.5.5 - Waiver of Requirements.

The Township Committee may, in its sole discretion, waive any requirement contained herein.

**SECTION 2: REPEALER:** All Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency only.

**SECTION 3: EFFECTIVE DATE:** This Ordinance shall take effect immediately upon final adoption and publication as required by law.

**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 **8<sup>TH</sup> DAY OF APRIL, 2024** AT THE TOWNSHIP HALL, 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 **13<sup>TH</sup> DAY OF MAY, 2024 AT 6:30 P.M.** AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY.

JOANNE R. HERRON, TOWNSHIP CLERK  
TOWNSHIP OF UPPER