

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
ORDINANCE**

**ORDINANCE NO. 010-2024**

**RE: AN ORDINANCE AMENDING CHAPTER 19 (LAND SUBDIVISION, SITE  
PLAN AND LAND USE ADMINISTRATION), AND CHAPTER 20 (ZONING)  
OF THE CODE OF UPPER TOWNSHIP**

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**WHEREAS**, the Township Committee of the Township of Upper desires to adopt an ordinance amending Chapters 19 and 20 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, with respect to performance guarantees and affordable housing set-aside requirements.

**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, Section 8 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be amended and supplemented by deleting Section 19-8.1 and replacing it with the following:

**19-8.1 Performance Guarantee Estimate.**

Before recording of final subdivision plats or as a condition of final site plan approval, the Planning Board or Board of Adjustment shall require the provision of performance and maintenance guarantees in accordance with the following standards. If improvements are installed prior to final subdivision approval, construction plans and specifications shall be approved by the Township Engineer prior to construction of the improvements.

a. A performance guarantee estimate shall be prepared by the developer's design engineer and forwarded to the Township Engineer for his approval. The performance guarantee estimate shall set forth the costs of all required improvements, which shall be limited to the following:

1. Those improvements required by an approval or developer's agreement, ordinance, or regulation to be dedicated to a public entity, and that have not yet been installed, which cost shall be determined by the municipal engineer, according to the method of calculation set forth in NJSA.40:55D-53.4, for the following improvements as shown on the approved plans or plat: streets, pavement, gutters, curbs, sidewalks, street lighting, street trees, surveyor's monuments, as shown on the final map and required by "the map filing law," NJSA 46:23-9.9 et seq. or NJSA 46:26B-1 through NJSA 46:26B-8, water mains, sanitary sewers, community septic systems, drainage structures, public improvements of open space, and any

grading necessitated by the preceding improvements. showing quantity, unit price and total amount;

2. Privately-owned perimeter buffer landscaping; and

3. For safety and stabilization guarantee, which shall be solely for the purpose of returning property that has been disturbed to a safe and stable condition or otherwise implementing measures to protect the public from access to an unsafe or unstable condition during the time periods and subject to the conditions set forth in NJSA 40:55D-53(d), as may be amended from time to time.

b. The Township Committee shall pass a resolution either approving or adjusting this performance guarantee estimate and a resolution to the developer for use in obtaining and posting a performance guarantee.

c. The approved performance guarantee estimate shall fix the requirements of maintenance of the utilities and improvements to be installed and completed by the developer. A surety company or cash bond meeting the requirements hereinabove set forth may be furnished to secure the maintenance guarantee, or the performance bond may be styled or amended to provide such security in reduced amount in keeping with the requirements.

**SECTION 2.** Chapter 20, Section 14 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be amended and supplemented by adding a new Section 20-14.5 as follows:

**20-14.5 Percentage of Mandatory Affordable Housing Set-Asides for All Residential Developments.**

- a. All new construction multifamily or single-family attached residential dwelling unit developments, whether for-sale or rental, within the borders of the Township of Upper proposing five (5) units or more, shall have a mandatory twenty percent (20%) set-aside for the purposes of providing affordable housing to very-low, low- and moderate-income households. This applies to all such developments, whether permitted by a zoning amendment, an approval or variance, including use variance, granted by the Township's Planning Board or Zoning Board, or through the adoption of a redevelopment plan or amended redevelopment plan in areas in need of redevelopment or rehabilitation. All affordable units must be constructed on-site provided, however, that the Township (Planning Board or Zoning Board) may, on a case-by-case basis, permit offsite affordable housing, at its sole discretion.
- b. The provisions herein shall not apply to residential expansion, additions, renovations, replacements, or any other type of residential development that does not result in a net increase in the number of dwelling units.
- c. This section shall not apply to developments containing four (4) or less dwelling units.
- d. All subdivision and site plan approvals of qualifying residential development shall be conditioned upon compliance with the provisions of this section.
- e. Where a development demolishes existing dwelling units and builds new dwelling units on the same site, the provisions of this section shall apply only if the total number of newly constructed dwelling units on the site is five (5) or more.

- f. For any such development where the Township's land use ordinances (e.g., zoning or an adopted redevelopment plan) already permitted residential development as of the effective date of the adoption of this ordinance, this requirement shall only apply if the Township permits an increase in approvable and developable gross residential density to beyond the permitted approvable and developable gross residential density as of the effective date of the adoption of this ordinance.
- g. Nothing in this subsection precludes the Township Planning Board or Zoning Board from imposing an affordable housing set-aside in a development not required to have a set-aside pursuant to this paragraph consistent with N.J.S.A. 52:27D-311(h) and other applicable law.
- h. The requirements in this subsection do not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a redevelopment plan or amended redevelopment plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project.
- i. The requirements in this subsection do not apply to any sites or specific overlay zones otherwise identified in the Township's adopted Fair Share Plan, for which density and set-aside standards shall be governed by the specific standards set forth therein.
- j. Notwithstanding any provision to the contrary, any density transfer requirement in any zone shall not apply to applications or projects including an affordable housing set aside of at least twenty (20%) percent.
- k. For any residential developments with more than four (4) dwelling units which results in a fractional share, the set-aside shall be rounded down to the next whole number and the developer shall pay into the affordable housing trust fund a fractional share of an affordable housing unit to be derived from calculations for payments in lieu of constructing affordable housing as published in N.J.A.C. 5:97-6.4 (c) 3 for the region in which the Township is located as may be amended from time to time multiplied by the fractional unit. Payment in lieu is only permitted for fractional shares.

**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:

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JOANNE HERRON, Township Clerk

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0 JAY NEWMAN, 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 10<sup>TH</sup> DAY OF JUNE, 2024 AT THE TOWNSHIP HALL AND 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 22<sup>ND</sup> DAY OF JULY, 2024 at 4:30 PM AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY AT WHICH TIME SAID ORDINANCE WAS ADOPTED.

BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.

JOANNE HERRON, TOWNSHIP CLERK  
TOWNSHIP OF UPPER

Legislative History:

Introduced: June 10, 2024

Publication: June 25, 2024

Newspaper(s): The Press of Atlantic City

Second Reading and Public Hearing: July 22, 2024

Final Adoption: July 22, 2024

Final Publication Date: July 27, 2024

I certify that the foregoing Ordinance was finally adopted by the Township Committee of the Township of Upper on July 22, 2024 and notice of adoption was thereafter published pursuant to law in the Press of Atlantic City on July 27, 2024.

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JOANNE R. HERRON, Township Clerk