

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
ORDINANCE**

ORDINANCE NO. 010-2025

**RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE
CHAPTER 13 (STREETS, SIDEWALKS AND SANITATION) OF THE
MUNICIPAL CODE 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 13 of the Revised General Ordinance of the Township of Upper, also known as the Code of Upper Township, shall be amended and supplemented as hereinafter provided:

Replace Chapter 13, Section 1 in its entirety with the following:

13-1. EXCAVATION AND CONSTRUCTION OF PUBLIC STREETS.

§ 13-1.1. Permit Required.

It shall be unlawful to dig, excavate, open or in any manner interfere with or disturb within the right-of-way of any municipal street within the Township of Upper for any purpose whatsoever without first securing a permit therefor as hereinafter provided.

§ 13-1.2. Application.

An application for permission to make an excavation between the curblines of any street under Township control shall be made to the Township Clerk. Such application shall be made on the required application form and shall be signed by the applicant and shall specify:

1. The applicant's name, address and phone number (local and out-of-town, if applicable);
2. The name, address and phone number of the person or firm who will be performing the work;
3. The length and width of such excavation;
4. The purpose for which the excavation is to be made;
5. The estimated time required to complete the work and restore the surface; and
6. Such other information as may be required by the Township Engineer.

§ 13-1.3. Fees/Escrow Requirement

- a. For all excavations within the paved areas under Township control, an administrative application fee of \$250.00 and construction inspection fee of \$1,000.00 shall be paid to the Clerk's Office prior to the issuance of the permit. If said paved area to be opened, disturbed, or undermined exceeds six (6) square yards, the additional yardage shall be classified as excess yardage, and an additional fee shall be due and payable by the applicant for all yardage in excess of six square yards at a rate of \$10 per square yard. The \$1,000.00 inspection fee will not be required to be paid if the Applicant is a utility company who is in compliance with Section 13-1.3(d), below.
- b. The applicant shall be responsible to provide all additional fees associated with multiple re-inspections that are necessary due to defective workmanship, lack of coordination, lack of work progression and any aspect of work that is unacceptable to the Township. The Township Engineer shall advise the applicant, in writing, of said additional fee, if warranted.
- c. If necessary, the area to be opened, disturbed or undermined by the applicant may be measured and determined by the Township Engineer and the Department of Public Works.

- d. All utility companies, including companies with existing franchise agreements with public utilities, shall be required to post one general inspection escrow in an amount to be determined by the Township Engineer based upon the application(s) submitted and the scope of work to be performed and/or an amount estimated and projected to be completed within one calendar year. The general escrow account shall be maintained by the Township and shall have a minimum balance maintained at all times, which shall not be less than 25% of the initial escrow amount required to be posted. All escrow fund balances shall be calculated by the Engineer.

§ 13-1.4. Performance and Maintenance Surety.

Before any permit is issued for any work in a public street, certain performance and maintenance sureties are to be posted with the Township Clerk's Office.

- a. Performance Surety.
 1. The performance surety shall be in the form of either a corporate guaranty bond or a surety guaranty bond issued by a company authorized to do business in the State of New Jersey, in a form satisfactory to the Township Clerk and in the penal sum of 100% of the full amount of the total estimated construction costs. A certified check drawn in favor of the Township of Upper for the same amount (100% of the total estimated construction costs) may be substituted for the performance surety. The estimated costs of the proposed work shall be based upon current market values, and said amount shall be prepared by the applicant and approved by the Township Engineer.
 2. In lieu of the above-mentioned performance surety, public utility companies or authorities may post an annual performance surety for \$20,000 or for an increased amount determined by the Township Engineer. The form of surety shall be approved by the Township Solicitor.
- b. Maintenance Surety.
 1. In addition to the posting of a performance surety, and as a condition to the release of same, the Township of Upper may, at their discretion, require the applicant to post a maintenance surety in the form of either a surety or guaranty bond issued by a company authorized to do business in the State of New Jersey, in a form satisfactory to the Township Solicitor and in the penal sum of 15% of the performance surety. A certified check, drawn in favor of the Township of Upper, for the same percentage (15% of the performance surety) may be substituted for the maintenance surety.
 2. Public utility companies or authorities posting and continually maintaining a performance surety in accordance with this section will not be required to post a separate maintenance surety.
- c. The applicant shall be responsible for all maintenance and repairs required at the site for a period of one year following completion of construction.

§ 13-1.5. Insurance; Indemnification and Hold Harmless Clause.

- a. All applicants and their agents and employees are required to be covered by a policy or policies of liability insurance. Said insurance shall provide coverage for public liability of at least \$100,000 per person per occurrence, \$300,000 per occurrence for bodily injury liability and at least \$50,000 per occurrence for property damage. A certificate of insurance that confirms the aforementioned coverage and naming the Township as an additional insured under the insurance policy shall be submitted to the Township Clerk at the time of submittal of the application.
- b. The applicant shall also agree, in writing, to indemnify and hold harmless the Township, its agents, servants, and employees from any damage or liability sustained by any person or property arising out of the negligence of the applicant or its agents, servants and employees during the course of any construction, excavation, restoration or refilling of any road or street under the control of the Township. The agreement shall require the applicant, in the event a claim is made against the Township, its agents, servants and employees arising out of the applicant's construction activities, to provide the Township with a legal defense and to pay any and all attorneys' fees or costs incurred by the Township in connection with any claims, suit or litigation.

§ 13-1.6. Issuance of Permit/Restrictions.

- a. The Township Engineer, upon receipt and examination of the application and the fee referred to hereinabove, shall authorize the Township Clerk to issue a permit for the excavation. The

permit shall specify that it is good for a ninety-day period from the date of issuance and shall further specify that such work shall be completed and restored within 48 hours after work is commenced or within a duration of time which in his opinion is reasonable and fair. The applicant shall notify the Township Engineer 24 hours before the commencement of any work so that appropriate inspection can be made where required.

- b. Whenever the Township resurfaces or reconstructs a street, no permit shall be issued for the opening of said street for a period of five years subsequent to the completion of the reconstruction and acceptance of such work by the Township, provided the property owners have been properly notified. The Township Clerk shall give written notice of any such proposed road opening by way of publication in a newspaper of general circulation within the Township no less than four months prior to commencing the Township's construction. The notice shall specify the anticipated start date for the construction and advise the property owner that any anticipated new facilities or repairs to their existing facilities must be completed prior to the start of the Township's project. Emergency situations are exempt from the five-year restriction.
- c. Between May 20 and September 10 work authorized pursuant to a permit issued under this chapter is restricted to Tuesday through Thursday within the Strathmere section of Upper Township. No scheduled work will be permitted between Friday and Monday during this time period, unless approved by the Engineer and the Township Committee.

§ 13-1.7. Restoration of Excavated Area.

- a. The applicant to whom such permit is issued shall, within the time limited in such permit, replace the earth and pavement in the excavation in such manner that the same shall be left in as good condition as it was before the excavation was commenced. Except as otherwise herein stated, all street work performed shall be in accordance with the applicable provisions of the New Jersey Department of Transportation (NJDOT) Standard Specifications for Road and Bridge Construction, including all amendments. Reference to articles or sections hereinafter refer to said NJDOT standard specifications.
 - 1. Trenches shall be backfilled in layers not to exceed six inches, and a vibratory tamper must be used. Compaction of 95% shall be required. Puddling of backfill is strictly prohibited. Should there be a deficiency, additional backfill material shall be supplied by the permittee. Whenever the Township Engineer shall deem the material unsatisfactory for backfill, the permittee shall provide acceptable material for the backfill.
 - 2. Roadways with a concrete base shall be restored using a combination of concrete and asphalt. The amount of concrete and asphalt to be used at each such excavation shall be as directed by the Township Engineer. See detail at end of chapter.
 - 3. Hot mix asphalt street restoration specifications.
 - (a) Gravel.
 - (1) Gravel shall be installed six inches thick. The gravel shall consist of compact soil aggregate, Type I-5. The use of a recycled asphalt product (RAP) or recycled concrete product may be substituted for the soil aggregate as long as it meets the NJDOT requirements for 1-5 materials. The Township Engineer may, at his discretion, submit samples of the soil aggregate for a gradation analysis, with the costs of said analysis borne by the applicant.
 - (b) Temporary restoration.
 - (1) Less than 100 square feet.
 - (i) For openings in asphalt roadways that are less than 100 square feet, the temporary restoration will consist of the installation of six inches of soil aggregate, Type I-5, to a level of six inches below the level of adjacent paved surfaces, a four-inch lift of hot mix asphalt base course, Mix I-2, followed by a two-inch lift of a bituminous concrete cold patch installed to grade.
 - (ii) These temporary surfaces shall be in place for a period of not less than 45 days to allow sufficient settlement to occur. Should settlement continue to occur, the Township Engineer shall determine when the work is acceptable for final restoration. The permittee shall be responsible for all maintenance deemed necessary by the Township Engineer until such time as the final restoration is completed.

- (2) Greater than 100 square feet.
 - (i) For openings in asphalt roadways that are greater than 100 square feet, the temporary restoration will consist of the installation of six inches of soil aggregate, Type I-5, to a level six inches below the level of the adjacent paved surfaces. A six-inch lift of hot mix asphalt, Mix I-2, shall then be installed to grade.
 - (ii) These temporary surfaces shall be left in place for a period of not less than 45 days to allow sufficient settlement to occur. Should settlement continue to occur, the Township Engineer shall determine when the work is acceptable for final restoration. The permittee shall be responsible for all maintenance deemed necessary by the Township Engineer until such time as the final restoration is completed.
- (c) Final Restoration.
 - (1) Less than 100 square feet.
 - (i) For openings less than 100 square feet, the final restoration will involve the removal of the top two inches of bituminous concrete cold patch. All edges shall be saw cut six inches beyond the actual trench width disturbed to produce a clean edge, and said edges shall be prepared with an asphaltic tack coat. A two-inch lift of hot mix asphalt surface course, Mix I-5, shall then be placed to a level even with the existing road grade.
 - (2) Greater than 100 square feet.
 - (i) For openings greater than 100 square feet, the trenches shall be milled to a depth of two inches to a distance of at least 12 inches beyond the actual trench width to produce a clean edge. All edges shall be coated with an asphaltic tack coat prior to a two-inch lift of hot mix asphalt surface course, Mix I-5, being placed to a level even with the existing road grade.
 - (d) No surface water shall be entrapped or ponded on the resurfaced areas. If any ponding occurs, the permittee will be responsible for performing whatever remedial action is required by the Township Engineer.
- 4. If more than two individual excavations would be required within a 100-foot length, a single trench must be used rather than the individual excavations. Final restoration will require a minimum of 1/2 width of the cartway. The trench shall be milled to a depth of two inches to a distance of at least 12 inches beyond the actual trench limit from the center line of the cartway to the curblineline. (See construction detail at end of section.) All edges shall be coated with an asphaltic tack coat prior to a two-inch lift of hot mix asphalt surface course, Mix I-5, being placed to a level even with the existing road grade.
- 5. In all cases where concrete has to be removed prior to any excavation, saw cut methods of removal shall be used. The restoration of the concrete shall be according to the following specifications:
 - (a) It shall be NJDOT Class B with a class design strength of 3,700 psi at 28 days.
 - (b) It shall have a minimum thickness of not less than four inches for sidewalk, six inches for driveway aprons and eight inches for gutter.
 - (c) It shall have a minimum width of not less than five feet for sidewalks.
 - (d) It shall have control joints not more than five feet for sidewalk, 10 feet for curb and gutter and expansion joints not more than 20 feet for sidewalk, curb and gutter.
- b. By the acceptance of such a permit, the applicant shall be deemed to have agreed to comply with the terms hereof, and upon his failure to do so to pay on demand any cost or expense that the Township may incur by reason of any shrinkage or settlement in the excavated area resulting from such excavation if such shrinkage or settlement shall occur within three months from the time the surface thereof is restored.

§ 13-1.5. Newly Paved Streets.

No permit shall be issued for any street opening which would disturb the pavement of any road having been constructed, reconstructed or overlaid until a period five years after the completion of said construction, reconstruction or overlay, except in the event of an emergency or hardship as

described below. The five- year period as articulated herein shall be calculated from December 31 of the year in which said road was constructed, reconstructed or overlaid and run five years thereafter.

- a. **Emergency Opening.** In the event that an entity shall be required to open a street and/or roadway as a result of an emergency, said emergency opening shall be reviewed by the Township Engineer, and if the said Township Engineer shall determine that no such emergency existed, then the entity so opening the street and/or roadway shall have a fine imposed upon such entity in the amount of \$5,000 for the first nonemergency opening, a fine of \$10,000 for a second nonemergency opening, and a fine of \$15,000 for a third nonemergency opening.
- b. **Hardship Condition.** In the event in which a property owner has a hardship condition which requires a street opening permit to be issued contrary to paragraph a above, the Township of Upper may grant relief if all of the following conditions are met:
 1. A letter addressed to the Township, c/o the Township Clerk, is received detailing the hardship and necessity of opening the street in lieu of waiting the prescribed period of time.
 2. Upon receipt of the letter, a public meeting date will be set for the Township Committee to take formal action.
 3. The property owner making request shall serve a notice to all property owners within 200 feet, by certified mail, return receipt requested, or by personal hand delivery, a minimum of 10 days prior to the public meeting.
 4. The property owner shall file a copy of the notice served to adjoining property owners with an affidavit of proof of delivery of notice with the Township Clerk at least three days prior to the public meeting. The notice must:
 - (a) Identify the property by street address and block and lot;
 - (b) State the reason for the hardship;
 - (c) State the type of size of the utility opening;
 - (d) Advise the adjoining property owners that if they have any objections, they must advise the Township Clerk, in writing, as to their objections to proposed street opening at least three days in advance of the public meeting;
 - (e) State the date and time of the public meeting; and
 - (f) Be approved by the Township Clerk prior to mailing
 5. The Township Committee shall consider the request at a public meeting and review all objections received in writing. Approval or denial of the request shall be through formal adoption of a resolution.
 6. A request based solely on economic savings shall not be considered and will be automatically denied.
 7. An additional fee of \$500 will be assessed for all street openings applications located within the asphalt pavement.
- c. **Roadway restoration.**
 1. In the event that an emergency or hardship requires the opening of a roadway that has been resurfaced by the Township during the previous five years, a full width, infrared restoration will be required. The restoration will consist of six-inch dense graded aggregate base course, and a six- inch hot mix asphalt base course, Mix I-2, brought to existing grade, within the excavated area. A full width, curb-to-curb milling two inches in depth to extend 20 feet beyond the limit of excavations will be performed after proper settlement in the trench area. The allowable time for the settlement shall be 45 days unless otherwise directed by the Township Engineer. The final surface course shall be a two-inch hot mix asphalt surface course, Mix I-5. See detail at end of chapter.
 2. Infrared restoration for repair of asphalt streets that are less than five years old and have been opened for utility work shall be utilized after the one-hundred-twenty-to one-hundred-eighty- day settlement period has elapsed.
 - (a) The following methods of construction shall apply:
 - (1) After completion of permanent restoration, the permittee shall provide

infrared restoration.

- (2) The area shall be swept clean of dirt, loose aggregate, or standing water.
 - (3) A chalk line shall be drawn 12 inches back from the seam of the original opening to use as a guide for raking.
 - (4) The infrared chamber shall be lowered over the repair, being sure to allow at least 12 inches to 18 inches of heated area beyond the perimeter of the original opening.
 - (5) To insure the proper heating time, the contractor shall check the surface temperature of the asphalt at seven minutes and every minute thereafter using an infrared thermometer so as not to allow the surface temperature to exceed 350° F. This is required since the ambient temperature, the color of the pavement, the size of the aggregate, and the moisture content influence the heating time.
 - (6) After the appropriate heating time (typically eight to 10 minutes), the asphalt surface will be softened to a depth of two to 2 1/2 inches.
 - (7) The infrared chamber shall be then removed from the heated area.
 - (8) The back side of a steel rake shall be used to neatly square off the repair, cutting 12 inches back from the original excavation along the chalk line.
 - (9) The area inside the repair shall be deeply scarified, taking special care to eliminate the original seam between the repair and the road.
 - (10) Approximately 1/2 to one inch of existing three-fourths-inch stones shall be raked out and removed from the patch.
 - (11) Maltenes rejuvenator shall be applied to the repair and surrounding heated asphalt surface. Emulsified maltenes recycling agent (rejuvenator) shall be applied in a ratio of 1:1 with water. This solution shall be well dispersed with a commercial-grade sprayer at a rate of eight ounces per square yard of heated area. This application area shall include both the area under repair as well as the area heated but left undisturbed around the perimeter of the repair. The application shall take place after the area has been scarified and just prior to the addition of new asphalt. The rejuvenator replaces the light oil component of asphalt, which has oxidized out over time.
 - (12) Hot mix asphalt I-5 (1/4 to 3/8 aggregate) shall be added to the area to bring it up to proper grade and luted smooth.
3. Trench restoration may be permitted under special circumstances and at the option of the Township of Upper and Township Engineer for openings having a minimum impact on the longevity and serviceability of the street in question. See detail at end of section.

§ 13-1.8. Clearance for Fire Equipment.

The excavation work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within 15 feet of fire hydrants. Passageways leading to fire escapes or fire-fighting equipment shall be kept free of debris, construction materials or other obstructions.

§ 13-1.9. Protection of Traffic.

- a. The permittee shall erect and maintain suitable barriers to confine the earth from trenches or other excavations so as to encroach upon highways as little as possible.
- b. The permittee shall construct and maintain adequate and safe crossings over excavations and across highways under improvement to vehicular and pedestrian traffic at all street intersections.
 1. Vehicular crossings shall be constructed and maintained of planks, timbers and blocking of adequate size to accommodate vehicular traffic safely. Decking shall be not less than four inches thick and shall be securely fastened together with heavy wire and staples.
 2. Pedestrian crossings shall consist of planking three inches thick, 12 inches wide and of adequate length, together with necessary blocking. The walk shall be not less than three feet in width and shall be provided with a railing, as required by the Township Engineer.

- c. Traffic control plans and devices shall conform to the latest edition of the Manual of Uniform Traffic Control Devices (MUTCD).

§ 13-1.10. Responsibility and Liability of the Township.

The Township shall not be responsible for any injury or damage to persons or property resulting from the negligence of the applicant or his servants, agents, or employees in making, grading, or filling any excavation permitted under the terms of this section. This section shall not be construed as imposing upon the Township or any official or employee any liability or responsibility for damages to any person injured in the performance of any excavation work for which an excavation permit is issued hereunder; nor shall the Township or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit or the approval of any excavation work.

§ 13-1.11. Violations and Penalties.

Any person, firm or corporation violating any of the provisions of this section shall, upon conviction thereof before the Municipal Judge of the Township's Municipal Court, be subject to a fine not exceeding \$1,000 or to imprisonment in the county jail for a period not exceeding 90 days, or both. Penalties for violating the emergency road opening provisions are contained above in subsection 13-1.5a.

§ 13-1.12. Exemptions.

Street openings and excavations performed by the Township of Upper or agents of the Township of Upper are exempt from the provisions of this chapter.

Replace Chapter 13, Section 2 in its entirety with the following:

§ 13-2. SIDEWALK AND CURB CONSTRUCTION AND MAINTENANCE.

§ 13-2.1. Premises Owner to Maintain Sidewalks and Curbs.

The owner of any premises in the Township of Upper abutting a sidewalk or curb shall, at his/her own expense, keep and maintain such sidewalk or curb in good condition and state of repair and shall not permit the same to fall into a state of disrepair or to become unfit or unsafe to walk upon. In the event that such sidewalk or curb or any part thereof becomes unsafe or hazardous to the public or unfit to walk upon, the abutting owner, at his own cost and expense, shall forthwith reconstruct or repair, as the facts may require, such sidewalk or curb or that part thereof which requires reconstruction or repair. This section shall not apply to situations where, in an approved subdivision, a developer is required to install curbs and sidewalks and where responsibilities for construction and maintenance are more particularly delineated in the subdivision ordinance of the Township. Additionally, the owner of any premises in the Township of Upper abutting the sidewalk or curb shall, at his or her own expense, maintain such sidewalk or curb in a clean condition, free of debris, and shall also maintain, in a clean condition, that portion of the gutter/roadway abutting the sidewalk extending from the edge of the curblines to a distance of 18 inches into the street.

§ 13-2.2. Notice of Condition to Owner.

The Township of Upper Engineer, Construction Official, or Code Enforcement Officers or their designees are authorized to issue notices of violations upon a determination that a sidewalk or curb is in an unsafe or hazardous condition as required herein. Whenever any lands are occupied and the owner cannot be found within the Township, said notice may be mailed, postage prepaid, to his or her post office address as it is ascertained from the latest tax rolls of the Township of Upper. In a case where an owner is a nonresident of the municipality or his or her post office address cannot be ascertained, then a notice may be inserted for four weeks, once a week in the official newspaper of the Township of Upper.

§ 13-2.3. Permit Required; Fee.

- a. An application for the excavation, repair, replacement, or reconstruction of an existing sidewalk, curb, or driveway shall be made to the Township Construction Official. Such application shall be made on the required application form and shall be signed by the applicant and shall specify:
 - 1. The applicant's name, address and phone number (local and out-of-town, if applicable);
 - 2. The name, address and phone number of the person or firm who will be performing the work;

3. The length and width of such excavation;
 4. The purpose for which the excavation is to be made;
 5. The estimated time required to complete the work and restore the surface; and
 6. Such other information as may be required by the Township Engineer.
- b. For major excavations of more than forty (40) linear feet of curbing or two hundred (200) square feet of sidewalk, an administrative application fee of \$250.00 and construction inspection fee of \$1,000.00 shall be paid to the Construction Office prior to the issuance of the permit .
 - c. For minor excavations of less than forty (40) linear feet of curbing or two hundred (200) square feet of sidewalk, an administrative application fee of \$50 shall be paid to the Township Construction Office prior to the issuance of the permit.
 - d. The applicant shall be responsible to provide all additional fees associated with multiple re-inspections that are necessary due to defective workmanship, lack of coordination, lack of work progression and any aspect of work that is unacceptable to the Township. The Township Engineer shall advise the applicant, in writing, of said additional fee, if warranted.
 - e. If necessary, the area to be opened, disturbed or undermined by the applicant may be measured and determined by the Township Engineer and the Department of Public Works.

§ 13-2.4. Standards and Specifications.

All sidewalks, curbs and driveways, including repairs, replacement and reconstruction thereof, shall be constructed to the strict line and grade as established by the Township Engineer and of the materials as specified by this section.

- a. Concrete Curbs.
 1. Concrete curbs shall be 16 inches in depth having a top width of six inches and a bottom width of eight inches. The top and face shall be troweled to produce a smooth finish. The face shall be troweled to a depth of nine inches. Mechanical vibration of the concrete will be permitted to produce a smooth curb face. Where vibrating produces the desired uniform smooth surface, troweling will not be required.
 2. Expansion joints shall be provided at twenty-foot intervals along the curb and shall consist of one-half inch pre-molded compressible material.
- b. Concrete Sidewalks.
 1. Concrete sidewalks shall be four inches in depth having a width of four or five feet which shall be determined by the width of existing sidewalk on any particular street. The sidewalk shall be finished with a wooden float to provide a uniform surface.
 2. Grooves shall be formed at intervals, equal to the width of the sidewalk and expansion joints provided at twenty-foot intervals and shall consist of one-half inch pre-molded compressible material.
 3. Sidewalks shall be located within the sidewalk area in accordance with the established practice on any particular street and shall slope upward from the established curb grade toward the property line at the rate of one-quarter inch per foot.
- c. Materials. The following shall govern the type of materials to be used:
 1. Mix. Concrete shall consist of one part portland cement, two parts of sand and four parts of coarse aggregate using only sufficient water to make a workable mix.
 2. Cement. Cement shall be approved portland cement.
 3. Sand. Sand shall be clean washed concrete sand.
 4. Coarse aggregate. The coarse aggregate shall be five-eighths inch or three-fourths inch broken stone or washed gravel and shall be in practical compliance with the requirements for five- eighths inch or three-fourths inch as indicated in the 2019 NJDOT Standard Specification for Road and Bridge Construction, including updated revisions.
- d. Whenever a sidewalk corner curb is repaired or replaced, the repair or replacement shall comply with the requirements of the Americans with Disabilities Act (ADA), requiring a ramp leading from the sidewalk to the road, through the curb, so as to provide a smooth unrestricted passageway between the road and the sidewalk. In connection with the repair or replacement of

any other curbs, the same compliance with ADA may be required, depending upon the availability of other ramps in the general vicinity. The owner and/or contractor doing the work must apply at the Township Construction Office for a permit and shall be advised of the applicability of the ADA requirements at that time. Specifications therefor are on file in the Township Construction office.

§ 13-2.5. Liability of Contiguous Landowner and Notice to Repair.

- a. The responsibility of maintaining the existing sidewalk, curb, and private driveway, all lying within the bed of a public street, is upon the contiguous property owner, who should maintain said areas so that they do not become dangerous to the public. Said owner should replace, reconstruct, or repair same as needed. The responsibility of said owner does not depend upon being notified to make a repair by the Township. However, in the event the Township of Upper should determine that any existing sidewalk, curb or driveway, which is located within the public right-of-way, is in such condition that it has become dangerous to the public, or is in such condition that it should be replaced, reconstructed, or repaired, or does not conform to the provisions of this chapter, the Township of Upper Engineer, Construction Official, or Code Enforcement Officers or their designee is authorized to give notice to the property owner to replace, repair or reconstruct the same within 30 days from the service of such notice.
- b. Whenever any lot, tract or parcel of land is located in an area where public convenience and necessity require the construction of a curb or sidewalk, or both, the Construction Official is hereby authorized and empowered to give notice to the property owner to cause the same to be constructed within 30 days from the service of the notice. Such areas are intended to mean those where the general public would be likely to pass or repass with reasonable frequency; those located where the lands abutting have improvements erected thereon, and lands located in a vicinity which has been developed by the construction of improvements on other lands.

§ 13-2.6. Failure to Comply; Work to Be Done by the Township.

In the event the owner does not make the replacement, repair or reconstruction as required by the notice and the provisions of subsection 13-2.5 hereof, the Township may make the necessary replacement, repair or reconstruction, and the cost of the work shall be assessed against the lands of the owner in the manner prescribed by law. Additionally, whenever directed to act by the Township Committee specific instances, the Construction Official shall utilize the provisions of N.J.S.A. 40:65, by giving notice to the owner that unless the owner completes the particular replacement, repair or reconstruction of a sidewalk, curb or driveway within 30 days after service of the notice, the Township will make the improvement at the sole expense of the owner. The cost of the work shall be assessed against the real estate of the owner in the manner prescribed by law. All applicable provisions of N.J.S.A. 40:65 shall be followed.

§ 13-2.7. Enforcement; Appeals; Penalties.

- a. The Construction Official is hereby empowered to enforce this section and several provisions thereof. The Construction Official is hereby further empowered to enforce the discretionary powers which are considered necessary in order to make the provisions hereof properly effective and useful for the benefit of the public.
- b. In order to prevent injustice, the possible abuse of discretion and to correct the possibility of error in judgment, any owner who receives a notice from the Township Construction Official has the right to appeal to the Township Committee by filing a notice of appeal with the Township Clerk within the thirty-day period heretofore mentioned. Upon receipt of any such notice of appeal, the Township Committee will hear the appeal at its next regular meeting, at which time the owner and any other persons appearing in the matter will be heard or will be afforded the opportunity to be heard. After the hearing, the Township Committee will consider the matter, reach a decision, and notify the owner thereof.
- c. Any person, firm or corporation violating any of the provisions of this section shall, upon conviction thereof before the Municipal Judge of the Township's Municipal Court, be subject to a fine not exceeding \$1,000 or to imprisonment in the county jail for a period not exceeding 90 days, or both. Each day's persistence in the things or acts prohibited by this section shall be and constitute a separate and distinct offense subject to any and all penalties prescribed in this section.

Replace Chapter 13, Section 4 in its entirety with the following:

§ 13-4. MAP OF UTILITIES.

§ 13-4.1. Map Required.

Every person owning, using or controlling pipes, conduits, ducts or other facilities under the surface of any street used for the purpose of supplying gas, electricity, communications, water or steam to or from the Township or its inhabitants, or for any other purpose, shall file with the Township Construction Office accurate information showing the location, size and description of all installations.

§ 13-4.2. Changes.

On or before January 31st of each year, all persons subject to this section shall file with the Township Construction Office additional information showing all installations made or abandoned during the previous year. If no changes have been made to the installations during the previous year, a written statement to that effect may be filed with the Township Construction Office within the period of time specified above. Any person subject to this section may, at his option, elect to provide additional information throughout the year as it is available.

Replace Chapter 13, Section 5 in its entirety with the following:

§ 13-5. STREET VACATIONS.

§ 13-5.1. Request for Street Vacation.

Any person seeking the vacation of a street pursuant to N.J.S.A. 40:67-1 et seq. shall make such request to the Township Clerk, in writing. Said request must include an identification of the applicant's property, and a depiction of the premises to be vacated, and a list of all owners of adjacent property, with current mailing addresses. Consent from all affected adjacent landowner(s) shall be submitted with said request. The consent shall include the adjacent landowner(s) street address and block and lot number.

§ 13-5.2. Initial Review.

- a. Upon receipt of the request and consents, the Township Clerk shall forward a copy of the request and consents to the Administrator for review. He/she shall also forward a copy of the request to the following for investigation and submission of reports:
 1. Township Solicitor;
 2. Township Engineer;
 3. Superintendent of Public Works;
 4. Zoning Officer;
 5. Tax Assessor.
- b. The aforementioned group shall determine whether the roadway is needed for any future Township land development, municipal facilities such as storm drainage, or recreational facilities; is under Green Acres jurisdiction or was ever used for municipal recreational purposes in the past; or whether the utility companies have need for the right-of-way.

§ 13-5.3. Application Fees.

The applicant shall pay a minimum fee of \$50.00 to cover the initial costs incurred by the Township of Upper in processing the application. In addition, the applicant shall reimburse the Township for the legal and engineering costs incurred by the Township in preparation and review of the vacation ordinance. Said sums due and owing shall be certified to the Township Clerk by the Township Solicitor and Township Engineer. The Township Clerk shall further certify the costs of public advertising and recording fees. The total amount due and owing for reimbursement for the legal, engineering, publication, certified mailing costs, and recording fees shall be paid by the applicant prior to the adoption of the vacation ordinance.

§ 13-5.4. Preparation and Submission of Documentation.

Prior to preparation of the vacation ordinance, the applicant shall prepare or have prepared on its behalf, the following:

- a. Survey maps and metes and bounds descriptions of the area to be vacated and the method of division of the vacated property subsequent to adoption of the ordinance. The survey map shall indicate all existing encumbrances, drainage facilities, utility locations and any other topographical feature pertinent to the area to be vacated. The maps shall depict the portions of the street or right-of-way to be conveyed to each abutting property owner having interest in the title to the centerline of the street to be vacated, unless the title searches disclose that

the interest in title is otherwise. In that event, it shall show to the appropriate line required, based upon the chain of title, of the street to be vacated. The description for all the vacated streets shall be prepared by metes and bounds for the vacation ordinance. The ending statement of the vacation description shall include the following wording:

"The above description is and is intended to be all of that portion as shown on the Official Tax Map of the Township of Upper. It is further intended that all rights of the public which may exist are to be vacated within the portion of the right-of-way described, reserving there out and therefrom all rights and privileges now possessed by public and private utilities to maintain, repair and replace their existing facilities in, adjacent to, over or under the roadway being vacated, including but not limited to, gas, water, cable, telephone, electric, sanitary sewers, storm sewers and any appurtenances and rights of ingress and egress relating thereto. The description has been prepared in accordance with the map entitled _____."

§ 13-5.5. Adoption Process.

Upon certification by the Township Solicitor and Township Engineer that all necessary documents are in order, the Township Solicitor shall prepare a vacation ordinance for discussion and introduction by the Township Committee. The Township Committee shall adhere to the procedures set forth in N.J.S.A. 40:67-1 et seq. and N.J.S.A. 40:49-2 with regard to introduction, publication, public hearing and adoption of said ordinance. In addition, the Township Clerk, after introduction of said ordinance, shall notify by certified mail, return receipt requested, all adjacent and adjoining property owners within 200 feet of the proposed road vacation area, of the introduction of the ordinance and advise them of the date of public hearing at which they may attend and make their comments known. Upon adoption of the ordinance, the Township Clerk shall record same with the County Clerk of the County of Cape May as required by law. Upon certification from the County Clerk that the ordinance has been recorded, the necessary tax records shall be revised by the Township Tax Assessor and the vacation indicated on the Tax Map of the Township of Upper.

§ 13-5.6. Additional Provisions.

The obligation of the Township with regard to the adopted vacation ordinance shall cease with its recording of same with the County Clerk and updating of its tax map. In the event that the applicant or the adjacent property owners who may receive an interest in the vacated area wish to have a deed prepared evidencing the property vacated, such deed shall be the obligation of the owner acquiring title to said portion of the roadbed. In the event that any such deed is prepared, it shall describe, by metes and bounds, the original property, including within the description that portion of the street being incorporated with the owner's original land holdings. The deed shall contain a reference to the new tax lot number created and assigned to the combined lot and the road vacation area as determined by the Township Tax Assessor. It shall also include a reference to the survey map upon which the deed description is based and a reference to the ordinance number by which the portion of the street was vacated. The deed shall be transferred by the owner to themselves.

Replace Chapter 13, Section 6 in its entirety with the following:

§ 13-6. SPEED HUMPS

§ 13-6.1. Purpose.

The purpose of this section is to provide a transparent and defensible mechanism, through guidance and objectivity, pertaining to the evaluation and selection of roadways within the Township for the installation of speed humps. Prior to the approval and installation of speed humps, the Township shall authorize a traffic study of the impacted area. Where appropriate, other temporary traffic calming measures should be considered and/or implemented prior to the installation of speed humps.

§ 13-6.2. Definitions.

85TH PERCENTILE SPEED – The speed at or below which 85% of the traffic is moving. The 85th percentile speed is used as one of the criteria to determine if a street shall qualify for the installation of speed humps.

COMMISSIONER – The Commissioner of the New Jersey Department of Transportation.

RESIDENTIAL STREET – A street of which the primary function is to provide initial access to the collector and arterial roadways. These facilities are characterized by short trips, low speeds, and small traffic volumes.

SPEED HUMP – A raised area of pavement or other materials created to control vehicular speeds in conformity with New Jersey Law, Title 39 of the Revised Statutes and New Jersey Department

of Transportation and the design specifications therein, including the engineering specifications for maximum height, profile, and minimum and/or maximum length. Speed humps include speed tables, cushions, and lumps.

TRAFFIC/SPEED STUDY – A twenty-four (24) hour survey of traffic speeds and volumes conducted by the use of a magnetic sensor(s) or air pressure hose(s) to determine the percentage of traffic that exceeds the speed limit.

§ 13-6.3. Requests for Installation and Eligibility Requirements.

- a. Requests for speed hump installations shall be made in writing and shall be directed to the attention of the Township Administrator. The Township Administrator shall provide a copy of the request to the appropriate internal departments, including the Township Engineer. A request for installation of a speed hump shall only qualify for consideration if the following criteria are met:
 1. The roadway must be a Township-owned and Township-maintained street;
 1. The initial request must originate from a resident(s) living on the street upon which the installation is requested;
 2. The roadway must have a posted speed limit of thirty (30) miles an hour or less and must be traversed by less than three thousand (3,000) vehicles per day; or the street must be located within five hundred (500') feet of a school or any property used for school purposes subject to the provisions of Section 3 of P.L. 2004, c. 107 (N.J.S.A. 39:4-8.11);
 3. The street must be in reasonably good condition, as determined by the Township Engineer in their sole discretion, or be incorporated as part of a roadway resurfacing project;
 4. Speed humps may be located on streets that contain horizontal curves, but the speed hump, itself, must not be located within the horizontal curve. Safe stopping sight distance must always be provided;
 5. Speed humps may not be located on a street with a vertical grade with more than an eight (8%) percent change on the immediate approaches where the visibility of the speed hump may be restricted;
 6. Special consideration must be given to streets without curbing and gutter in order to accommodate drainage and to prevent vehicular runarounds; and
 7. The Township shall provide appropriate notice to any municipality or county that may be impacted by the installation of a speed hump.
- b. A resident petition must be included with the request for installation of a speed hump and such petition shall describe the conditions sought to be remediated through the installation of a speed hump. The petition must be signed by at least sixty-seven (67%) percent of the property owners living on the street in which the speed hump is requested to be installed.
- c. After verification of the petition and the request made for installation of a speed hump, the Township Engineer's office shall be notified and requested to conduct a traffic/speed study in order to make a determination on the street's eligibility for installation of a speed hump.
- d. In the event that the street is determined to be ineligible for the installation of a speed hump, the applicant(s) will be notified by the Township and/or its agents, in writing, pertaining to such determination.
- e. Any determination through which a request for installation of a speed hump is denied may be appealed, in writing, to the Township Administrator and must include reasons for the appeal. Upon receipt of such appeal, the Township Administrator shall present the appeal to the Township Committee for a determination as to whether the determination of the City Engineer shall be upheld or shall be overturned based on the information contained in the filed appeal.
- f. In the event that the street is determined to be eligible for the installation of a speed hump, the street will be placed on a list of streets eligible for such installation, which list shall be maintained by the Township.

§ 13-6.4. Evaluation of Requests for Installation of Speed Humps.

All requests for installation of speed humps which meet the initial eligibility requirements, as set forth in Chapter 13-6.3, above, will be formally evaluated by the Township as set forth below:

2. After a determination of the impact of installation of a speed hump, as determined by the Township Engineer, the applicant shall provide notice to all residents living along the street on which the speed hump is proposed informing all residents of their right to object to the installation of a speed hump by providing written notice of any such objection to the attention of the Municipal Clerk within ten (10) days of the receipt of such notice. All required notices shall be sent by certified mail, return receipt requested. Proof of mailing shall be required to be provided by the applicant to the Municipal Clerk with receipts from each resident required to receive notice and/or proof of mailing and failure of a resident to accept notice.
 3. A traffic/speed study shall indicate that the 85th percentile speed is at least five (5) or more miles per hour over the posted speed limit for the street.
 4. The street segment must be a minimum of seven hundred fifty (750') feet in length between traffic controls, four-way intersections, and/or curves with less than a two hundred fifty (250') foot radius; or the street must be comprised of contiguous segments with no stop controls between the segments and all side streets entering at four-way intersections are stop controlled. The total length of the contiguous segments must be at least seven hundred fifty (750') feet in length.
- a. Pursuant to the provisions of Section 3 of P.L. 2004, c. 107 (N.J.S.A. 39:4-8.11):
 1. Prior to a municipality or county constructing a speed hump which places any impact on roadways in an adjoining municipality or county, the governing board or body of the municipality or county shall provide appropriate notice to the adjourning municipality or county;
 2. Prior to a municipality or county constructing a speed hump which places any impact on a state roadway, the county or municipality shall obtain the approval of the Commissioner.
 - b. The installation of a speed hump on a street must be approved by the Director of Public Works, the applicable Fire Department Chief for the fire company that is tasked with servicing the street upon which a speed hump installation is proposed, and the New Jersey State Police. The written approval of each individual and/or entity referenced above must be received and placed on file with the Township Clerk's Office prior to any speed hump being installed within the Township.
 - c. All applications that have met the eligibility requirements and have received approval from the individuals and/or entities referenced in subsection e, above, shall be submitted to the Township Engineer's Office for review and approval.
 - d. The Township Engineer's Office shall make the final determination as to whether the requested speed hump is appropriate for installation at the requested location based on the criteria set forth herein. If a speed hump is approved by the Township Engineer's Office, it shall thereafter be presented to the Township Committee for final approval. If approved by the Township Committee, the approved speed hump installation shall be passed to the prioritization phase.

§ 13-6.5. Prioritization of Speed Humps.

- a. The installation of speed humps will be prioritized on a Township-wide basis. Speed hump installations shall be prioritized based upon the following factors, which shall be formally evaluated by the Township Administrator:
 1. Date of approved application;
 2. Comparison of the operating speed or the 85th percentile speed to the statutory limit;
 3. Daily traffic count average;
 4. Accident history; and
 5. Proximity to schools, parks, playgrounds, or other facilities with large volumes of children, bicycles, or pedestrian use.
- b. Lower prioritized, but less costly speed hump installations, may be implemented ahead of higher priority speed hump installations if funding levels do not allow for the installation of the higher priority speed hump(s) at any given time.

§ 13-6.6. Design, Construction, and Location of Speed Humps.

- a. Speed hump layout and design shall be determined by the Township Engineer. All construction shall conform to the New Jersey Department of Transportation technical standards in place at the time of installation.
- b. The street upon which a speed hump is to be installed must have adequate sight distance to safely accommodate the hump as determined by the Township Engineer's Office.
- c. Speed humps near drainage inlets should be placed just downstream of the inlet. Drainage consideration can affect speed hump location and/or spacing.
- d. Speed humps shall not be located within ten (10') feet from the nearest driveway.
- e. All speed humps constructed shall conform in design and construction to the technical standards established by the New Jersey Department of Transportation.
- f. Advance warning, including, but not limited to, the erection of appropriate signage giving notice of the presence of a speed hump before the first speed hump in a series of speed humps and pavement markers shall be placed at the location of the first speed hump. The signage and pavement markings for a speed hump shall conform to the current standards prescribed in the Manual of Uniform Traffic Control Devices for Streets and Highways, as adopted by the Commission of Transportation.
- g. The speed hump shall be located at minimum of two hundred fifty (250') feet from the nearest intersecting street.
- h. The distance between speed humps shall be at the discretion of the Township Engineer and within the requirements of the New Jersey Department of Transportation.
- i. All signage and pavement markings shall conform to the Manual of Uniform Traffic Control Devices for Streets and Highways.

§ 13-6.7. Removal of Speed Humps.

- a. The process for requests for the removal of speed humps will follow the same procedure that was utilized for installation of speed humps, as set forth in this Chapter. Absent any design faults or unforeseen issues that result in unsafe conditions, the cost of any speed hump removal shall be borne by the property owners requesting such removal, which amount shall be paid to the Township prior to the removal taking place.
- b. In the case of any unforeseen circumstance or changes in circumstance that no longer require the continued use of a speed hump, the Township reserve the right to remove any such speed humps at any time and without notice to any affected parties.

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:

JOANNE R. HERRON, Township Clerk

CURTIS T. CORSON, JR., 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 10TH DAY OF NOVEMBER, 2025 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 8TH DAY OF DECEMBER, 2025 AT 5:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY, AT WHICH TIME SAID ORDINANCE WAS ADOPTED.

JOANNE R. HERRON, TOWNSHIP CLERK
TOWNSHIP OF UPPER

Legislative History:

Introduced: November 10, 2025

Publication: November 18, 2025

Newspaper(s): The Press of Atlantic City

Second Reading and Public Hearing: December 8, 2025

Final Adoption: December 8, 2025

Final Publication Date: December 13, 2025

I certify that the foregoing Ordinance was finally adopted by the Township Committee of the Township of Upper on December 8, 2025 and notice of adoption was thereafter published pursuant to law in the Press of Atlantic City on December 13, 2025.

JOANNE R. HERRON, Township Clerk