

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

ORDINANCE NO. 015-2026

**RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE
CHAPTER XX (ZONING) OF THE CODE OF UPPER TOWNSHIP**

WHEREAS, the Township Committee of the Township of Upper have become aware of the emergence of large-scale computer processing facilities that have become commonly known as “data centers” that are utilized for purposes of cloud computing, AI generation, machine learning, and hyperscale data processing and storage, along with other similar and associated uses; and

WHEREAS, the Township Committee of the Township of Upper has become aware of the operational impacts of data centers throughout the State of New Jersey and elsewhere that have negatively impacted the general welfare of those populations located both within and outside of the communities in which the data centers are operating through unwarranted and excessive noise, through the consumption of significant resources, specifically massive amounts of energy required to be utilized by data centers for powering rooms of interconnected computer servers, as well as water for cooling systems to cool the excessive heat that is generated by the computer servers contained therein; and

WHEREAS, it is unquestionable that data centers often require significant land resources in order to house their facilities; and

WHEREAS, the beneficial impacts of data centers are limited and present little opportunity for local employment within the Township of Upper relative to the size of the facilities that are to be constructed and the likely detriment that the creation and operation of such data centers would bring to the residents and visitors of the Township of Upper; and

WHEREAS, in the interest of protecting the health, safety, and general welfare of the residents and visitors of the Township of Upper, and in order to protect the limited natural resources available to the residents, visitors, and businesses of the Township of Upper, the Township of Upper seeks to prohibit data centers as a permitted principal use within the Township of Upper; and

WHEREAS, the Township of Upper is authorized by the New Jersey Municipal Land Use Law, codified at N.J.S.A. 40:55D-1, et seq., to enact land use regulations that place restrictions on specific land uses when such regulations are enacted in the interest of protecting

and promoting the public health, safety, and welfare of the community and are consistent with the purposes of zoning that are specifically enumerated in Section 2 of the New Jersey Municipal Land Use Law; and

WHEREAS, a prohibition on data centers as a permitted use within the Township of Upper is consistent with the purposes of zoning in order to protect the health, safety, and general welfare of the Township of Upper and to conserve natural resources and the environment.

NOW, THEREFORE, 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 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:

20-1.5 – Prohibited Uses shall be revised to read as follows:

- a. All uses not expressly permitted in this chapter are prohibited.
- b. The following uses are expressly prohibited in all zones and zoning districts in the Township.
 1. Adult activities, including but not limited to uses commonly referred to as adult book stores, adult movies, adult entertainment and massage parlors.
 2. Drug paraphernalia shop, commonly referred to as "head" shops, except persons registered with the State Health Commissioner or referred to in N.J.S.A. 24:21-10, and also exempting any Class 5 Cannabis Retail licensee lawfully operating a cannabis retail sales facility within the Township of Upper.
 3. Junk yards and automobile salvage.
 4. Prohibited uses shall also include the following classes of cannabis licenses created pursuant to the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, set forth at N.J.S.A. 24:6I-1 et seq.:
 - (a) Class 1 Cannabis Cultivation Licenses;
 - (b) Class 2 Cannabis Manufacturing Licenses;
 - (c) Class 3 Cannabis Wholesaler Licenses;
 - (d) Class 4 Cannabis Distributor Licenses; and
 - (e) Class 6 Cannabis Delivery Licenses for deliveries not conducted by a licensed Class 5 Cannabis Retail Sales licensee.

Nothing contained herein shall prohibit the delivery of cannabis items and related supplies by an approved and licensed cannabis delivery service.

5. Data Centers.

20-2 – Definitions shall be amended to add the following definitions to the body of the existing section:

ACCESSORY SERVER ROOM – Shall mean a room or enclosed area located within a principal building that is devoted to the housing and operation of computer services, networking equipment, telecommunications equipment, data storage devices, backup power equipment, and related hardware used solely to support the operations of the principal use located on the same property.

DATA CENTER – Shall mean a building or group of buildings, regardless of size, primarily devoted to the housing, operation, maintenance, cooling, security, and management of computer servers or computer networking equipment, for the purpose of computing, networking, storage, hosting, processing, transmitting, or managing digital data or computing services, including, but not limited to, the generation of artificial intelligence (“AI”), cloud computing, machine learning, crypto-currency mining, colocation services, or large scale digital data storage and data processing, or other similar purposes. This definition shall expressly exclude an Accessory Service Room, as such term is defined herein.

20-1.5 – Accessory Buildings shall be revised to read as follows:

- a. Accessory Buildings as Part of Principal Buildings. Any accessory building attached to a principal building shall be considered part of the principal building, and the total structure shall adhere to the yard requirements for the principal building regardless of the technique of connecting the principal and accessory buildings.
- b. Distance Between Adjacent Buildings. The minimum distance between an accessory building and any other building(s) on the same lot shall be as prescribed in § 20-4 except that no poultry or livestock shelter shall be erected nearer than 50 feet to any dwelling on the same lot.
- c. Height of Accessory Buildings. The height of accessory buildings shall be 20 feet unless otherwise prescribed in § 20-4.
- d. Location. An accessory building may be erected in the side and rear yard areas only and shall be set back from the side and rear lot lines as prescribed in § 20-4; except for the following:
 - 1. If the structure is 100 square feet or less and 10 feet in height or less then the structure may be located within five feet of a side or rear yard line except for:
 - (a) That if erected on a corner lot, the accessory building shall be set back from the side street to comply with the setback line applying to the principal building for that side street;
 - (b) That if erected on a lot whereon front yard does not provide actual legal access, e.g., Garden State Parkway, the accessory building shall be set back from said street to comply with the setback line applying to the accessory structure;
 - 2. No poultry or livestock shelter shall be erected nearer than 50 feet to any lot lines if permitted in the zone.
- e. Storage container. Shall be permitted on a lot by permit from the Zoning Official for a period up to 45 days during any 365-day period.
- f. Tractor trailers shall be prohibited. Existing tractor trailers must show conformance

with Subsection 20-5.6.

- g. Size of Accessory Structure. No accessory structure on a residentially used lot shall be larger in area or volume than the principal structure.
- h. Accessory Server Rooms, as defined herein, shall be permitted in all non-residential zoning districts of the Township, subject to the following limitations:
 - 1. Processing and/or storage of data shall bear a direct relationship to the operations of the principal use of the property and shall be used solely to support the business or operation that makes up the principal use of the property.
 - 2. The Accessory Server Room shall not be operated for the primary purpose of providing cloud computing, colocation services, digital hosting, artificial intelligence processing, cryptocurrency mining, commercial data storage, or similar services to third parties.
 - 3. Space devoted to an Accessory Server Room shall be limited to no greater than ten (10%) percent of the gross floor area of the building or structure in which it is located, or two thousand (2,000) square feet, whichever is less.

SECTION 2: REPEALER: All Ordinances or parts of Ordinances which are in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency or conflict only.

SECTION 3: 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 4: EFFECTIVE DATE: This Ordinance shall take effect upon final adoption and publication as required by law.

SECTION 5: CODIFICATION: This Ordinance shall be codified in the Upper Township Code in 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 10th DAY OF AUGUST, 2026, 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 HELD ON THE 14th DAY OF SEPTEMBER, 2026, AT 5:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY.

JOANNE R. HERRON, TOWNSHIP CLERK
TOWNSHIP OF UPPER