

ORDINANCE NO. 2019-11
TOWNSHIP OF GREEN, COUNTY OF SUSSEX, STATE OF NJ

**AN ORDINANCE REVISING SECTION 30-13 OF THE CODE OF
THE TOWNSHIP OF GREEN REGARDING PERFORMANCE AND
MAINTENANCE GUARANTEES AND INSPECTION FEES IN
ACCORDANCE WITH THE MUNICIPAL LAND USE LAW**

WHEREAS, the New Jersey Municipal Land Use Law, N.J.S.A. 40D:55D-1 et seq. authorizes municipalities to require the posting of performance and maintenance guarantees as a condition of development approvals, which has recently been amended; and

WHEREAS, the Township Land Use Board has recommended, and the Township Committee has agreed, that the Township's development regulations should be revised to be consistent with the recent amendments to the Municipal Land Use Law.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Township of Green, Sussex County, New Jersey, the following Sections shall be revised as follows:

SECTION 1.

Section 30-13 shall be deleted in its entirety and replaced as follows:

30.13 Performance and Maintenance Guarantees

30.13.1 Installation of improvements or provision of guarantees required before final approval; scope of performance guarantees.

Before recording of final subdivision plats or deeds and/or as a condition of final site plan approval and/or as a condition to the issuance of a zoning permit, the applicant shall have installed all required improvements; provided, however, that the Township may require and shall accept performance and maintenance guarantees for the purpose of assuring the installation and maintenance of certain on tract improvements. Such performance and maintenance guarantees shall be in accordance with the provisions of this Section. In the event that final approval is by stages or sections of development as provided by this Chapter, the provisions of this Section shall be applied by stage or section of development. The nature and scope of required performance guarantees shall be as follows:

- A. Public Improvements: Performance guarantees shall be provided for 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 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monuments, as shown on the final map and required by "the map filing law," P.L.1960,c.141 (N.J.S.A. 46:23-9.17; repealed by section 2 of P.L.2011,c.217) or N.J.S.A. 46:26B-1 through N.J.S.A. 46:26B-8, water mains, sanitary sewers, community septic systems, drainage structures,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.

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- B. Perimeter Buffers: Performance guarantees shall be provided, within an approved phase or section of a development, privately-owned perimeter buffer landscaping, as required by this chapter or imposed as a condition of approval.
- C. Safety and Stabilization: A “safety and stabilization guarantee,” in favor of the Township shall be provided, when required by the approving agency, 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.
- D. Temporary Certificates of Occupancy: In the event that the developer shall seek a temporary certificate of occupancy for a development, unit, lot, building, or phase of development, as a condition of the issuance thereof, the developer shall furnish a separate guarantee, referred to herein as a "temporary certificate of occupancy guarantee." Such guarantee shall cover the cost of installation of only those improvements or items which remain to be completed or installed under the terms of the temporary certificate of occupancy and which are required to be installed or completed as a condition precedent to the issuance of the permanent certificate of occupancy for the development, unit, lot, building or phase of development and which are not covered by an existing performance guarantee.
- E. Successor Developer: In the event that a successor developer to the original developer becomes responsible for completion of the required improvements, the successor developer shall furnish a replacement performance guarantee.

30.13.2 Amount and Form of Performance Guarantees

- A. Amount: The amount of any performance guarantees required by this Chapter shall be as follows:
 - 1. Public Improvements: The performance guarantee shall be in an amount not to exceed 120% of the cost of installation of only 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 Township Engineer, according to the method of calculation set forth in Section 15 of P.L.1991,c.256 (N.J.S.A. 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," P.L.1960, c.141 (N.J.S.A. 46:23-9.9 et seq.; repealed by section 2 of P.L.2011, c.217) or N.J.S.A. 46:26B-1 through N.J.S.A. 446:26B-8, water mains, sanitary sewers, community septic systems, drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements.
 - 2. Perimeter Buffers: At the developer's option, any required performance guarantee for privately-owned perimeter buffer landscaping may be posted either as a

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separate guarantee or as a line item of the performance guarantee required by this Chapter. The amount of the perimeter buffer landscaping guarantee shall be calculated in the same manner as for the performance guarantee in Subsection 1. above.

3. Safety and Stabilization: At the developer's option, any required "safety and stabilization guarantee" may be furnished either as a separate guarantee or as a line item of the performance guarantee required by this article. The amount of such guarantee shall be as follows:

a) The amount of a "safety and stabilization guarantee" for a development with bonded improvements in an amount not exceeding \$100,000 shall be \$5,000.

b) The amount of a "safety and stabilization guarantee" for a development with bonded improvements exceeding \$100,000 shall be calculated as a percentage of the bonded improvement costs of the development or phase of development as follows:

- 1) \$5,000 for the first \$100,000 of bonded improvement costs, plus
- 2) Two and a half percent of bonded improvement costs in excess of \$100,000 up to \$1,000,000, plus
- 3) One percent of bonded improvement costs in excess of \$1,000,000.

4. Temporary Certificates of Occupancy: The amount of any "temporary certificate of occupancy guarantee" shall be determined by the Township Engineer.

B. Appeal of Disputed Performance Guarantee Amounts: The developer may appeal the Township Engineer's estimate of the cost of improvements for purposes of furnishing a performance guarantee. Such appeal shall be made in accordance with the procedures set forth in Section 33-6.

C. Form of Guarantee: At least 10% of the performance guarantee shall be in the form of cash or a certified check made payable to the Township of Green. The balance of the performance guarantee shall be in the form of any security issued by an institution authorized to issue such securities in the State of New Jersey and which may be accepted by the Township and approved by the Township Attorney, including but not limited to surety bonds, cash and letters of credit; provided that the Township shall only accept an irrevocable letter of credit if it:

1. constitutes an unconditional payment obligation of the issuer running solely to the Township for an express initial period of time in the amount determined pursuant to this Chapter;
2. is issued by a banking or savings institution authorized to do and doing business in the State of New Jersey;

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3. is for a period of at least one year; and
4. permits the Township to draw upon the letter of credit if the obligor fails to furnish another letter of credit which complies with the provisions of this Section thirty (30) days or more in advance of the expiration date of the letter of credit or such longer period in advance thereof as is stated in the letter of credit.

D. Guarantee from Successor Developer: The Township Committee or an approving authority may accept a performance guarantee in favor of the Township from a successor developer as a replacement for a performance guarantee that was previously furnished, pursuant to section 41 of P.L.1975, c.291 (N.J.S.A. 40:55D-53), for the purpose of assuring the installation of improvements.

An approving authority shall notify the governing body whenever it accepts a replacement performance guarantee. Notice shall contain a copy of the written confirmation of the new obligor's intent to furnish a replacement performance guarantee and the Township Engineer's written verification of the sufficiency of the amount of that replacement performance guarantee.

Except as otherwise provided by an ordinance requiring a successor developer to furnish a replacement performance guarantee, the Township Committee or approving authority shall not accept a replacement performance guarantee without securing:

1. Written confirmation from the new obligor that the intent of the new obligor is to furnish a replacement performance guarantee, relieving the predecessor obligor and surety, if any, of any obligation to install improvements, and
2. Written verification from the Township Engineer that the preplacement performance guarantee is of an amount sufficient to cover the cost of the installation of improvements, but not to exceed 120% of the cost of the installation, which verification shall be determined consistent with Section 41 of P.L.1975, c.291 (N.J.S.A. 40:55D-53).

30-13.3 Duration of Performance Guarantee

- A. Term of Guarantee: The performance guarantee shall state the time period within which all improvements are to be installed by the developer, which shall be as set forth in the developer's agreement with the Township.
- B. Extension of Time Allowed for Completion of Improvements. The time allowed for installation of the improvements for which the performance guarantee has been provided may be extended by the Township Committee by resolution. As a condition or as part of any such extension, the amount of any performance guarantee shall be increased or reduced, as the case may be, to an amount not to exceed 120% of the cost of the installation at the time of the resolution. The cost of installation shall be determined by the Township Engineer as provided herein for the initial cost determination.

30-13.4 Failure to Complete Improvements within Time Specified.

If the required improvements are not completed or corrected in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the Township for the reasonable costs of the improvements not completed or corrected. The Township may, either prior to or after receipt of the proceeds thereof, complete such improvements or use said funds to restore the property to a safe condition so that the subject property in its unfinished development state does not adversely affect the public safety or adversely impact the environment. The following shall apply:

- A. Any completion or correction of improvements shall be subject to the public bidding requirements of the Local Public Contracts Law.
- B. If a "safety and stabilization guarantee" was required pursuant to Section 30-13.1C, the Township may utilize such guarantee only in the circumstance that:
 - 1. Site disturbance has commenced and, thereafter, all work on the development has ceased for a period of at least sixty (60) consecutive days following such commencement for reasons other than force majeure, and
 - 2. Work has not recommenced within thirty (30) days following the provision of written notice by the Township to the developer of the Township's intent to claim payment under the guarantee.
- C. The Township shall not provide notice of its intent to claim payment under a "safety and stabilization guarantee" until a period of at least sixty (60) days has elapsed during which all work on the development has ceased for reasons other than force majeure. The Township shall provide written notice to a developer by certified mail or other form of delivery providing evidence of receipt.

30-13.5 Release of Performance Guarantees.

Release of performance guarantees shall be in accordance with the following procedures:

- A. Upon substantial completion of all required street improvements (except for the top course) and appurtenant utility improvements and the connection of the same to the public system, the obligor may request of the Township Committee that the Township Engineer prepare a list of all uncompleted or unsatisfactory completed improvements. The request to the Township Committee shall be made in writing by certified mail addressed to the Township Clerk, with a copy of the request to be sent to the Township Engineer. The request shall indicate which improvements have been completed and which improvements remain uncompleted in the judgement of the obligor.
- B. Upon receiving the obligor's request, the Township Engineer shall inspect all improvements covered by the obligor's request and shall file a detailed list and report, in writing, with the Township Committee and shall simultaneously send a copy thereof to the obligor not later than 45 days after receipt of the obligor's request.
- C. The detailed list prepared by the Township Engineer shall be in accordance with the itemized cost estimate prepared by the Township Engineer, which estimate shall have been appended to the performance guarantee as required herein. The list prepared by the Township Engineer shall state, in detail, with respect to each improvement determined to be incomplete or unsatisfactory, the nature and extent of the incompleteness of each incomplete improvement or the nature and extent of and remedy for the unsatisfactory state of each completed improvement determined to be unsatisfactory.
- D. The report prepared by the Township Engineer shall identify each improvement determined to be complete and satisfactory together with a recommendation as to the amount of reduction to be made in the performance guarantee relating to the completed and satisfactory improvement. The recommended reduction shall be in accordance with the itemized cost estimate prepared by the Township Engineer, which cost estimate shall have been appended to the performance guarantee as required herein.
- E. The Township Committee, by resolution, shall either approve the improvements determined to be complete and satisfactory by the Township Engineer or reject any or all of these improvements. The cause for any rejection shall be stated in the Committee's resolution. If any portion of the required improvements is rejected, the approving authority may require the obligor to complete or correct such improvements and, upon completion or correction, the same procedure of notification as required herein shall be followed.
- F. For accepted improvements, the Township Committee shall approve and authorize the amount of reduction to be made in the performance guarantee relating to the improvements accepted. Any authorized reduction shall be in accordance with the itemized cost estimate prepared by the Township Engineer, which cost estimate shall have been appended to the performance guarantee as required herein. The resolution

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shall be adopted not later than 45 days after receipt of the list and report prepared by the Township Engineer.

- G. Any partial reduction granted in the performance guarantee as provided herein shall be applied to the cash deposit in the same proportion as the original cash deposit bears to the full amount of the performance guarantee.
- H. Upon posting of a “temporary certificate of occupancy guarantee,” all sums remaining under a performance guarantee required pursuant to 30-13.1, which relate to the development, unit, lot, building, or phase of development for which the temporary certificate of occupancy is sought, shall be released.
- I. At no time may the Township hold more than one guarantee or bond of any type with respect to the same line item. The “temporary certificate of occupancy guarantee” shall be released by the Township Engineer upon the issuance of a permanent certificate of occupancy with regard to the development, unit, lot, building, or phase as to which the temporary certificate of occupancy relates.
- J. The Township shall release a separate “safety and stabilization guarantee” to a developer upon the developer’s furnishing of a performance guarantee which includes a line item for safety and stabilization in the amount required by 30-13.1.C.
- K. The Township shall release a “safety and stabilization guarantee” upon the Township Engineer’s determination that the development of the project site has reached a point that the improvements installed are adequate to avoid any potential threat to public safety. The “safety and stabilization guarantee” shall be reduced by the same percentage as the performance guarantee is being reduced at the time of each performance guarantee reduction.
- L. Within 30 days after receiving notice from the approving authority of its acceptance of a replacement performance guarantee, the Township Committee, by resolution, shall release the predecessor obligor from liability pursuant to its performance guarantee.
- M. For the purpose of releasing the obligor from liability pursuant to its performance guarantee, the amount of the performance guarantee attributable to each approved bonded improvement shall be reduced by the total amount for each such improvement, in accordance with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee pursuant to Section 30-13.1, including any contingency factor applied to the cost of installation. If the sum of the approved bonded improvements would exceed 70 percent of the total amount of the performance guarantee, then the Township may retain 30 percent of the amount of the total performance guarantee and “safety and stabilization guarantee” to ensure completion and acceptability of bonded improvements, as provided above, except that any amount of the performance guarantee attributable to bonded improvements for which a “temporary certificate of occupancy guarantee” has been posted shall be released from the performance guarantee even if such release would reduce the amount held by the Township below 30 percent.

30-13.6 Release from Liability Upon Acceptance of Improvements; Acceptance of Dedicated Improvements.

Upon adoption of the resolution by the Township Committee approving certain completed improvements, the obligor shall be release from all liability pursuant to its performance guarantee, with respect to those approved improvements. The following shall apply:

To the extent that any of the improvements have been dedicated to the Township on the subdivision plat or site plan, the Township Committee shall be deemed, upon the release of any performance guarantee required pursuant to Section 30-13.1.A, to accept dedication for public use of streets or roads and any other improvements made thereon according to site plans and subdivision plats approved by the approving authority, provided that such improvements have been inspected and have received final approval by the Township Engineer.

30-13.7 Failure of Township Engineer or Committee to Act.

If the Township Engineer or Township Committee fails to act on the request for release of a performance guarantee within the time require herein, the obligor may apply to the court in the manner provided below, provided that nothing herein shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the Township Committee or the Township Engineer.

- A. If the Township Engineer fails to send or provide the list and report as requested by the obligor as required herein within 45 days from receipt of the request, the obligor may apply to the court in a summary manner for an order compelling the Township Engineer to provide the list and report within a stated time. The cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.
- B. If the Township Committee fails to approve or reject the improvements determined by the Township Engineer to be complete and satisfactory or reduce the performance guarantee for the complete and satisfactory improvements within 45 days from the receipt of the Township Engineer's list and report, the obligor may apply to the court in a summary manner for an order compelling, within a stated time, approval of the complete and satisfactory improvements and approval of a reduction in the performance guarantee for the approvable complete and satisfactory improvements in accordance with the itemized cost estimate prepared by the Township Engineer, which cost estimate shall have been appended to the performance guarantee as required herein. The cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.

30-13.8 Maintenance guarantees.

Public Improvements and Perimeter Buffers: If required by the developer's agreement with the Township, the developer shall post with the Township, prior to the release of a performance guarantee required pursuant to 30-13.1, a maintenance guarantee for such improvements.

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Private Storm Water Management Improvements: If required by the developer's agreement with the Township, the developer shall post with the Township, upon the inspection and issuance of final approval of the following private site improvements by the Township Engineer, a maintenance guarantee for the following private site improvements: storm water management basins, in-flow and water quality structures within the basins, and the out-flow pipes and structures of the storm water management system.

Except as specifically provided otherwise below, maintenance guarantees shall be administered in the same manner as performance guarantees as provided by this Chapter.

- A. Amount of Maintenance Guarantee: The maintenance guarantee shall be in favor of the Township of Green in an amount equal to 15% of the cost of such improvements. In the event of improvements for which a performance guarantee was issued, the amount of the maintenance guarantee shall equal 15% of the cost of those improvements for which the guarantee(s) is(are) being released. The cost of said improvements shall be determined by the Township Engineer in the same manner as provided herein for performance guarantees.
- B. Appeal of Disputed Maintenance Guarantee Amounts: The developer may appeal the Township Engineer's estimate of the cost of improvements for purposes of furnishing a maintenance guarantee. Such appeal shall be made in accordance with the procedures set forth in Section 33-6.
- C. Form of Guarantee: The maintenance guarantee shall be in the form of any security issued by an institution authorized to issue such securities in the State of New Jersey and which may be accepted by the Township and approved by the Township Attorney, including but not limited to surety bonds, cash and letters of credit, provided that acceptance of irrevocable letters of credit shall be subject to the same conditions as provided herein for performance guarantees.
- D. Term of Maintenance Guarantee: The maintenance guarantee shall be required to run for a period of two years, which shall be stated in the guarantee, and shall automatically expire at the end of the established term.

30-13.9 Exception for improvements related to other jurisdictions.

In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or the improvements are covered by a performance or maintenance guarantee to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the Township for such utilities or improvements.

30-13.10 Developer's Agreement.

Prior to any constructions and coincident with the furnishing of the performance guarantee by the developer, the developer shall enter into a developer's agreement with the Township Committee incorporating all of the terms and conditions of approval as required by the Board. In addition, the developer's agreement may impose and describe the terms of other matters that may or may not be specified in the approval, including but not limited to the following:

- A. Procurement of necessary drainage, utility, access, construction and other easements.
- B. Revisions to the drainage plan as may be reasonably required by the Township Engineer before or during construction.
- C. Construction-related provisions, such as permitted days and hours of construction, traffic controls, staging and storage of equipment and materials, site security, noise and dust controls, installation and use of temporary structures, etc.
- D. Tree preservation, removal and replacement requirements.
- E. Condominium requirements and documentation.
- F. Compliance with State, County and other jurisdictional requirements.
- G. Submission of as-built drawings.
- H. Title 39 requirements.
- I. Insurance, liability and indemnification requirements.

30-13.11 Inspection of Improvements and Construction.

All improvements required by the Board, except electric, telephone, cable television, street lighting, gas, water and streets not under the jurisdiction of the Township of Green shall be installed under the supervision and inspection of the Township Engineer. Such other improvements shall be installed under the supervision and inspection of the authority having jurisdiction over such improvements. No construction work covering the required improvements shall be commenced without the developer first notifying the Township Engineer and/or Construction Official, as applicable, that said construction work is about to take place. Such notice shall be given, in writing, to the Township Engineer at least one week before the

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commencement of such work. No required improvements shall be covered with soil or other improvements until inspected and approved by the Township Engineer.

SECTION 2 - SEVERABILITY

If any provision of this Ordinance or the application of this Ordinance to any person or circumstances is held invalid, the remainder of this Ordinance shall not be affected and shall remain in full force and effect.

SECTION 3 - REPEALER

All ordinances or parts of ordinances or resolutions that are inconsistent or in opposition to the provisions of this Ordinance are hereby repealed in their entirety.

SECTION 4 - EFFECTIVE DATE

This Ordinance shall take effect immediately upon adoption and publication in accordance with law.

SECTION 5 - NOTICE

The Township Clerk is directed to give notice at least ten days prior to the hearing on the adoption of this Ordinance to the County Planning Board and to all others entitled pursuant to the provisions of N.J.S.A. 40:55D-15. Upon the adoption of this Ordinance, after public hearing, the Municipal Clerk is further directed to publish notice of the passage and to file a copy of this Ordinance, as finally adopted, with the Sussex County Planning Board, as required by N.J.S.A. 40:55D-16.

ATTEST:

TOWNSHIP OF GREEN,
IN THE COUNTY OF SUSSEX

Mark Zschack, Township Clerk

Daniel Conkling, Mayor

Record of Vote – Introduction:

	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
Mr. Chirip			√			
Mrs. Phillips		√	√			
Mr. Qarmout	√		√			
Mrs. Raffay			√			
Mr. Conkling			√			

Record of Vote – Adoption:

	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
Mr. Chirip						
Mrs. Phillips						
Mr. Qarmout						
Mrs. Raffay						
Mr. Conkling						

INTRODUCED: May 20, 2019
PUBLIC HEARING: June 17, 2019
ADVERTISED ADOPTION:

ADVERTISED:
ADOPTED: