

**TOWNSHIP OF MANSFIELD
BURLINGTON COUNTY**

ORDINANCE 2018-5

**AMENDING THE TOWNSHIP CODE AT
CHAPTER 27 GOVERNING “LAND USE PROCEDURES”,
CHAPTER 44A GOVERNING “SITE PLAN REVIEW”,
AND CHAPTER 50 GOVERNING “SUBDIVISION OF LAND”
REGARDING PERFORMANCE, MAINTENANCE
AND RELATED GUARANTEES**

WHEREAS, the State Legislature has recently amended provisions of the Municipal Land Use Law at N.J.S.A. 40:55D-53 governing performance, maintenance and related bonds; and

WHEREAS, the Township Committee desires to amend and update its existing Code provisions to be in accord with State statute and serve the best interests of the Township and its residents.

NOW, THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Mansfield, County of Burlington, State of New Jersey that the Township Code be and hereby is amended as follows:

Section 1. Chapter 27 governing “Land Use Procedures” shall be amended as follows:

Article III. Provisions Applicable to Both Planning Board and Zoning Board of Adjustment.

§ 27-24.1. Required Guarantees; surety.

In accordance with N.J.S.A. 40:55D-53.4, for the purpose of assuring the installation and maintenance of bondable land development improvements, as a condition of all final site plan, subdivision, and/or zoning permit approvals, the Board or Zoning Officer, as appropriate, shall require, and the Township Committee shall accept the following guarantees:

1) Performance Guarantees

- i. The furnishing of a performance guarantee in favor of the Township 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 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; water mains, sanitary sewers, community septic systems, drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements. The performance guarantee shall also cover the cost for privately-owned perimeter buffer landscaping in an approved phase or section of a development, either as a separate guarantee or as a line item of the performance guarantee.

- ii. The cost of the improvements covered by the performance guarantee shall be determined by the Township Engineer.
- iii. The Township Engineer shall prepare an itemized cost estimate of the improvements covered by the performance guarantee, which itemized cost estimate shall be appended to each performance guarantee posted by the obligor.
- i. 2) Maintenance Guarantee. In accordance with N.J.S.A. 40:55D-53.4, developer shall post with the municipality, a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the following private site improvements: stormwater management basins, in-flow and water quality structures within the basins, and the out-flow pipes and structures of the stormwater management system, if any, which cost shall be determined by the municipal engineer.
 - ii. The Maintenance Guarantee shall be furnished upon the inspection and issuance of final approval of the applicable private site improvements by the municipal engineer.
 - iii. The term of the maintenance guarantee shall be for a period not to exceed two years and shall automatically expire at the end of the established term.

3) Temporary Certificate of Occupancy Guarantee

- i. Pursuant to N.J.S.A. 40:55D-53(1)(c), a developer shall furnish a Temporary Certificate of Occupancy Guarantee ("TCOG") whenever the developer seeks a temporary certificate of occupancy for a development, unit, lot, building, or phase of development. The TCOG shall be furnished in favor of the municipality in an amount equal to 120% of the cost of installation of any improvements which (1) remain to be completed or installed under the terms of the temporary certificate of occupancy; (2) are required to be completed or installed as a condition precedent to the issuance of a permanent certification of occupancy; and (3) are not covered by an existing performance guarantee.

The scope and amount of the TCOG shall be determined by the Municipal Engineer.

The TCOG shall be released upon the issuance of a permanent certificate of occupancy.

4) Safety and Stabilization Guarantee

- A. Pursuant to N.J.S.A. 40:55D-53(1)(d), a developer shall furnish a Safety and Stabilization Guarantee (“SSG”) in favor of the municipality, either as a separate guarantee or as a line item of the performance guarantee.

- B. The amount of the SSG for a development with bonded improvements in an amount not exceeding \$100,000 shall be \$5,000. The amount of the SSG 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:

\$5,000 for the first \$100,000 of bonded improvement costs, plus two and a half percent of bonded improvement costs in excess of \$100,000 up to \$1,000,000, plus one percent of bonded improvement costs in excess of \$1,000,000.

- C. The municipality shall release a separate SSG 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 pursuant to this chapter.

- D. A SSG shall be available the municipality for the purposes of returning property that has been disturbed to a safe and stable condition, or taking other measures to protect the public from access to an unsafe or unstable condition. An SSG shall be shall only be available to the municipality when:
 - 1. site disturbance has commenced and, thereafter, all work on the development has ceased for a period of at least 60 consecutive days following such commencement for reasons other than force majeure; and
 - 2. work has not recommenced within 30 days following the provision of written notice by the municipality to the developer of the municipality's intent to claim payment under the guarantee. A municipality shall not provide notice of its intent to claim payment under a SSG until a period of at least 60 days has elapsed during which all work on the development has ceased for reasons other

than force majeure. A municipality shall provide written notice to a developer by certified mail or other form of delivery providing evidence of receipt.

- E. The municipality shall release a SSG upon the Municipal 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.

§ 27-24.2. Other governmental agencies.

In the event that other governmental agencies or public utilities will automatically 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.

§ 27-24.3. Failure to perform; municipal completion.

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 cost of the improvements not completed or corrected, and the Township may either prior to or after the receipt of the proceeds thereof complete such improvements. Such completion or correction of improvements shall be subject to the public bidding requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.

§ 27-24.4. Conformance with municipal standards.

All improvements shall be in accordance with the design standards of the Township Code or as authorized by a design exception granted by the reviewing board and shall be subject to inspection and approval by the Municipal Engineer. The Municipal Engineer shall be notified 24 hours prior to the start of the various phases of the work, and if discontinued, shall again be notified when the work will be continued.

§ 27-24.4. Release or reduction of performance guarantee.

Upon substantial completion of all required improvements, the obligor may request of the governing body, in writing, by certified mail addressed in care of the Township Clerk, that the Township Engineer prepare, in accordance with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee pursuant to this Chapter, a list of all uncompleted or unsatisfactorily completed improvements. If such a request is made, the obligor shall send a copy of the request to the Township Engineer. The request shall indicate which improvements have been completed and which improvements remain uncompleted in the judgment of the obligor. Thereupon 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 Council, and shall simultaneously send a copy thereof to the obligor not later than 45 days after receipt of the obligor's request.

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. 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, in accordance with the itemized cost estimate prepared by the Municipal Engineer and appended to the performance guarantee pursuant to this Chapter.

The Township Committee, by resolution, shall either accept the improvements determined to be complete and satisfactory by the Township Engineer, or reject any or all of these improvements upon the establishment in the resolution of cause for rejection, and shall approve and authorize the amount of reduction or release to be made in the performance guarantee relating to the improvements accepted, in accordance with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee pursuant to this Chapter. This resolution shall be adopted not later than 45 days after receipt of the list and report prepared by the Township Engineer. Upon adoption of the resolution by the Township Committee, the obligor shall be released from all liability pursuant to its performance guarantee, with respect to those accepted improvements, except for that portion sufficient to secure completion or correction of the improvements not yet accepted; provided that 30% of the amount of the performance guarantee posted may be retained to ensure completion and acceptability of all improvements. If any portion of the required improvements is rejected, the Township shall require the obligor to complete or correct such improvements, and, upon completion or correction, the same procedure of notification, as set forth in this section, shall be followed.

§ 27-24.5. Release or reduction of performance guarantee.

The obligor shall reimburse the Township for all reasonable inspection fees paid to the Township Engineer for the foregoing inspection of improvements; provided that the municipality may require of the developer a deposit for the inspection fees in an amount not to exceed, except for extraordinary circumstances, the greater of \$270 or 5% of the cost of improvements, which cost shall be determined pursuant to N.J.S.A. 40:55D-53.4.

If the municipality determines that the amount in escrow for the payment of inspection fees, is insufficient to cover the cost of additional required inspections, the municipality may require the developer to deposit additional funds in escrow.

If additional funds are required, the municipality shall submit to the developer a written inspection escrow deposit request, signed by the municipal engineer, which:

1. informs the developer of the need for additional inspections;
2. details the items or undertakings that require inspection;
3. estimates the time required for those inspections; and
4. estimates the cost of performing those inspections.

§ 27-24.6. Phasing in sections.

In the event that final approval is by stages or sections of development pursuant to Subsection a of Section 29 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-38), the provisions of this section shall be applied by stage or section.

§ 27-24.7. Dedication and acceptance.

To the extent that any of the improvements have been dedicated to the Township on the subdivision plat, site plan and/or zoning permit, the municipality shall be deemed, upon the release of any performance guarantee required hereunder, to accept dedication for public use any improvements made thereunder, provided that such improvements have been inspected and have received final approval by the Township Engineer.

Section 2. Chapter 44A governing "Site Plan Review" shall be amended as follows:

§ 44A-14. Performance and Maintenance Bonds.

In approving the site plan, the Planning Board shall require that the applicant furnish a performance, maintenance, and related bonds in accordance with the requirements of this Code at Chapter 27-24.1, et seq.

Section 3. Chapter 50 governing "Subdivision of Land" shall be amended as follows:

§ 50-44. Performance Guaranties and Inspections.

Installation of improvements and maintenance guaranty or performance guaranty required. No final plat shall be approved by the approving authority until all items required to be bonded (on-site, off-site, on-tract and off-tract) in the public interest have been installed, inspected, certified and approved by the Township Engineer and accepted by the governing body and a maintenance guaranty has been filed and accepted by the governing body in accordance with the requirements of this Code at Chapter 27-24.1, et seq.

§ 50-46. Maintenance Guaranty.

The municipality shall also require a maintenance guaranty in accord with this Code at Chapter 27-24.1, et seq.

Section 4. Applicability to existing projects.

The modifications in this ordinance shall be applicable to all projects that have not received final approvals from the Township Planning Board or the Township Zoning Board of Adjustment and/or which have not posted bonds and begun construction of required improvements as of January 16, 2018, the date of enactment of P.L. 2017, c.312 obviated the Township's previously lawful ordinances.

Section 5. **Repealer, Severability, and Effective Date.**

Repealer. Any and all Ordinances inconsistent with the terms of this Ordinance are hereby repealed to the extent of any such inconsistencies.

Severability. In the event that any clause, section, paragraph or sentence of this Ordinance is deemed to be invalid or unenforceable for any reason, then the Township Committee hereby declares it's intent that the balance of the Ordinance not affected by said invalidity shall remain in full force and effect to the extent that it allows the Township to meet the goals of the ordinance.

Effective Date. This Ordinance shall take effect upon proper passage and approval in accordance with the law.

INTRODUCTION: April 18, 2018

FINAL ADOPTION: