

**TOWNSHIP OF NEW HANOVER  
COUNTY OF BURLINGTON  
ORDINANCE 2018-06**

**AN ORDINANCE OF THE TOWNSHIP OF NEW HANOVER, STATE OF NEW JERSEY  
UPDATING PERFORMANCE AND GUARANTEE SECTIONS OF THE TOWNSHIP'S  
LAND USE CODE TO COMPLY WITH STATUTORY REVISIONS TO THE  
MUNICIPAL LAND USE LAW BY AMENDING/SUPPLEMENTING CHAPTER 114 OF  
THE CODE OF THE TOWNSHIP OF NEW HANOVER**

**WHEREAS**, the Township of New Hanover is a public body corporate and politic of the State of New Jersey; and

**WHEREAS**, the Code of the Township of New Hanover currently sets forth requirements for performance and maintenance guarantees for development within the Township, pursuant to Chapter 114- 1 of the Code; and

**WHEREAS**, the Township of New Hanover desires to amend Chapter 114- of the Code, entitled "Land Use," to comply with recent modifications to the Municipal Land Use Law, N.J.S.A. 40:55D-53; and

**NOW, THEREFORE, BE IT ORDAINED** by the Township Committee ("Committee") of the Township of New Hanover, County of Burlington, State of New Jersey, that Chapter 114-1 of the Code shall be amended/supplemented as follows:

**Section I.**

**114-1. Performance, Safety Stability, and Maintenance Guarantees**

- (A)** As a condition of granting final approval of a subdivision or site plan, the Committee shall require for the purpose of assuring the installation and maintenance of public improvements, the furnishing of a performance guarantee in favor of the Township in an amount not to exceed 120% of the cost of installation to be determined by the Township Engineer, as set forth in this Section, for improvements to be dedicated to the Township, as shown on the approved plans or plat, including: 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. 46:23-9.9B et seq.), water mains, sanitary sewers, community septic systems, drainage structures,

public improvements of open space, and any grading necessitated by the preceding improvements.

(1) The developer shall also furnish a performance guarantee to include, within an approved phase or section of a development, privately-owned perimeter buffer landscaping, as required by the Township's Code or imposed as a condition of approval. At a developer's option, a separate performance guarantee may be posted for the privately-held perimeter buffer landscaping.

(2) In the event that the developer shall seek a temporary certificate of occupancy for a development, unit, lot, building, or phrase 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," in compliance with the provisions of N.J.S.A. 40:55D-53(a)(1)(c) et seq. The municipal official designated to administer the provisions of this section is the Township Engineer.

(B) Safety and stabilization guarantee. The developer shall also furnish to the Township a "safety and stabilization guarantee" in favor of the Township. At the developer's option, a "safety and stabilization guarantee" may be furnished as either a separate guarantee or as a line item of the performance guarantee. A "safety and stabilization guarantee" shall be available to the Township exclusively 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, 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 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 Township to the developer of the Township's intent to

claim payment under the guarantee.

- (3) The Township shall not provide notice of its intent to claim payment under a "safety and stabilization" guarantee until a period of at least 60 days has elapsed during which all work on the development has ceased for reasons others than force majeure. The Township shall provide written notice to the developer by certified mail or other form of delivery providing evidence of receipt.
  - (4) The amount of the "safety and stabilization guarantee" for a development with bonded improvements in an amount not exceeding \$100,000, the guarantee shall be \$5,000. The amount of the "safety and stabilization guarantee" for a development with bonded improvements exceeding \$100,000 shall be calculated as a percentage of all bonded improvements, or applicable phase or stage of development as follows:
    - (a) \$5,000 for the first \$100,000 of bonded improvement costs, **plus**
    - (b) Two and a half percent of bonded improvement costs in excess of \$100,000 up to \$1,000,000, **plus**
    - (c) One percent of bonded improvement costs in excess of \$1,000,000.
  - (5) The Township shall release a separate "safety and stabilization" guarantee to the developer upon the developer's furnishing of a performance which includes a line item for safety and stabilization in the amount required under this Section.
- (C) Maintenance Guarantee. As a condition precedent to the release of a performance guarantee required pursuant to this Section, the developer shall post a maintenance guarantee with the Township in an amount not to exceed 15% of the cost of the installation of the improvements which are being released.
- (1) The developer shall also post a maintenance guarantee with the Township in an amount not to

exceed 15% of the costs of the installation of the following private site improvements:

- (a)** Stormwater management basins
  - (b)** In-flow and water quality structures within the basins; and
  - (c)** The out-flow pipes and structures of the stormwater management system, if any
- (2)** 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)** In the event that other governmental entities or public utilities automatically will own the utilities to be installed or the improvements are covered by a performance or maintenance guarantee to another agency, no performance or maintenance guarantee shall be required by the Township for such utilities or improvements.
- (D)** The time allowed for installation of the bonded improvements for which the performance guarantee has been provided may be extended by the governing body by resolution. As a condition or as part of any such extension, the amount of any performance guarantee shall be increased or reduced to an amount not to exceed 120% of the costs of the installation, which cost shall be determined by the Township Engineer according to the method of calculation set forth in N.J.S.A. 40:55D-53.4 as of the time of the passage of the resolution.
- (E)** If the required bonded 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.

**(F)** Upon substantial completion of all required street improvements (except for the top course) and appurtenant utility improvements, as the connection of same to the public system, the obligor may request of the Committee 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 Section, a list of all uncompleted or unsatisfactory completed bonded 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 bonded improvements have been completed and which bonded improvements remain uncompleted in the judgment of the obligor. Thereupon the Township Engineer shall inspect all bonded improvements covered by obligor's request and shall file a detailed list and report, in writing, with the Committee, and shall simultaneously send a copy thereof to the obligor not later than 45 days after receipt of the obligor's request.

**(1)** The list prepared by the Township Engineer shall state, in detail, with respect to each bonded 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 bonded improvement determined to be unsatisfactory.

The report prepared by the Township Engineer shall identify each bonded 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 bonded improvement, in accordance with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee pursuant to subsection a. of this section.

**(G)** The Committee, by resolution, shall either approve the bonded improvements determined to be complete and satisfactory by the Township Engineer, or reject any or all of these bonded improvements upon the

establishment in the resolution of cause for rejection, and shall approve and authorize the amount of reduction 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 subsection a. of this section. 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 Committee, the obligor shall be released from all liability pursuant to its performance guarantee, with respect to those approved bonded improvements, except for that portion adequately sufficient to secure completion or correction of the improvements not yet approved; provided that 30% of the amount of the total performance guarantee and "safety and stabilization guarantee" posted may be retained to ensure completion and acceptability of all improvements.

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. 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 subsection (A) of this section, 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.

- (1) If the Township Engineer fails to send or provide the list and report as requested by the obligor pursuant to Section 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 and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.
  - (2) If the Township Council fails to approve or reject the bonded 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 and appended to the performance guarantee pursuant to Section; and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.
  - (3) In the event that the obligor has made a cash deposit with the Township as part of the performance guarantee, then any partial reduction granted in the performance guarantee pursuant to this Section 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, provided that if the developer has furnished a "safety and stabilization guarantee," the Township may retain cash equal to the amount of the remaining "safety and stabilization guarantee."
- (H) If any portion of the required bonded improvements is rejected, the Township Engineer may 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.

- (I) Nothing herein, however, shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the Township Council or the Township Engineer.
- (J) The obligor shall reimburse the Township for reasonable inspection fees paid to the Township Engineer for the foregoing inspection of improvements; which fees shall not exceed the sum of the amounts set forth herein below. The Township may require the developer to post the inspection fees in escrow in an amount:
  - (1) not to exceed, except for extraordinary circumstances, the greater of \$500 or, except for extraordinary circumstances, the greater of \$500 or 5% of the costs of the bonded improvements that are subject to a performance guarantee under this Section; and
  - (2) not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee under this Section, which cost shall be determined pursuant to N.J.S.A. 40:55D-53.4.
- (K) For those developments for which the inspection fees total less than \$10,000.00, fees may, at the option of the developer, be paid in two installments. The initial amount deposited in escrow by a developer shall be 50% of the inspection fees. When the balance on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Township Engineer for inspections, the developer shall deposit the remaining 50% of the inspection fees.
- (L) For those developments for which the inspection fees total \$10,000.00 or greater, fees may, at the option of the developer, be paid in four installments. The initial amount deposited in escrow by a developer shall be 25% of the inspection fees. When the balance



on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Township Engineer for inspection, the developer shall make additional deposits of 25% of the inspection fees.

- (M) If the Township determines that the amount in escrow for payment of inspection fees, as calculated pursuant to the requirements of this Section, is insufficient to cover the cost of additional required inspections, the developer shall deposit additional funds in escrow. In such instance, the Township shall deliver to the developer a written inspection escrow deposit request, signed by the Township Engineer, which informs the developer of the need for additional inspections, details the items or undertakings that require inspection, estimates the time required for those inspections, and estimates the cost of performing those inspections.
- (N) In the event that final approval is by stages or sections of development pursuant to N.J.S.A. 40:55D-38(a), the provisions of this Section shall be applied by stage or section.
- (O) To the extent that any of the improvements have been dedicated to the Township on the subdivision plat or site plan, the Committee shall be deemed, upon the release of any performance guarantee required pursuant to this Section, 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 Township Engineer.

## **Section II. Repealer, Severability, and Effective Date**

- (A) Any and all Ordinances inconsistent with the terms of this Ordinance are hereby repealed to the extent of any such inconsistencies.
- (B) 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 Council hereby declares its 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.

(C) This ordinance shall take effect immediately upon adoption and publication of notice of adoption as provided by law.

DATED:

TOWNSHIP OF NEW HANOVER

ATTEST:

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DENNIS ROOHR, MAYOR

**TOWNSHIP OF NEW HANOVER**  
**NOTICE OF PENDING ORDINANCE**  
**Ordinance No. 2018-06**

**AN ORDINANCE OF THE TOWNSHIP OF NEW HANOVER, STATE OF NEW JERSEY**  
**UPDATING PERFORMANCE AND GUARANTEE SECTIONS OF THE TOWNSHIP'S**  
**LAND USE CODE TO COMPLY WITH STATUTORY REVISIONS TO THE**  
**MUNICIPAL LAND USE LAW BY AMENDING/SUPPLEMENTING CHAPTER 114 OF**  
**THE CODE OF THE TOWNSHIP OF NEW HANOVER**

**Take Notice** that the Ordinance identified above, which updates the performance and maintenance guarantee section of Chapter 114 of the Township's Land Use Code to comply with modifications to the Municipal Land Use Law, has been adopted on first reading by the Township Committee of the Township of New Hanover, County of Burlington, State of New Jersey, held on May 08, 2018. It will be considered for final passage after public hearing to be held on June 12, 2018, at 7:00 P.M. in the Town Hall at 2 Hockamick Road, New Hanover, New Jersey.

The Ordinance will take effect immediately upon adoption and publication as required by law.

Copies of the full ordinance are on file with the Township Clerk of the Township of New Hanover in the Town Hall. Copies may be obtained free of charge on request and a copy is posted on the municipal bulletin board in the Town Hall at 2 Hockamick Road, Cookstown, New Jersey.

Adel Gianaris,  
Deputy Township Clerk