

# Egg Harbor Township

## Ordinance No. 14

2018

**An ordinance to amend the Code of the Township of Egg Harbor, Chapter 198, specifically Section 198-19, entitled "Performance Guarantee for Improvements to provide for the posting of performance guarantees for subdivision and site plan improvements"**

**BE IT ORDAINED**, by the Township Committee of the Township of Egg Harbor, County of Atlantic and State of New Jersey as follows:

**SECTION 1:** Chapter 198 of the Code of the Township of Egg Harbor, Section 198-19 is hereby amended by deleting it in its entirety and replacing it as follows:

### **§198-19 Guarantees Required.**

- A. Before filing of final subdivision plats or recording of minor subdivision deeds or as a condition of final site plan approval or as a condition to the issuance of a zoning permit, the Township shall require a performance guarantee for the purpose of assuring the installation of certain on-tract improvements.

The Township may require up to ten percent (10%) of the all performance guarantees in cash. The developer has the option to post more than ten percent (10%) in cash or any portion of a required maintenance guarantee in cash.

- B. Types of Performance Guarantees Required.

1. Site Improvement Guarantee.

A guarantee in favor of the Township in an amount not to exceed one hundred twenty percent (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 (C.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monuments, as shown on the final map and required by "the map filing law," P.L.1960, c.141 (C.46:23-9.9 et seq.; repealed by section 2 of P.L.2011, c.217) or N.J.S.46:26B-1 through N.J.S.46:26B-8, water mains, sanitary sewers, community septic systems, drainage structures, public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. 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 developer. 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 guarantee to another governmental agency, no performance guarantee, as the case may be, shall be required by the Township for such utilities or improvements.

2. Perimeter Buffer Landscaping Guarantee.

A guarantee in favor of the Township to include, within an approved phase or section of a development privately-owned perimeter buffer landscaping, as required by site plan approval or imposed as a condition of approval. At the developer's option, a separate performance guarantee may be posted for the privately-owned perimeter buffer landscaping.

3. Temporary Certificate of Occupancy Guarantee.

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 as a "temporary certificate of occupancy guarantee," in favor of the Township in an amount equal to one hundred twenty percent (120%) of 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. Upon posting of a "temporary certificate of occupancy guarantee," all sums remaining under a performance guarantee, required pursuant to paragraph (1) of this section, which relate to the development, unit, lot, building, or phase of development for which the temporary certificate of occupancy is sought, shall be released. The scope and amount of the "temporary certificate of occupancy guarantee" shall be determined by the Township engineer. At no time may Township hold more than one guarantee 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.

4. Safety and Stabilization Guarantee.

A developer shall 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 either as a separate guarantee or as a line item of the site improvement performance guarantee referenced in paragraph 1 of this section. A "safety and stabilization guarantee" shall be available to the Township solely 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:

- (a) 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
- (b) 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. 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 of the notice.

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.

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:

\$5,000 for the first \$100,000 of bonded improvement costs, plus two and a half percent (2.5%) of bonded improvement costs in excess of \$100,000 up to \$1,000,000, plus one percent (1%) of bonded improvement costs in excess of \$1,000,000.

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 under this paragraph.

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.

C. Types of Maintenance Guarantees Required.

1. Site Improvement Maintenance Guarantee.

Prior to the release of a Site Improvement or Perimeter Buffer Landscaping performance guarantee described in Paragraph B, the developer shall post a maintenance guarantee in an amount not to exceed fifteen percent (15%) of the cost of the installation of the improvements which are being released. The Township may not require any portion of the maintenance guarantee to be posted in cash but the developer has the option to post the maintenance guarantee in cash.

2. Stormwater Management Maintenance Guarantee.

Upon the inspection and issuance of final approval by the Township engineer of the following private site improvements, a separate maintenance guarantee in an amount not to exceed fifteen percent (15%) of the cost of the installation of the following private site improvements related to the stormwater management for the project: stormwater management basins,

in-flow and water quality structures within the basins, and the out-flow pipes and structures of the stormwater management system.

3. The term of all maintenance guarantees shall be for a period of two years and shall automatically expire at the end of the two (2) year period.

D. Procedures for Reductions of Performance Guarantees.

Upon substantial completion of all required street improvements (except for the top course) and appurtenant utility improvements, and the connection of same to the public system, the obligor may request of the Township 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 Paragraph B of 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 governing body, and shall simultaneously send a copy thereof to the obligor not later than forty-five (45) days after receipt of the obligor's request.

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 Paragraph B of this section.

The Township 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 Paragraph B of this section. This resolution shall be adopted not later than forty-five (45) days after receipt of the list and report prepared by the Township engineer. Upon adoption of the resolution by the governing body, 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 thirty percent (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 Paragraph B of this section, including any contingency factor applied to the cost of installation. If the sum of the approved bonded improvements would exceed seventy percent (70%) of the total amount of the performance guarantee, then the Township may retain thirty percent (30%) 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 thirty percent (30%).

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 subsection 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".

If any portion of the required bonded improvements is rejected, the Township Committee 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.

Nothing herein, however, shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the Township Committee or Township engineer.

E. Payments for Professionals Serving Township.

The obligor shall reimburse the Township for reasonable inspection fees paid to the Township engineer for the inspection of improvements; which fees shall not exceed the sum of the amounts set forth in subparagraphs (1) and (2) of this section. 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 five hundred dollars (\$500) or five percent (5%) of the cost of bonded improvements that are subject to a performance guarantee under this section; and
2. Not to exceed five percent (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 section 15 of P.L.1991, c.256 (C.40:55D-53.4).

For those developments for which the inspection fees total less than \$10,000, fees may, at the option of the developer, be paid in two installments. The initial amount deposited in escrow by a developer shall be fifty percent (50%) of the inspection fees. When the balance on deposit drops to ten percent (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 fifty percent (50%) of the inspection fees.

For those developments for which the inspection fees total \$10,000 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 twenty five percent (25%) of the inspection fees. When the balance on deposit drops to ten percent (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 twenty five percent (25%) of the inspection fees.

If the Township determines that the amount in escrow for the payment of inspection fees, as calculated pursuant to subparagraphs (1) and (2) of this section, is insufficient to cover the cost of additional required inspections, the Township may require the developer to deposit additional funds in escrow provided that the Township delivers 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.

F. Other Requirements.

1. 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 (C.40:55D-38), the provisions of this section shall be applied by stage or section.
2. 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 Paragraph B of 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 approving authority, provided that such improvements have been inspected and have received final approval by the Township engineer.
3. All guarantees shall be approved as to form by the Township solicitor. The developer shall pay for all reasonable fees associated with the review by the Township solicitor.
4. A performance guarantee shall run for a period to be fixed by the Planning Board at the time of approval of a final plat, but in no case for a term of more than two (2) years. However, with the consent of the owner and the surety, if there is one, the Township Committee may, by resolution, extend the term of such performance guarantee for an additional period not to exceed three (3) years. 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 one hundred twenty percent (120%) of the cost of the installation, 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 (C.40:55D-53.4) as of the time of the passage of the resolution.

5. If the required improvements have not been installed in accordance with the performance guarantee, the obligor and surety shall be liable thereon to the Township of Egg Harbor for the reasonable cost of the improvements not installed and, upon the receipt of the proceeds of the performance guarantee, the Township of Egg Harbor shall install such improvements. Such completion or correction of improvements shall be subject to the public bidding requirements of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.). The obligor and surety shall also pay for all reasonable inspection fees in addition to all required improvements.
6. It shall be expressly understood that, notwithstanding the posting of any performance guarantees for a lot in a major subdivision, no certificate of occupancy shall be issued until the developer or subdivider shall have installed the road subbase, road base, curbs, gutters and first course paving as specified in Chapter 94 of the Township Code entitled "Design, Performance and Improvement Standards", and until the underground utilities such as sewer, water, gas, storm drainage lines, electric, telephone and cable television and all other underground work shall have been duly and properly installed. No occupancy permit shall be issued until the subdivider shall have entered into an agreement with the Township to permit municipal forces to enter upon the streets of the subdivision prior to final acceptance of said streets for the purpose of rendering such Township services such as fire and police protection, snow removal, trash collection and any other service as may be deemed necessary for the health, safety and welfare of the residents. No occupancy certificates shall be granted for the final two dwellings until the finished road surface has been installed pursuant to Township specifications and until all other improvements and conditions as may be required by the Planning Board, the Building Subcode Official and the Plumbing Official have been properly installed. Certification that all requirements are met must be provided in writing by the Township Engineer or other designated administrative officer prior to the issuance of such certificate of occupancy.

**SECTION 2:** All ordinances and parts of Ordinances inconsistent with the provisions of this ordinance are, to the extent of such inconsistency, hereby repealed.

**SECTION 3:** Should any section, clause, sentence, phrase or provision of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

**SECTION 4.** This Ordinance shall become effective immediately upon final adoption and publication according to law.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE TOWNSHIP COMMITTEE OF EGG HARBOR TOWNSHIP, IN THE COUNTY OF ATLANTIC, STATE OF NEW JERSEY, HELD APRIL 4, 2018 AND WILL BE FURTHER CONSIDERED FOR FINAL

PASSAGE AFTER A PUBLIC HEARING THEREON AT A REGULAR MEETING OF SAID TOWNSHIP COMMITTEE TO BE HELD IN THE TOWNSHIP HALL, IN SAID TOWNSHIP ON MAY 2, 2018.

Dated: April 4, 2018

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Eileen M. Tedesco, RMC  
Township Clerk