

**TOWNSHIP OF RARITAN  
COUNTY OF HUNTERDON, NEW JERSEY**

**ORDINANCE #20-09**

**AN ORDINANCE UPDATING CHAPTER 16 OF THE TOWNSHIP LAND DEVELOPMENT CODE TO COMPLY WITH STATUTORY UPDATES TO THE MUNICIPAL LAND USE LAW**

**WHEREAS**, the Municipal Land Use Law “MLUL” (N.J.S.A. 40:55D-1 *et seq.*) delegates to municipalities the power to zone and regulate development, and that statute is amended from time to time by the state legislature; and

**WHEREAS**, the MLUL’s statutory provisions regarding performance guarantees, maintenance guarantees, inspection fees and establishing a safety and security obligation were recently amended and supplemented by the legislature P.L. 2017 c. 312, and the Township now amends its Land Development Code to comply with the revised statute; and

**WHEREAS**, as required by N.J.S.A. 40:55D-26, the Township has referred this proposed land development ordinance to the Planning Board for review and comment prior to final adoption.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Raritan, County of Hunterdon, that the following provisions of the “Revised General Ordinances of the Township of Raritan, 1999” also known as the “Code” and specifically Chapter 16.16 of the Land Development Code of the Township shall be repealed and replaced as follows:

**1. §16.16.010. Performance Guarantees, of the Revised General Ordinances of the Township of Raritan, 1999 is repealed and replaced by the following:**

§16.16.010. Performance, Maintenance, and Safety and Stability Guarantees

A. Performance Guarantee. As a condition of granting final approval of a subdivision or site plan, the approving board 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 Subsection D of 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, conservation easement pins and signs, surveyor’s monuments as shown on the final map and required by the Recordation Law (N.J.S.A. 46-23-9.9 *et seq.*), water mains, sanitary sewers, community septic systems, drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements, as well as privately-owned perimeter buffer landscaping as required by ordinance or imposed as a condition of approval for each section or phase of development.

- (1) At the developer’s option a separate performance guarantee may be posted for the privately- owned perimeter buffer landscaping.

- (2) In the event that a 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 "temporary certificate of occupancy guarantee" in compliance with the provisions of N.J.S.A. 40:55D-53a(1)(c) *et seq.* The municipal official designated to administer the provisions of this section is the Township Engineer.
- (3) Should a successive developer request a permit update under the State Uniform Construction Code for the purpose of updating the name and address of the owner of property on a construction permit, as a condition of such permit update, the new owner shall provide replacement performance guarantees, safety and stability guarantees and or maintenance guarantees as applicable to the then current stage of development.

B. Safety and Stabilization Guarantee. The developer shall furnish to the Township a safety and stabilization guarantee to be available to the Township 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 in compliance with the provisions of N.J.S.A. 40:55D-53a(1)(d) *et seq.* and as follows:

- (1) At the developer's option the safety and stabilization guarantee may be provided as a separate guarantee or as a line item in the performance guarantee.
- (2) The amount of the safety and stabilization guarantee shall be as follows: for 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 the bonded improvements, or applicable phase or stage of development, as follows: \$5,000 for the first \$100,000 of bonded improvements plus 2.5% of bonded improvement costs in excess of \$100,000 up to \$1,000,000 plus 1% of bonded improvements costs in excess of \$1,000,000.

C. Maintenance Guarantee. As a condition precedent to the release of a performance guarantee the approving Board shall require the furnishing of a maintenance guarantee to be posted with the Township Committee as provided for herein. Upon final acceptance of the improvements by the Township Engineer consistent with the procedures as outlined in this Section H, and before the release of the performance guarantee by the Township Committee, the developer shall post a maintenance guarantee with the Township in the amount of 15% of the costs of the installation of the public improvements which are being released. The developer shall also post a maintenance guarantee in an amount not to exceed 15% of the costs of the installation of the following private site improvements; stormwater management system; inflow and water quality structures within the basins; and the outflow pipes and structures of the stormwater management system, if any. Said maintenance guarantee(s) to run for a period of two years after release of the performance guarantee of the improvements if such are dedicated to the public or the date of approval by the Township Engineer if private improvements. 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 maintenance guarantee to another governmental agency, no maintenance guarantee shall be required by the municipality for such utilities or improvements. Cash cannot be required as any part of such maintenance guarantee by the approving Board, though the developer at its option may so provide all or a portion in cash.

D. Cost Determination. The cost of installation of improvements for the purposes of subsection A, B and C of this section shall be estimated by the Township Engineer based on documented construction costs for the public improvements prevailing in the general area of the municipality. An itemized list of costs shall be provided by developer to the Township Engineer for use in creating an itemized cost estimate to be used in determining the applicable guarantees and fees required in connection with developer's project. The developer may appeal the Township Engineer's estimate to the Township Committee. The Township Committee shall decide the appeal within 45 days of receipt of the appeal in writing by the Municipal Clerk. After the developer posts a guarantee with the municipality based upon the cost of the installation of improvements as determined by the Township Committee, he may institute legal action within one year of the posting in order to preserve the right to judicial determination as to the fairness and reasonableness of the amount of the guarantee. For a performance guarantee or safety and safety and stability guarantee, the first 10% shall be in cash, in the form of a cashier's check, as provided for in N.J.S.A. 40:55D-53.3. The remaining amount of all guarantees shall be provided in a form acceptable to and reviewed to the satisfaction of the Township attorney, in addition to other acceptable forms of surety. The Township may accept performance guarantee, temporary certificate of occupancy guarantee, safety and stability guarantee and maintenance guarantee which is an irrevocable letter of credit if it is issued by a banking or savings institution authorized to do so and doing business in this state and whose financial condition and size in relation to the letter of credit satisfied the Municipal Auditor, is irrevocable, unconditional, subject to all requirements of the Raritan Township Land Development Code and is issued in a form acceptable to the Township Attorney.

E. Other Agency Guarantees. 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 for such utilities or improvements.

F. Time of Guarantee. Performance guarantees shall run for a term not to exceed 24 months. However, at the request of the developer the time allowed for installation of improvements for which the performance guarantee has been provided may be extended by the Township Committee by resolution. As a condition 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 costs of the installation, which costs shall be determined by the Township Engineer as set forth in Subsection D of this section as of the time of passage of the resolution. Also, as a condition of such extension the safety and security guarantee, and any temporary certificate of occupancy guarantee, shall be increased or reduced as applicable.

G. If the required improvements are not completed or corrected in accordance with the performance guarantee, the safety and stabilization guarantee, or the temporary certificate of occupancy 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 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, P.L. 1971, c. 198 (N.J.S.A. 40A:11-1 *et seq.*).

H. Procedures Required Before Releasing or Reducing the Performance Guarantee. Upon substantial completion of all required street improvements (except for the top course), 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 to the care of the Municipal Clerk, that the Township Engineer prepare, in accordance with the itemized cost estimate prepared for the performance guarantee, a list of all uncompleted or unsatisfactorily completed bonded improvements. A copy of the request shall also be mailed to the Township Engineer. The Township Engineer shall inspect all improvements covered by the obligor's request and shall provide a detailed list and report to the Township Committee, and simultaneously to the obligor, no later than 45 days from receipt of the request for such inspection.

The report 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 shall also identify each improvement determined to be complete and satisfactory together with a recommendation as to the amount of reduction to be permitted in the performance guarantee relating to the completed and satisfactory improvements in accordance with the itemized cost estimate prepared for and appended to the performance guarantee. In addition to the above, when the obligor requests a release of performance guarantees for an item to be dedicated to the Township, the obligor shall also provide the documents and information required by Land Development Code Section 16.16.030 Acceptance of Subdivision Improvements in The Township System, as to those items to be dedicated.

I. Action of the Township Committee. 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 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. The 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 liability pursuant to its performance guarantee and safety and stability guarantee for the approved 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 performance guarantee and safety and stability guarantee posted may be retained to ensure completion of all improvements.

- (1) If the Township Engineer fails to send or provide the list and report as requested by the obligor pursuant to Subsection H of this 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 costs of applying to the Court, including reasonable attorney's fees, may be awarded to the prevailing party. 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 and safety and security 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 and safety and stability guarantees for the approved complete and satisfactory improvements; and approval of a reduction in the performance and safety and stability guarantees with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee pursuant to this section; and the cost of applying to the court, including reasonable attorney's fees which may be awarded to the prevailing party.

- (2) 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 security guarantee the Township may retain such cash equal to the amount of the remaining safety and security guarantee.

J. Rejected Improvements. If any portion of the required improvements is rejected, the approving board may require the obligor to complete or correct such improvements, and upon completion or correction, the same procedure and notification as set forth in this chapter shall be followed/

K. Stages or Sections. In the event that final approval is by stages or sections of development pursuant to N.J.S.A. 40:55D-38a, the provisions of this section shall be applied to the stage or section.

**2. § 16.16.020 Maintenance Guarantees, of the Revised General Ordinances of the Township of Raritan, 1999 is repealed and replaced by the following:**

§ 16.16.020. Reimbursement and Inspections.

A. Reimbursement and Inspections. The obligor shall reimburse the Township for reasonable inspection fees paid to the Township Engineer for the inspections of the foregoing improvements, provided that the Township may require of the developer a deposit for the inspection fees in the amount, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of bonded improvements subject to a performance guarantee as determined pursuant to subsection D of section 16.16.010 and N.J.S.A. 40:55D-53h. *et seq.* Further, the Township may also require an escrow fee not to exceed 5% of the costs of the private site improvements that are not subject to the performance guarantee. The itemized cost list provided by the developer to the Township Engineer in §16.16.010 D and the itemized cost estimate provided by the Township Engineer shall include the cost of all public and private improvements in order that the estimate

may also be used to identify the appropriate amount for inspection fees for the project. Payment of the inspection fees may be made in installments as provided for in N.J.S.A. 40:55D-53 h.

B. If the Township determines that the amount in escrow for the payment of inspection fees, as calculated pursuant to N.J.S.A. 40:55D-53h, is insufficient to cover the costs of additional required inspections, the Township may require the developer to deposit additional funds in escrow provided 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 the additional inspections, details the items undertakings that require inspection, estimates the time required for those inspections and estimates the cost for performing those inspections.

**BE IT FURTHER ORDAINED** that this ordinance shall take effect after final adoption and publication as required by law.

**DATE ADOPTED:** April 7, 2020

**ATTEST:**

  
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Lisa Fania, RMC  
Township Clerk

**TOWNSHIP COMMITTEE OF  
THE TOWNSHIP OF RARITAN**

  
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Jeff Kuhl  
Mayor