

ORDINANCE 2018-18

AN ORDINANCE OF THE TOWNSHIP OF CHATHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING SUBSECTION 30-61.4, TITLED “INSTALLATION OF IMPROVEMENTS; DEVELOPERS AGREEMENTS AND GUARANTEES; TOWNSHIP DESIGN STANDARDS AND SPECIFICATIONS” BY AMENDING PARAGRAPH C THEREOF TITLED “PERFORMANCE GUARANTEE,” BY ADDING NEW PARAGRAPH K TITLED “SAFETY AND STABILIZATION GUARANTEE,” AND ADDING NEW PARAGRAPH L TITLED “TEMPORARY CERTIFICATE OF OCCUPANCY GUARANTEE.”

WHEREAS, on January 16, 2018, P.L. 2017, c.312 was signed into law, amending N.J.S.A.40:55D-53 of the Municipal Land Use Law regarding performance, maintenance and other guarantee requirements; and

WHEREAS, the Township Committee of the Township of Chatham now desires to amend its Land Development Ordinance to conform to the new legislation.

NOW, THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Chatham, County of Morris, State of New Jersey, as follows:

Section 1. Paragraph (c) titled “Performance Guarantee” of subsection 30-61.4 is hereby repealed and replaced as follows:

Performance Guarantee. The performance guarantee shall be in favor of the Township in an amount equal to one hundred twenty (120%) percent of the estimate cost of such improvements as determined by the Township Engineer according to the method of calculation set forth in 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,” 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. The performance guarantee may also be required to include, at the discretion of the Township, Planning Board or Zoning Board of Adjustment, a guarantee for the installation of privately-owned perimeter buffer landscaping. At the developer’s option, a separate performance guarantee may be posted for the privately-owned perimeter buffer landscaping. Ten (10%) percent of the performance guarantee shall be in the form of cash or a certified check made payable to "Township of Chatham" and shall be accompanied by a cash deposit agreement and performance guarantee in a form satisfactory to the Township Attorney.

Each performance guarantee, or part thereof, paid in cash, shall be held in escrow by the Township in an account separate from the general funds of the Township and separate from any other such account. The account shall be in a banking institution or savings and loan association in this State insured by an agency of the Federal government, or in any other fund or depository approved for such deposits by the State, in an amount bearing interest at the minimum rate currently paid by the institution or depository on time or savings deposits. The Township Treasurer shall notify the developer in writing of the name and address of the institution or depository in which the deposit is made and the amount of the deposit.

All interest earned on any account shall be retained in the account until paid over as provided in subsection 30-17.10.

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 guarantee to another governmental agency, no performance guarantee shall be required by the

municipality or such utilities or improvements, provided, however, that the municipality may require evidence that the developer has paid to any such other governmental agency or public utility any charges which are required for installation, including any refundable deposits.

All interest earned on any account shall be retained in the account until paid over as provided herein and in accordance with subsection 30-17.10.

Section 2. Subsection 30-61.4 is hereby amended through the addition of Paragraph (k) titled “Safety and Stabilization Guarantee” as follows:

1. *Safety and Stabilization Guarantee.* In addition to a performance guarantee required pursuant to subsection 30-61.4(c), a developer may be required to furnish to the Township a separate guarantee, referred to herein as a “safety and stabilization guarantee”, in favor of the Township, to 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 60 consecutive days following such commencement for reasons other than force majeure, and

b. 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. The amount of the safety and stabilization guarantee shall be calculated as set forth in N.J.S.A. 40:55D-53. At the developer’s option, the safety and stabilization guarantee may be included as a line item for safety and stabilization in the performance guarantee rather than in the form of a separate guarantee.

2. 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 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.

3. The Township Committee 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.

4. The Township Committee shall release a “safety and stabilization guarantee” upon the Township Engineer’s determination that the development of the site has reached a point that the improvements installed are adequate to avoid any potential threat to public safety.

Section 3. Subsection 30-61.4 is hereby amended through the addition of Paragraph (l) titled “Temporary Certificate of Occupancy Guarantee” as follows:

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 herein as a “temporary certificate of occupancy guarantee” in favor of the Township in an amount equal to one hundred twenty (120%) percent 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 subsection 30-61.4(c), 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. 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.

Section 4. Severability

If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

Section 5. All ordinances or parts of ordinances inconsistent with or in conflict with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 6. This Ordinance shall take effect immediately upon: (i) adoption; (ii) publication in accordance with the laws of the State of New Jersey; and (iii) filing of the final form of adopted Ordinance by the Clerk with the Morris County Planning Board pursuant to N.J.S.A. 40:55D-16.

Introduced: September 27, 2018

TOWNSHIP OF CHATHAM, COUNTY OF
MORRIS, STATE OF NEW JERSEY

Adopted: October 25, 2018

Attest:

BY: _____
Karen M. Swartz, Deputy Mayor

Gregory J. LaConte, Clerk