

**THE TOWNSHIP OF EWING  
COUNTY OF MERCER, NEW JERSEY**

**ORDINANCE NO. 18-07**

1st Reading 4-10-18 Date to Mayor 4-25-18

2nd Reading & Public Hearing 4-24-18 Date Returned 4-25-18

Date Adopted: Date Resubmitted to Council \_\_\_\_\_

4-24-18 Approved as to Form of Legality

Effective Date: \_\_\_\_\_ Township Attorney

5-16-18

AN ORDINANCE AMENDING THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF EWING IN THE COUNTY OF MERCER, TO AMEND CHAPTER 215, ARTICLE X, SECTION 215-101 TITLED "GUARANTEES AND INSPECTIONS"

First Reading

MEMBER	AYE	NAY	ABSENT	ABSTAIN	MOVE	SECOND
<b>Baxter</b>	X					
<b>Keyes-Maloney</b>	X				X	
<b>Schroth</b>	X					
<b>Steward</b>	X					X
<b>Wollert</b>			X			

Second Reading

MEMBER	AYE	NAY	ABSENT	ABSTAIN	MOVE	SECOND
<b>Baxter</b>	X					
<b>Keyes-Maloney</b>	X					X
<b>Schroth</b>	X				X	
<b>Steward</b>	X					
<b>Wollert</b>	X					

By \_\_\_\_\_ Date \_\_\_\_\_ Accepted \_\_\_\_\_ Rejected \_\_\_\_\_  
Mayor

Reconsidered  
By Council \_\_\_\_\_ Override Vote YEA \_\_\_\_\_ NAY \_\_\_\_\_

\_\_\_\_\_  
President of the Council

\_\_\_\_\_  
Municipal Clerk

**Township of Ewing**  
**Ordinance No. 18-07**

AN ORDINANCE AMENDING THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF EWING IN THE COUNTY OF MERCER, TO AMEND CHAPTER 215, ARTICLE X, SECTION 215-101 TITLED "GUARANTEES AND INSPECTIONS"

**BE IT ORDAINED** by the Council of the Township of Ewing, County of Mercer that the Code of the Township of Ewing be amended as follows:

Section 1. Chapter 215, Land Development, Article X, Fees; Guarantees and Inspections, Section 215-101, Guarantees and Inspections, is hereby amended as follows:

§ 215-101. Guarantees and inspections.

A. Performance guarantee estimate.  
[Amended by Ord. No. 1992-1]

(1) Certification of completion of improvements.

(a) No final application for development (whether for an entire tract or a section thereof) shall be approved by the Board until the satisfactory completion and performance of all required on-tract improvements have been certified to the Board by the Township Engineer unless the owner shall have filed with the Township a performance guarantee assuring the installation of on-tract improvements on or before an agreed date as hereinafter provided.

(b) Required improvements shall include those improvements to be dedicated to the public and that have not yet been installed as shown on the approved plans or plat deemed necessary or appropriate by the Board, including streets, grading, pavement, gutters, curbs, sidewalks, streetlighting, ~~shade 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. 46:23-9.9 et seq.), water mains, ~~culverts, storm sewers,~~ sanitary sewers ~~or other means of sewage disposal,~~ community septic systems, drainage structures, ~~erosion control and sedimentation control devices,~~ public improvements of open space and, ~~in the case of site plans only, other on-tract improvements and landscaping~~ any grading necessitated by the preceding improvements.

(c) The Board may also require a performance guarantee to include, within an approved phase or section of a development, privately-owned perimeter buffer landscaping, as required by this Code or otherwise imposed as a condition of approval.

(2) It is the intention of the Township Council that residents living in each new section of a development be provided with a lot and/or dwelling unit and tract area that is as complete as possible with respect to tract and individual lot and/or dwelling unit improvements. In order to accomplish this objective, and except as hereafter provided, all remaining improvements shall be completed as to each category set forth in the performance guarantee to a percentage extent equal to the percent of lots and/or dwelling units which have been conveyed in any manner.

(3) A performance guarantee estimate shall be prepared by the applicant's engineer and submitted to the Township Engineer for review and approval, setting forth all requirements for improvements, as fixed by the Board, and their estimated cost.

B. Approval by Township Attorney.

(1) The owner shall present two copies of the performance guarantee, in an amount equal to 120% of the approved performance guarantee estimate when secured by a bond or in an amount equal to 100% of the approved performance guarantee when

secured by cash or irrevocable letter of credit, for approval as to form and execution by the Township Attorney.

- (2) The Township Attorney shall notify the Secretary of the Board prior to the meeting that the performance guarantee is properly executed and can be added to the agenda.

C. Bonding and cash requirements.

- (1) The performance guarantee shall be made payable and deposited to Ewing Township and shall be in the form of cash, irrevocable letter of credit or certified check or a performance bond in which the owner shall be principal, the bond to be provided by an acceptable surety company licensed to do business in the State of New Jersey. The Township shall issue its receipt for such deposits and shall cause the same to be deposited in the name of the Township to be retained as security for completion of all requirements and to be returned to the owner on completion of all required work or, in the event of default on part of the owner, to be used by the Township to pay the cost and expense of obtaining completion of all requirements.
- (2) Ten percent of the amount of the approved performance guarantee shall be deposited by the owner in cash with the Township. The remaining 90% may be in cash, irrevocable letter of credit or surety bond. In the event of default, the ten-percent fund herein mentioned shall be first applied to the completion of the requirements, and the cash or surety bond shall thereafter be resorted to, if necessary, for the completion of the requirements. The cash or surety bond shall recite the foregoing provisions.

D. Inspection and tests.

[Amended by Ord. No. 1982-2; Ord. No. 1991-11]

- (1) All site improvements and utility installations for both site plans and subdivisions shall be inspected during the time of their installation under the supervision of the Township Engineer, or other designated Township official, to ensure satisfactory completion. The cost of the inspection shall be the responsibility of the owner, who shall pay to the Township Treasurer a sum equal to 5% of the amount of the estimated costs of the required improvements for payment of the inspection costs; 10% where the amount of the estimated costs is from zero to \$25,000; 7% where the amount of the estimated costs is from \$25,001 to \$50,000; and 5% where the estimated costs exceed \$50,001.
  - (a) The escrow associated with inspection fees shall be replenished whenever the original amount is reduced by charges or anticipated charges against the account to 25% or less of the original amount. The Engineer shall notify the applicant or owner to replenish the escrow, and the applicant or owner shall, upon request of the Engineer, deposit up to 100% of the original escrow account.
- (2) In no case shall any paving work be done without permission from the Township Engineer. At least two working days' notice shall be given to the Township Engineer prior to any construction so that he/she or a qualified representative may be present at the time the work is to be done.
- (3) Streets should not be paved with a wearing course until all heavy construction is completed. Shade trees shall not be planted until all grading and earthmoving is completed. The seeding of grass and the placing of surveyor's monuments shall be among the last operations.
- (4) The Township Engineer's office shall be notified prior to each of the following phases of work so that he/she or a qualified representative may inspect the work:
  - (a) Road subgrade.

- (b) Curb and gutter forms.
  - (c) Curbs and gutters.
  - (d) Road paving.
  - (e) Sidewalk forms.
  - (f) Sidewalks.
  - (g) Drainage pipes and other drainage construction.
  - (h) Street name signs.
  - (i) Monuments.
  - (j) Detention and/or retention basins.
  - (k) Underground utilities.
- (5) Any improvement installed contrary to the plan or plat approval by the Township shall constitute just cause to void the municipal approval.
- (6) Any improvement installed without notice for inspection pursuant to § 215-101D(4) hereinabove shall constitute just cause for:
- (a) Removal of the uninspected improvement;
  - (b) The payment by the developer of any costs for material testing;
  - (c) The restoration by the developer of any improvements disturbed during any material testing; and/or
  - (d) The issuance of a stop-work order by the Township Engineer pending the resolution of any dispute.
- (7) Inspection by the Township of the installation of improvements and utilities shall not operate to subject the Township to liability for claims, suits or liability of any kind that may at any time arise because of defects or negligence during construction or at any time thereafter; it being recognized that the responsibility to maintain safe conditions at all times during construction and to provide proper utilities and improvements is upon the owner and his contractor, if any.
- (8) Upon the completion or substantial completion of all required appurtenant utility improvements, and the connection of same to the public system, the obligor may notify the Township Council, in writing, by certified mail in care of the Township Clerk, of the completion or substantial completion of the improvements and shall simultaneously send a certified copy thereof to the Township Engineer. Within 10 working days of receipt of the notice, the Township Engineer shall inspect all the improvements of which such notice has been given and file a detailed report, in writing, with the Township Council, indicating either approval, partial approval or rejection of such improvements with a statement of the reasons for any rejection. The costs of the improvements as approved or rejected shall be set forth.
- E. Release. The Township Council shall approve, partially approve or reject the improvements, on the basis of the report from the Township Engineer, and shall notify the obligor, in writing, by certified mail, of the Engineer's report and the action of the Township Council not later than 65 days after the receipt of the notice of the obligor of the completion or substantial completion of the improvements. Failure of the Township Council to send or provide such notification to the obligor within the 65 days shall be deemed to constitute approval of the improvements, and the obligor and the surety, if any, shall be released from all liability pursuant to the performance guarantee for such improvements.

- (1) Where partial approval is granted, the obligor shall be released from all liability pursuant to the performance guarantee for such improvements, except for that portion adequately sufficient to secure provision of the improvements not yet approved, provided that 30% of the performance guarantee posted may be retained to ensure the completion of all improvements and that the 30% may be applied against all improvements, regardless of when completed.
- (2) If any portion of the required improvements is rejected, the obligor shall complete such improvements and, upon completion, shall notify the Township Council as specified in § 215-101D(8), and the same procedures shall be followed as in the first instance.
- (3) Maintenance guarantees.
  - (a) The developer shall post with the Township, prior to the release of a performance guarantee required pursuant to § 215-101A(1)(a), § 215-101A(1)(c), or both, a maintenance guarantee in an amount not to exceed 15% of the cost of installation of the improvements which are being released.
  - (b) The developer shall post with the Township, upon the inspection and issuance of final approval of the following private site improvements by the Township Engineer, 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 according to the method of calculation set forth in section 15 of P.L. 1991, c. 256 (C.40:55D-53.4).
  - (c) The term of the maintenance guarantee shall be for a period not to exceed two years and shall automatically expire at the established term.

F. Conditions and acceptance of improvements. The approval of any application for development by the Township shall in no way be construed as acceptance of any street or drainage system, or any other improvement, nor shall such approval obligate the Township in any way to exercise jurisdiction over such street or drainage system or other improvement. No improvement shall be accepted by the governing body unless and until all of the following conditions have been met:

- (1) The Township Engineer shall have certified, in writing, that the improvements are completed and that they comply with the requirements of this chapter;
- (2) The final application for development shall have been approved by the Board;
- (3) ~~The owner shall have filed with the Township Council a maintenance guarantee in an amount equal to and not more than 15% of the cost of installing the improvements. The maintenance guarantee shall run for a period of two years. The procedures and requirements governing such maintenance guarantee shall be identical with the procedures and requirements for a performance guarantee set forth in this chapter. The requirements for a maintenance guarantee may be waived by the Township Council only if the Township Engineer has certified that the improvements have been in continuous use for not less than two years from the date the Township Engineer certified completion of such improvements and that during this period the owner has maintained the improvements in a satisfactory manner in accordance with this section; and~~
- (4) An as-built plan and profiles of all utilities, roads and physical features (three black-and-white prints plus a Mylar copy to be sent to the Township Engineer), with certification signed and sealed by a New Jersey licensed professional engineer as to the actual construction as approved by the Township Engineer, shall be provided.

- (5) As a condition precedent to the issuance of a temporary or permanent certificate of occupancy, pursuant to the Uniform Construction Code of New Jersey, the developer's engineer shall submit an as-built lot grading plan to the Construction Official.

G. Safety and stabilization guarantee.

- (1) A developer shall also furnish to the Township a safety and stabilization guarantee in favor of the Township. The developer shall have the option to furnish the safety and stabilization guarantee as either a separate guarantee or as a line item of the performance guarantee. The 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 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 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 other than force majeure. The Township shall provide written notice to the developer by certified mail or other form of delivery providing evidence of receipt.

- (2) Safety and stabilization guarantee amounts.

(a) 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.

(b) 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:

(i) \$5,000 for the first \$100,000 of bonded improvement costs, plus

(ii) two and a half percent of bonded improvement costs in excess of \$100,000 up to \$1,000,000, plus

(iii) one percent of bonded improvement costs in excess of \$1,000,000.

- (3) Releases of safety and stabilization guarantees.

(a) The Township shall release a separate safety and stabilization guarantee to the 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 section.

(b) 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.

Section 2. Severability. Should any section, clause, sentence, phrase or provision of this article be declared unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this article.

Section 3. Repealer. All prior ordinances or parts of same inconsistent with any provisions of this article are hereby repealed to the extent of such inconsistency.

Section 4. Effective Date. This ordinance shall take effect upon final adoption and publication in accordance with law.

Adopted: