

**TOWNSHIP OF MILLBURN
ORDINANCE NO. 2500-18**

**ORDINANCE OF THE TOWNSHIP OF MILLBURN AMENDING SECTION 411 OF THE
TOWNSHIP OF MILLBURN DEVELOPMENT REGULATIONS AND ZONING ORDINANCE
CODE ENTITLED "GUARANTEES AND INSPECTIONS" TO CLARIFY AND PROVIDE
NECESSARY AMENDMENTS TO CONFORM TO THE MUNICIPAL LAND USE LAW**

***STATEMENT OF PURPOSE:** The purpose of this Ordinance is to amend the Township of Millburn Development Regulations to bring the requirements of Section 411 into compliance with a recently adopted statute concerning the posting of performance guarantees in connection with land development projects.*

WHEREAS, the Township Committee desires to amend Section 411 of the Township of Millburn Development Regulations and Zoning Ordinance currently entitled "Guarantees and Inspections" to clarify, update, and amend same to more accurately conform to current statutory requirements and recent amendments to the Municipal Land Use Law regarding the installation and maintenance of certain improvements and the guarantees required for same; and

WHEREAS, the Township Engineer has reviewed the proposed amendment of Section 411 and has recommended to the Township Committee that such further amendments be considered as now proposed herein; and

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Millburn, in the County of Essex and State of New Jersey, as follows:

SECTION 1: Section 411 of the Township of Millburn Development Regulations and Zoning Ordinance currently entitled "Guarantees and Inspections" is hereby amended as follows:
§ 411 Installation of Improvements; Required Guarantees

The following payments, contributions, and requirements shall be applicable to all site plans and subdivisions in addition to other applicable ordinances for any such development as follows:

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 pursuant to subsection d. of section 52 of P.L.1975. c.291 (C.40:55D-65) the Township will require and shall accept in accordance with the standards adopted by ordinance and regulations adopted pursuant to section 1 of P.L.1999, c.68 (C.40:55D-53a) for the purpose of assuring the installation and maintenance of certain on-tract improvements, the furnishing of a performance guarantee, and provision for a maintenance guarantee in accordance with paragraphs (1) and (2) of this subsection. In accordance with the Township Ordinance requiring a successor developer to furnish a replacement performance guarantee, as a condition to the approval of 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, the Governing Body may require and shall accept in accordance with the standards adopted by ordinance and regulations adopted pursuant to section 1 of P.L.1999, c.68 (C.40:55D-53a) for the purpose of assuring the installation and maintenance of certain on-tract improvements, the furnishing of a performance guarantee, and provision for a maintenance guarantee, in accordance with paragraphs (1) and (2) of this subsection.

(1) (a) The developer shall furnish a performance guarantee in favor of the Township in an amount not to exceed 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, water mains, sanitary sewers, drainage structures, public improvements of open space, 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 obligor.

(b) The developer shall furnish a performance guarantee to include, within an approved phase or section of a development privately-owned perimeter buffer landscaping, as required by ordinance 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.

(c) 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 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 subparagraph (a) of this paragraph, 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 will the Township hold more than one guarantee or bond 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.

(d) In addition to a performance guarantee required by the Township ordinance, a developer shall furnish to the municipality a separate guarantee, referred to herein as a "safety and stabilization guarantee", in favor of the municipality, to be available to the municipality 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:

(i) 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

(ii) 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 a developer by certified mail or other form of delivery providing evidence of receipt.

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 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

(2) (a) The developer shall post with the Township, prior to the release of a performance guarantee required pursuant to subparagraph (a), subparagraph (b), or both subparagraph (a) and subparagraph (b) of paragraph (1) of this subsection, a maintenance guarantee in an amount not to exceed 15% of the cost of the 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 outflow 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 end of the established term.

(d) The Township shall not require that a maintenance guarantee required pursuant to this ordinance be in cash or that more than 10 percent of a performance guarantee pursuant to the ordinance be in cash. A developer may, however, provide at his option some or all of the maintenance guarantee in cash, or more than 10 percent of a performance guarantee in cash. (C.40:55D-53.3)

SECTION 2: This Ordinance shall take effect upon adoption.

Introduced: 4/17/2018

Published: 4/26/2018