

CITY OF ABSECON

ORDINANCE 08-2018

AN ORDINANCE AMENDING THE CITY CODE AT ARTICLE XXIV, CHAPTER 224, §176-78 REGARDING PERFORMANCE, MAINTENANCE AND RELATED BONDS

WHEREAS, the State Legislature has recently amended provisions of the Municipal Land Use Law at N.J.S.A. 40:55D-53 governing performance, maintenance and related bonds; and

WHEREAS, the City Council desires to amend and update its existing Code provisions to be in accord with State statute and serve the best interests of the City and its residents; and

WHEREAS, after introduction, this Ordinance shall be referred to the City of Absecon Planning Board for review and comment pursuant to N.J.S.A. 40:55D-26.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Absecon that the City Code be and hereby is amended as follows:

Section 1. Article XXIV, Chapter 224, §176-78 shall be amended to read in full:

§ 224-176 Required Guarantees; Surety.

For the purpose of assuring the installation and maintenance of bondable land development improvements, as a condition of all final site plan, subdivision, and zoning permit approvals, the Board or Zoning Officer shall require, as appropriate, and the City Council shall accept, in accordance with the standards adopted hereinafter:

- (1) The furnishing of a performance guarantee in favor of the City in an amount not to exceed 120% of the cost of 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,. The performance guarantee shall also include, within an approved phase or section of a development, privately-owned perimeter buffer landscaping, as required by this Chapter or imposed as a condition of approval.

The cost shall be determined by the City Engineer according to the method of calculation set forth in N.J.S.A. 40:55D-53.4, for any and all bondable items as permitted therein. At the developer's option, a separate performance guarantee may be posted for the privately-owned perimeter buffer landscaping. The City 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.

- (2) The furnishing of a Temporary Certificate of Occupancy Guarantee in the amount of 120% of the cost of installing the remaining improvements which are not covered by a performance guarantee and are required to be completed before the issuance of a permanent certificate of occupancy. The scope and amount of such a guarantee will be determined by the City Engineer.

(3) The furnishing of a Safety and Stabilization Guarantee to return the property to a safe and stable condition or to otherwise implement measures to protect the public from access to an unsafe or unstable condition. The amount of such a guarantee shall be \$5,000 where the overall bonded improvements are \$100,000 or less. Where the overall bonded improvements are \$100,000 or more, then the City Engineer shall calculate the bond amount in accord with the following: \$5,000 for the first \$100,000 of bonded improvement costs, plus 2.5 percent of bonded improvement costs in excess of \$100,000 up to \$1 million, plus 1 percent of bonded improvement costs in excess of \$1 million.

B. Other governmental agencies.

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 by the City for such utilities or improvements.

C. Failure to perform; municipal completion.

If the required improvements are not completed or corrected in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the City for the reasonable cost of the improvements not completed or corrected, and the City may either prior to or after the 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, N.J.S.A. 40A:11-1, et seq.

D. Conformance with municipal standards.

All improvements shall be in accordance with the design standards of the City Code or as authorized by a design exception granted by the reviewing board and shall be subject to inspection and approval by the City Engineer. The City Engineer shall be notified 24 hours prior to the start of the various phases of the work, and if discontinued, shall again be notified when the work will be continued.

E. Release or reduction of performance guarantee.

(1) Upon substantial completion of all required improvements, the obligor may request of the governing body, in writing, by certified mail addressed in care of the City Clerk with copy to the City Engineer, that the City Engineer prepare, in accordance with the itemized cost estimate prepared by the City Engineer and appended to the performance guarantee pursuant to this Chapter, a list of all uncompleted or unsatisfactorily completed improvements. The request shall indicate which improvements have been completed and which improvements remain uncompleted in the judgment of the obligor. Thereupon the City Engineer shall inspect all improvements covered by the obligor's request and shall file a detailed list and report, in writing, with the City Council, and shall simultaneously send a copy thereof to the obligor not later than 45 days after receipt of the obligor's request.

- (2) The list prepared by the City 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 prepared by the City Engineer shall identify each 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 improvement, in accordance with the itemized cost estimate prepared by the Municipal Engineer and appended to the performance guarantee pursuant to this Chapter.
- (3) The City Council, by resolution, shall either approve the improvements determined to be complete and satisfactory by the City 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 or release to be made in the performance guarantee relating to the improvements accepted, in accordance with the itemized cost estimate prepared by the City Engineer and appended to the performance guarantee pursuant to this Chapter. This resolution shall be adopted not later than 45 days after receipt of the list and report prepared by the City Engineer. Upon adoption of the resolution by the City Council, the obligor shall be released from all liability pursuant to its performance guarantee, with respect to those accepted improvements, except for that portion sufficient to secure completion or correction of the improvements not yet accepted; provided that 30% of the amount of the performance guarantee and safety and stabilization guarantee posted may be retained to ensure completion and acceptability of all improvements. If any portion of the required improvements is rejected, the City shall 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.

F. Inspection Fees.

The obligor shall reimburse the City for all reasonable inspection fees paid to the City Engineer for the foregoing inspection of improvements; provided that the municipality may require of the developer a deposit for the inspection fees in an amount not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of improvements, which cost shall be determined pursuant to N.J.S.A. 40:55D-53.4.

G. Phasing in sections.

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

§ 224-177. Maintenance Guarantees

- A. A developer shall post with the City, prior to the release of a performance guarantee required pursuant to § 224-176(A)(1), a maintenance guarantee to be posted with City Council for a period not to exceed two years after final acceptance of the improvement in an amount not to exceed 15% of the cost of the improvement installation of the improvements which are being released.

- B. A developer shall post with the City, upon the inspection and issuance of final approval of the following private site improvements by the City Engineer, a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the following private site improvements: storm water management basins, in-flow and water quality structures within the basins, and the out-flow pipes and structures of the storm water management system, if any, which cost shall be determined by the City Engineer according to the method of calculation set forth in N.J.S.A. 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.

§ 224-178. Dedication and Acceptance.

To the extent that any of the improvements have been dedicated to the City on the subdivision plat, site plan and/or zoning permit, the municipality shall be deemed, upon the release of any performance guarantee required hereunder, to accept dedication for public use any improvements made thereunder, provided that such improvements have been inspected and have received final approval by the City Engineer.

Section 2. Repealer, Severability, and Effective Date.

Repealer. § 224-176-78, together with any and all Ordinances inconsistent with the terms of this Ordinance are hereby repealed to the extent of any such inconsistencies.

Severability. In the event that any clause, section, paragraph or sentence of this Ordinance is deemed to be invalid or unenforceable for any reason, then the City Council hereby declares it's intent that the balance of the Ordinance not affected by said invalidity shall remain in full force and effect to the extent that it allows the City to meet the goals of the ordinance.

Effective Date. This Ordinance shall take effect upon proper passage and approval in accordance with the law.

DATED: June 21st, 2018

SIGNED: _____
John R. Armstrong, Mayor

ATTEST: _____
Carie A. Crone, RMC, Municipal Clerk

Passed on first reading at a regular meeting of the Municipal Council held on June 7th, 2018. Laid over and advertised for public hearing and final adoption on June 21st, 2018. Notice is hereby given that the foregoing Ordinance was approved for final adoption by the Municipal Council of the City of Absecon at a regular meeting held on June 21st, 2018.