

**BOROUGH OF PEAPACK AND GLADSTONE  
SOMERSET, NJ**

**ORDINANCE NO. 1140-2024**

**TITLE: AN ORDINANCE AMENDING CHAPTER 23-58 ENTITLED "INSTALLATION OF IMPROVEMENTS OR GUARANTEES" OF THE MUNICIPAL CODE OF THE BOROUGH OF PEAPACK AND GLADSTONE, COUNTY OF SOMERSET, STATE OF NEW JERSEY TO REVISE PERFORMANCE AND MAINTENANCE GUARANTEES AND ESTABLISH SAFETY AND STABILIZATION GUARANTEES**

**WHEREAS**, pursuant to N.J.S.A. 40:55D-53, the Borough Council of the Borough of Peapack and Gladstone is authorized under State law to establish ordinances requiring developers to post performance, maintenance and safety and stabilization guarantees; and

**WHEREAS**, the Borough of Peapack and Gladstone wishes to modify its Municipal Code to revise sections of performance and maintenance guarantees and to establish safety and stabilization guarantees; and

**NOW, THEREFORE, BE IT ORDAINED**, by the Borough Council of the Borough of Peapack and Gladstone in the County of Somerset and State of New Jersey that Chapter 23-58 of the Municipal Code of the Borough of Peapack and Gladstone, County of Somerset, State of New Jersey, entitled "Installation of Improvements or Guarantees" be and is hereby amended accordingly.

**SECTION 1.** That Chapter 23 of the Municipal Code, Land Development, shall be amended and supplemented to revise Section 23-58.1(c) and Sections 23-58.2(a) and (b) and add a new Section 23-58.3 as follows: (new text is in underline and **bold**; deletions are ~~stricken~~):

**§ 23-58.1 Performance Guarantees Required**

- a. Prior to the granting of final approval of a subdivision or site plan, the applicant shall have installed or shall have furnished performance guarantees for the ultimate installation of the improvements that were required as a condition of preliminary approval and are shown on the final plat.
- b. Improvements for which performance guarantees may be required include: streets, grading, pavement, gutters, curbs, sidewalks, street lighting, shade trees, surveyor's monuments, water mains, culverts, storm sewers, sanitary sewers or other means of sewage disposal, drainage structures, erosion control and sedimentation control devices, public improvements of open space, and, in the case of site plans only, landscaping and other on-site improvements.

- c. The applicant shall file with the Borough Clerk a performance guarantee in favor of the Borough of Peapack and Gladstone insuring the installation of such uncompleted improvements on or before an agreed upon date. ~~The cost of installation of the required improvements shall be estimated by the Borough Engineer, and~~ The amount of the performance guarantee shall be of an amount equal to one hundred twenty (120%) percent of ~~this~~ the estimated cost. Ten (10%) percent of the performance guarantee shall be required to be in the form of cash. The performance guarantee shall consist 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, and shall be determined by the developer and approved by the municipal 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," P.L.1960, c.141, 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 Borough, the Land Use Board, 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. The developer shall prepare an itemized cost estimate of the improvements covered by the performance guarantee for review and approval by the municipal engineer, which improvements shall be appended to each performance guarantee posted by the obligor.
- d. The form and sufficiency of bond shall be subject to approval of the Borough Attorney. Performance bonds shall be expressly conditioned upon the developer's full compliance with all Borough ordinances and regulations governing the installation of improvements and utilities and faithful performance of the terms of agreement with the Borough.
- e. The time allowed for installation of the improvements for which the performance guarantee has been provided may be extended by the Borough Council by resolution. As a condition or as part 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 one hundred twenty (120%) percent of the cost of the installation as determined as of the time of the passage of the resolution.
- f. 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 Borough for the reasonable cost of the improvements not completed or corrected, and the Borough may either prior to or after the receipt of the proceeds thereof complete such improvements.

- g. Upon substantial completion of all required appurtenant utility improvements, and the connection of same to the public system, the obligor may notify the Borough Council in writing, by certified mail addressed in care of the Borough Clerk of the completion or substantial completion of improvements and shall send a copy thereof to the Borough Engineer. Thereupon the Engineer shall inspect all improvements of which such notice has been given and shall file a detailed report, in writing, with the Borough Council indicating either approval, partial approval or rejection. The cost of the improvements as approved or rejected shall be set forth.
- h. The Governing Body shall either approve, partially approve or reject the improvements, on the basis of the report of the Borough Engineer and shall notify the obligor in writing, by certified mail, of the contents of the report and the action of the Governing Body with relation thereto, not later than sixty-five (65) days after receipt of the notice from the obligor of the completion of the improvements. Where partial approval is granted, the obligor shall be released from all liability pursuant to its performance guarantee, except for that portion adequately sufficient to secure provision of the improvements not yet approved; provided that thirty (30%) percent of the amount of the performance guarantee posted may be retained to ensure completion of all improvements. Failure of the Borough Council to send or provide such notification to the obligor within sixty-five (65) days shall be deemed to constitute approval of the improvements and the obligor and surety, if any, shall be released from all liability pursuant to such performance guarantee for such improvements.
- i. If any portion of the required improvements are rejected, the Borough Council may require the obligor to complete such improvements and, upon completion, the same procedure of notification, as set forth in this section shall be followed.
- j. Nothing herein, however, shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the Borough Council or the Borough Engineer.
- k. The obligor shall reimburse the Borough of Peapack and Gladstone for all reasonable inspection fees paid to the Borough Engineer for the foregoing inspection of improvements.
- l. In the event that final approval is by stages or sections of development, the provisions of this section shall be applied by stage or section.

m. Prior to the filing of the final plat and/or prior to the commencement of construction of improvements, inspection fees shall be deposited with the Borough of Peapack and Gladstone. A sum equal to five (5%) percent of the estimated cost of the subdivision improvements, as prepared by the applicant's engineer and approved by the Borough Engineer, shall be deposited with the Borough Chief Financial Officer, as provided in Article VI, Section 23-53d. Any excess fees not required for inspections shall be returned by the Borough of Peapack and Gladstone after the improvements have been installed and accepted by the Borough. Site plan improvements shall be inspected by the Borough Engineer to insure conformance with site plan approval. Prior to the issuance of the building permit and/or prior to commencement of construction of improvements, inspection fees shall be deposited with the Borough of Peapack and Gladstone. A sum equal to five (5%) percent of the estimated costs of on-site improvements, (not including buildings) and five (5%) percent of the estimated costs of municipal improvements, as prepared by the applicant's engineer and approved by the Borough Engineer, shall be deposited with the Borough Chief Financial Officer as provided in Article VI, Section 23-53d. Any excess fees not required for inspection shall be returned by the Borough of Peapack and Gladstone after the improvements have been installed and accepted/approved.

#### **§ 23-58.2 Maintenance Guarantees**

~~a.~~ a. Upon completion and approval of the required improvements or portions of improvements, the developer ~~may be required to post a maintenance guarantee with the Borough Council for a period not to exceed two (2) years after final acceptance of the improvement, in an amount not to exceed fifteen (15%) percent of the cost of the improvement.~~ shall post with the Borough, prior to the release of the performance guarantee, a maintenance guarantee in an amount equal to 15% of the cost of the installation of the improvements covered under the performance guarantee, along with 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 itemized cost shall be determined by the developer and approved by the municipal engineer according to the method of calculation set forth in N.J.S.A. 40:55D-53.4. The term of the maintenance guarantee, the form and sufficiency of which must be approved by the Borough Attorney, shall be for a period not to exceed two years and shall automatically expire at the end of the established term.

- ~~b. The guarantee shall be in a form and sufficiency approved by the Borough Attorney. The maintenance bond shall be posted upon final release of the performance bond by the Borough and shall be expressly conditioned upon the maintenance by the developer of all such improvements for a period of two (2) years, and particularly shall guarantee the remedy of any defects in such improvements which occur during that period.~~
- e. b. 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 governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the Borough for such utilities or improvements.

### § 23-58.3 Safety and Stabilization Guarantees

- a. The furnishing of a "safety and stabilization guarantee" in favor of the Borough of Peapack and Gladstone shall be required as deemed necessary to ensure that the Borough has an adequate guarantee to return the property that has been disturbed to a safe and stable condition or otherwise implement measures to protect the public from access to an unsafe or unstable condition. The Borough shall be permitted to access the guarantee when (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 municipality to the developer of the municipality's intent to claim payment under the guarantee. 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.

**SECTION 2. SEVERABILITY.** If any paragraph, section, subsection, sentence, sentence clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision of such holding shall not affect the validity of the remaining paragraphs or sections hereof.

**SECTION 3. INCONSISTENCY.** All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

**SECTION 4. EFFECTIVE DATE.** This ordinance shall take effect upon final passage and publication according to law.

BE IT FURTHER ORDAINED, this Ordinance shall take effect immediately upon final passage and publication according to law.

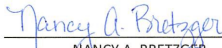
Introduced: March 26, 2024

Introduced	Seconded	Borough Council	Aye	Nay	Abstain	Absent
X		Jamie Murphy	X			
		Eric L. Quartello				X
		Sergio Silva				X
		Julie Sueta	X			
	X	John Sweeney	X			
		Jill Weible	X			

Adopted: April 16, 2024

Introduced	Seconded	Borough Council	Aye	Nay	Abstain	Absent
	X	Jamie Murphy	X			
		Eric L. Quartello				X
		Sergio Silva	X			
		Julie Sueta	X			
X		John Sweeney	X			
		Jill Weible	X			

ATTEST:

  
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NANCY A. BRETZGER  
CLERK

  
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MARK A. CORIGLIANO  
MAYOR