

**BOROUGH OF HIGHLAND PARK
ORDINANCE NO 21-2040**

**ORDINANCE AMENDING THE HIGHLAND PARK BOROUGH CODE PURSUANT TO
N.J.S.A. 40:55D-53 REGARDING LAND DEVELOPMENT PERFORMANCE, MAINTENANCE
AND RELATED GUARANTEES**

WHEREAS, the New Jersey Legislature has amended N.J.S.A. 40:55D-53 so as to modify performance guarantees, maintenance guarantees, and municipal inspection protocols under the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), and to introduce the availability of guarantees for safety and stabilization and temporary certificates of occupancy; and

WHEREAS, the Mayor and Borough Council are authorized to enact and amend ordinances as deemed necessary for the preservation of the public health, safety, and welfare and as may be necessary to carry into effect the powers and duties conferred and imposed upon the Borough of Highland Park by law; and

WHEREAS, the Mayor and Borough Council have reviewed the existing provisions pertaining to performance guarantees, maintenance guarantees, and the reduction or release thereof in the Highland Park Borough Code, and have determined that it is in the best interest of the residents of the Borough of Highland Park to amend the Highland Park Borough Code in accordance with N.J.S.A. 40:55D-53.

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Highland Park, County of Middlesex, State of New Jersey, that the Code of the Borough of Highland Park is hereby amended, revised, and/or supplemented as follows:

Sections 230-78 and 230-79 of the "Code of the Borough of Highland Park" concerning land development performance, maintenance and related guarantees as said sections currently appear in said Code are hereby deleted and replaced with the following NEW language and shall read as follows:

Chapter 230. Land Development

Part 2. Review Procedures and Requirements

Article XI. Guarantees and Inspections

§ 230-78. Requirements

In accordance with N.J.S.A. 40:55D-53.4, for the purpose of assuring the installation and maintenance of bondable land development improvements, as a condition of all final site plan, subdivision, and/or zoning permit approvals, the Board or Zoning Officer, as appropriate, shall require, and the Borough Council shall accept the following guarantees:

A. Performance Guarantees

The furnishing of a performance guarantee in favor of the Borough 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 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, 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 shall also cover the cost for privately-owned perimeter buffer landscaping in an

approved phase or section of a development, either as a separate guarantee or as a line item of the performance guarantee.

The cost of the improvements covered by the performance guarantee shall be determined by the Borough Engineer.

The Borough 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. Maintenance Guarantee

In accordance with N.J.S.A. 40:55D-53.4, developer shall post with the Borough, 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 Borough Engineer.

The maintenance guarantee shall be furnished upon the inspection and issuance of final approval of the applicable private site improvements by the Borough Engineer.

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.

C. Temporary Certificate of Occupancy Guarantee

Pursuant to N.J.S.A. 40:55D-53(1)(c), a developer shall furnish a Temporary Certificate of Occupancy Guarantee ("TCOG") whenever the developer seeks a temporary certificate of occupancy for a development, unit, lot, building, or phase of development. The TCOG shall be furnished in favor of the Borough in an amount equal to 120% of the cost of installation of any improvements which (1) remain to be completed or installed under the terms of the temporary certificate of occupancy; (2) are required to be completed or installed as a condition precedent to the issuance of a permanent certification of occupancy; and (3) are not covered by an existing performance guarantee.

The scope and amount of the TCOG shall be determined by the Borough Engineer.

The TCOG shall be released upon the issuance of a permanent certificate of occupancy.

D. Safety and Stabilization Guarantee

Pursuant to N.J.S.A. 40:55D-53(1)(d), a developer shall furnish a Safety and Stabilization Guarantee ("SSG") in favor of the Borough, either as a separate guarantee or as a line item of the performance guarantee.

The amount of the SSG for a development with bonded improvements in an amount not exceeding \$100,000 shall be \$5,000. The amount of the SSG 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.

The Borough shall release a separate SSG 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 pursuant to this section.

§ 230-79 Guarantee Reduction and/or Release

A. Request for List of uncompleted or unsatisfactory improvements.

Upon substantial completion of all required street improvements (except for the top course) and appurtenant utility improvements and the connection of same to the public system, the obligor may request of the Borough Council in writing, by certified mail addressed in care of the Borough Clerk, that the Borough Engineer prepare, in accordance with the itemized cost estimate prepared by the Borough Engineer and appended to the performance guarantee pursuant to § 230-78A above, a list of all uncompleted or unsatisfactory completed improvements. If such a request is made, the obligor shall send a copy of the request to the Borough Engineer. The request shall indicate which improvements have been completed and which improvements remain uncompleted in the judgment of the obligor. Thereupon, the Borough Engineer shall inspect all improvements covered by the obligor's request and shall file a detailed list and report, in writing, with the Borough Council and shall simultaneously send a copy thereof to the obligor not later than 45 days after receipt of the obligor's request.

The list prepared by the Borough 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 Borough 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 Borough Engineer and appended to the performance guarantee pursuant to § 230-78A above.

B. Approval or rejection of improvements; application of partial reduction.

The Borough Council, by resolution, shall either approve the improvements determined to be complete and satisfactory by the Borough 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 to be made in the performance guarantee relating to the improvements accepted, in accordance with the itemized cost estimate prepared by the Borough Engineer and appended to the performance guarantee pursuant to § 230-78A above. This resolution shall be adopted not later than 45 days after receipt of the list and report prepared by the Borough Engineer. Upon adoption of the resolution by the Borough Council, the obligor shall be released from all liability pursuant to its performance guarantee with respect to those approved improvements except for that portion adequately sufficient to secure completion or correction of the improvements not yet approved, provided that 30% of the amount of the performance guarantee posted may be retained to ensure completion and acceptability of all improvements.

C. Inspection Fees

(1) The obligor shall reimburse the Borough for all reasonable inspection fees paid to the Borough Engineer for the foregoing inspection of improvements; provided that the Borough may require of the developer a deposit for the inspection fees in an amount not to exceed, except for extraordinary circumstances, the greater of \$270 or 5% of the cost of improvements, which cost shall be determined pursuant to N.J.S.A. 40:55D-53.4.

(2) If the Borough determines that the amount in escrow for the payment of inspection fees is insufficient to cover the cost of additional required inspections, the Borough may require the developer to deposit additional funds in escrow.

(3) If additional funds are required, the Borough shall submit to the developer a written inspection escrow deposit request, signed by the Borough Engineer, which:

- (a) informs the developer of the need for additional inspections;
- (b) details the items or undertakings that require inspection;
- (c) estimates the time required for those inspections; and
- (d) estimates the cost of performing those inspections.

D. 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. 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.

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 120% of the cost of the installation, which cost shall be determined by the Borough Engineer according to the method of calculation set forth in N.J.S.A. 40:55D-53.4 as of the time of the passage of the resolution.

This Ordinance shall be in full force and effect from and after its adoption and any publication as required by law.

Introduced on first reading
by title: December 7, 2021

ADOPTED:

ATTEST:

APPROVED:

Jennifer Santiago
Deputy Clerk

Gayle Brill Mittler
Mayor