

**BOROUGH OF WOODBURY
HEIGHTS GLOUCESTER
COUNTY, NEW JERSEY**

ORDINANCE 6-2020

**AMENDING AND REPEALING THE BOROUGH CODE AT CHAPTER 70,
SECTION 49 GOVERNING "PERFORMANCE AND MAINTENANCE
GUARANTIES" TO BE CODIFIED AS CHAPTER 70, SECTION 48A**

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 Borough Council desires to amend and update its existing Code provisions to be in accord with State statute and serve the best interests of the Borough and its residents.

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Woodbury Heights, County of Gloucester, State of New Jersey that the Borough Code be and hereby is amended as follows:

Section I. Chapter 70-49 of the Code is hereby deleted and repealed, in its entirety, and replaced as Chapter 70, Section 48A to be codified as follows:

§ 70-48A.1. Required Guarantees; surety.

In accordance with N.J.S.A. 40:55D-53, et., seq., 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:

- 1) Performance Guarantees.
 - a. 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.

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

- c. 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.

2) Maintenance Guarantee.

- a. In accordance with N.J.S.A. 40:55D-53, the 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, inflow and water quality structures within the basins, and the outflow pipes and structures of the storm water management system, if any, which cost shall be determined by the municipal engineer. Additionally, in accordance with N.J.S.A. 40:55D-53.4, a maintenance guarantee is required for any items on the performance bond associated with improvements being dedicated to the Municipality if any, which cost shall be determined by the municipal engineer.
- b. The Maintenance Guarantee shall be furnished upon the inspection and issuance of final approval of the applicable private site improvements by the municipal engineer.
- c. The term of the maintenance guarantee shall be for a period not to exceed two (2) years and shall automatically expire at the end of the established term.

3) Temporary Certificate of Occupancy Guarantee.

- a. 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 municipality 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.
- b. The scope and amount of the TCOG shall be determined by the Municipal Engineer.
- c. The TCOG shall be released upon the issuance of a permanent

certificate of occupancy, as issued and determined by the Borough
Construction Code Official and Borough Engineer.

4) Safety and Stabilization Guarantee

- a. 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.
- b. 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.
- c. 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 chapter.
- d. A SSG shall be available to the municipality for the purpose of returning property that has been disturbed to a safe and stable condition, or taking other measures to protect the public from access to an unsafe or unstable condition. An SSG shall be shall only be available to the Borough when:
 - 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 Borough to the developer of the Borough's intent to claim payment under the guarantee. The Borough shall not provide notice of its intent to claim payment under a SSG 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 Borough shall provide

written notice to a developer by certified mail or other form of delivery providing evidence of receipt.

- iii. The municipality shall release a SSG upon the Municipal 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.

§ 70-48A.2. 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 Borough for such utilities or improvements.

§ 70-48A.3. Borough Solicitor Review

The performance, maintenance, TCOG and SSG guarantees must be reviewed by the Borough Solicitor to confirm that they are issued satisfactory as to form, sufficiency and execution and they meet all statutory requirements. After review and approval by the Borough Solicitor, all guarantees must be posted in original form with the Borough Clerk prior to the Planning Board Chair' and Secretary's signature of any site plan, subdivision plat or minor subdivision deed, and prior to issuance of any zoning, building or other permit or certificate.

§ 70-48A.4. Extension of Time

The time allowed for installation of the improvements for which the performance guarantee has been provided may be extended by the governing body 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 municipal 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.

§ 70-48A.5. Default; Reductions and Release

If the required improvements are not completed or corrected in accordance with the performance guarantee, the developer 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 compilation 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.). Otherwise, the guarantees will be subject to reduction and release as provided in N.J.S.A. 40:55D-53 et. seq.

§ 70-48A.6. Request for List of Uncompleted or Unsatisfactory Completed 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 governing body in writing, by certified mail addressed in care of the Borough Clerk, that the municipal engineer prepare, in accordance with the itemized cost

estimate prepared by the municipal engineer and appended to the performance guarantee pursuant to this Section , 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 municipal engineer. The request shall indicate which improvements have been completed and which improvements remain uncompleted in the judgment of the obligor. Thereupon the municipal engineer shall inspect all bonded improvements covered by obligor's request and shall file a detailed list and report, in writing, with the governing body, 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 municipal engineer shall state, in detail, with respect to each bonded 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 municipal 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 Section.

§ 70-48A.7. Action by Governing Body.

The Borough Council, by resolution, shall either approve the bonded improvements determined to be complete and satisfactory by the municipal 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 and the "safety and stabilization bond" relating to the improvements accepted, in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the performance guarantee pursuant to this Section. This resolution shall be adopted not later than 45 days after receipt of the list and report prepared by the municipal engineer. Upon adoption of the resolution by the Borough Council, the obligor shall be released from all liability pursuant to its performance guarantee and "safety and stabilization bond," with respect to those approved bonded 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 total performance guarantee and "safety and stabilization bond" posted may be retained to ensure completion and acceptability of all improvements. For the purpose of releasing the obligor from liability pursuant to its performance guarantee and "safety and stabilization bond," the amount of the performance guarantee and "safety and stabilization bond" attributable to each approved bonded improvement shall be reduced by the total amount for each such improvement, in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the performance guarantee pursuant to subsection a. of this section, including any contingency factor applied to the cost of installation. If the sum of the approved bonded improvements would exceed 70% percent of the total amount of the performance guarantee, then the municipality may retain 30% percent of the amount of the total performance guarantee and "safety and stabilization bond" to ensure completion and acceptability of all improvements, as provided above, except that any amount of the performance guarantee attributable to bonded improvements for which a "temporary certificate of occupancy bond" has been posted shall be released from the performance guarantee even if such release would reduce the amount held by the Borough to below 30% percent. If any portion of the required improvements is rejected, the Borough may 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.

§ 70-48A.8. Engineering Inspection Fees.

The obligor shall reimburse the Borough for reasonable inspection fees paid to the Borough engineer for the foregoing inspection of improvements: which fees shall not exceed the sum of the amounts set forth in N.J.S.A. 40:55D-53(a)(b). The developer shall post the following inspection fees in escrow:

- 1) not to exceed 5% of the cost of bonded improvements that are subject to a performance guarantee under N.J.S.A. 40:55D-53(a)(b), which cost shall be determined pursuant to N.J.S.A. 40:55D-53.4 ; and
- 2) not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee under N.J.S.A. 40:55D-53(a)(b), which cost shall be determined pursuant to N.J.S.A. 40:55D-53.4.
- 3) **Installments.** For those developments for which the inspection fees total less than \$10,000, fees may, at the option of the developer, be paid in two installments. The initial amount deposited in escrow by a developer shall be 50% of the inspection fees. When the balance on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the municipal engineer for inspections, the developer shall deposit the remaining 50% of the inspection fees. For those developments for which the inspection fees total \$10,000 or greater, fees may, at the option of the developer, be paid in four installments. The initial amount deposited in escrow by a developer shall be 25% of the inspection fees. When the balance on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the municipal engineer for inspection, the developer shall make additional deposits of 25% of the inspection fees.
- 4) **Request for Additional Deposit.** If the municipality determines that the amount in escrow for the payment of inspection fees, as calculated pursuant to N.J.S.A. 40:55D-53(a)(b), is insufficient to cover the cost of additional required inspections, the municipality may require the developer to deposit additional funds in escrow provided that the municipality delivers to the developer a written inspection escrow deposit request, signed by the municipal engineer, which: informs the developer of the need for additional inspections, details the items or undertakings that require inspection, estimates the time required for those inspections, and estimates the cost of performing those inspections.

§ 70-48A.9. Applicability of Amendments not Codified in this Ordinance.

Any and all amendments made to N.J.S.A. 40:55D-53 that have not been codified in this Ordinance shall be deemed incorporated herein.

§ 70-48A.10. Applicability to existing projects.

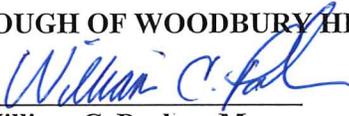
The modifications in this ordinance shall be applicable to all projects that have not received final approvals from the Borough Planning Board or the Borough Zoning Board of Adjustment and/or which have not posted bonds and begun construction of required improvements as of January 16, 2018, the date of enactment of P.L. 2017, c.312 obviated the Borough's previously lawful ordinances.

Section II. All Ordinances or Code provisions or parts thereof inconsistent with the provisions of this Ordinance shall be and are hereby repealed to the extent of such inconsistency.

Section III. If any section, subsection, part, clause or phrase of the Ordinance shall be declared invalid by judgment of any court of competent jurisdiction, such section, subsection, part, clause or phrase shall be deemed to be severable from the remainder of this Ordinance.

Section IV. This Ordinance shall take effect immediately after final passage and publication as required by law and may be renumbered for codification purposes.

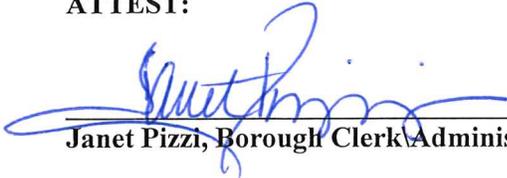
BOUROUGH OF WOODBURY HEIGHTS

By: 
William C. Packer, Mayor

Dated:

07/15/2020

ATTEST:

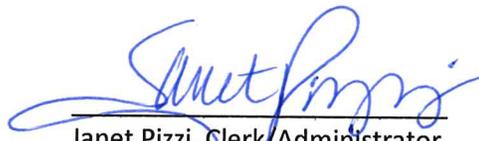

Janet Pizzi, Borough Clerk Administrator

NOTICE

Notice is hereby given that the foregoing Ordinance was introduced and passed on first reading at the regular meeting of the Borough Council the Borough of Woodbury Heights on the 17th day of June, 2020 and will be considered for final passage at a meeting of the Borough Council the Borough of Woodbury Heights, to be held on the 15th day of July, 2020 at 7:30PM, at which time and place any interested party will be given the opportunity to be heard.


JANET PIZZI, BOROUGH CLERK

Notice is hereby given that the foregoing Ordinances were finally adopted following a public hearing by the Borough Council at the Regular Meeting of the Borough of Woodbury Heights, 500 Elm Avenue, Woodbury Heights, NJ, County of Gloucester, State of New Jersey, at a meeting held on the 15th day of July, 2020 at 7:30 p.m.



Janet Pizzi, Clerk/Administrator