



# Ordinance of the Township of Bernards

1 Collyer Lane, Basking Ridge, NJ 07920  
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## ORDINANCE #2406

An Ordinance to Amend the Revised Land Use Ordinances of the Township of Bernards Chapter 21 “Land Use,” Section 59 “Installation of Improvements: Guarantee Agreement”

**BE IT ORDAINED**, by the Township Committee of the Township of Bernards in the County of Somerset that Chapter 21 “Land Use,” Section 59 “Installation of Improvements: Guarantee Revised Land Use Ordinances of the Township of Bernards is amended. (new text is in double underline; deletions are stricken):

### **§ 21-59.1 Installation of Improvements or Guaranty Prior to Grant of Final Subdivision Approval.**

After preliminary subdivision approval has been granted but prior to the recording of a final subdivision plat, the applicant shall have installed under the inspection of the Township Engineer the improvements required under Section 21-60 unless the applicant has furnished to the Township a performance guaranty in an amount and in a form, approved by the Township Engineer, to assure the installation on or before a date approved by the Board of all improvements required for the whole or any section of the tract which have not already been inspected and approved by the Township Engineer.

### **§ 21-59.2 Installation of Improvements and Guaranty Prior to Grant of Final Site Plan Approval.**

After preliminary site plan approval has been granted, and before any construction permit is issued for any building, the applicant shall install under the inspection of the Township Engineer those on-tract or on-site improvements required under Subsections **21-60.2** and **21-60.3** which are determined by the Board to have an impact on the health, safety and welfare of the Township, such as:

- a. Detention and retention facilities.
- b. Drainage structures, including those carrying off-site or off-tract stormwater runoff.
- c. Erosion and sedimentation control improvements.
- d. All landscaping in all buffers.

Prior to commencing site work, the applicant will furnish the Township with a bond for the completion of the above items a, b, c and d, including the grading and reseeding of disturbed areas. The bond shall contain a provision waiving objection to any delay in the completion of any item permitted by the Township Engineer or other Township authorities.

If the Township Engineer determines that a particular improvement, including but not limited to items a, b, c and d above, does not have to be actually installed prior to the granting of final site plan approval in order to protect the environment or the public health, safety or welfare, the applicant may furnish the Township with a performance guaranty to insure installation on or before a date approved by the Township Engineer.

### **§ 21-59.3 ~~Performance Guaranty~~ Guarantees Required; Surety Release.**

~~The performance guaranty shall be in favor of the Township in an amount equal to 120% of the estimated cost of such improvements as determined in Subsection 21-59.4 below. At least 10% of the performance guaranty shall be in the form of cash or a certified check made payable to the Township of Bernards and shall be accompanied by a cash deposit agreement in the form annexed hereto as Appendix A. Any performance bond given as part of this guaranty shall be given in the form annexed hereto as Appendix B. Developers must use the preprinted form which is available from the Township Engineering Department. The Township Engineer may revise the preprinted form from time to time, but such revisions may not alter the substance of such forms unless authorized by an ordinance implementing the revision.~~

- a. Before filing a final subdivision plat or recording a minor subdivision deed 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

N.J.S.A. 40:55D-65, a developer shall furnish a performance guarantee, and provide for a maintenance guarantee in accordance with paragraphs (1) and (2) of this subsection.

1. 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, as shown on the final map and required by "the map filing law," P.L.1960, c.141 (C.46:23-9.9 et seq.; repealed by section 2 of P.L.2011, c.217) or N.J.S.46:26B-1 through N.J.S.46:26B-8, water mains, sanitary sewers, community septic systems, drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements.

A successor developer must 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.

2. ~~The developer shall submit an itemized cost estimate of the improvements covered by the performance guarantee in accordance with section 21-59.4, which itemized cost estimate shall be appended to each performance guarantee posted by the obligor. 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. A performance guarantee shall include, within an approved phase or section of a development privately-owned perimeter buffer landscaping, as required by Township 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 zoning officer, Township Engineer, or other municipal official designated by ordinance. At no time may 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 zoning officer, Township Engineer, or other municipal official designated by ordinance 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. A developer shall furnish to the Township a "safety and stabilization guarantee," in favor of the Township. At the developer's option, a "safety and stabilization guarantee" may be furnished either as a separate guarantee or as a line item of the performance guarantee. A "safety and stabilization guarantee" shall be available to the Township 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:

1. 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
2. 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.
3. 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.
4. 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:
  - i. \$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.
5. The Township shall release a separate "safety and stabilization guarantee" 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 under this paragraph.
6. The Township shall release a "safety and stabilization guarantee" upon the Township 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.
- e. 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.
- f. If required, 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 out-flow 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)*.
- g. 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.
- h. 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 performance or maintenance guarantee to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the Township for such utilities or improvements.
- i. The maintenance bond shall be expressly conditioned on the repair, correction of defects, replacement or restoration of an improvement or any part thereof whenever defects arise from faulty materials, poor workmanship or from natural causes. Maintenance shall also include the plowing of snow on streets or portions of streets not yet accepted by the Township in order that vehicular access is at all times provided to lots for which certificates of occupancy have been issued.

- j. The time allowed for installation of the bonded 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 Township Engineer according to the method of calculation set forth in section 15 of P.L.1991, c.256 (C.40:55D-53.4) as of the time of the passage of the resolution.
- k. If the required bonded improvements are not completed or corrected in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the Township for the reasonable cost of the improvements not completed or corrected and the Township 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,” P.L.1971, c.198 (C.40A:11-1 et seq.).
- l. 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 municipal clerk, that the Township Engineer prepare, in accordance with the itemized cost estimate approved by the Township Engineer and appended to the performance guarantee pursuant to subsection a. of this section, a list of all uncompleted or unsatisfactory completed bonded improvements. If such a request is made, the obligor shall send a copy of the request to the Township Engineer. The request shall indicate which bonded improvements have been completed and which bonded improvements remain uncompleted in the judgment of the obligor. Thereupon the Township 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.
- m. The list prepared by the Township 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 bonded improvement determined to be unsatisfactory. The report prepared by the Township Engineer shall identify each bonded 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 bonded improvement, in accordance with the itemized cost estimate approved by the Township Engineer and appended to the performance guarantee pursuant to subsection a. of this section.
- n. The governing body, by resolution, shall either approve the bonded improvements determined to be complete and satisfactory by the Township Engineer, or reject any or all of these bonded 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 approved by the Township Engineer and appended to the performance guarantee pursuant to subsection a. of this section. This resolution shall be adopted not later than 45 days after receipt of the list and report prepared by the Township Engineer. Upon adoption of the resolution by the governing body, the obligor shall be released from all liability pursuant to its performance guarantee, 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 guarantee” posted may be retained to ensure completion and acceptability of all improvements. The “safety and stabilization guarantee” shall be reduced by the same percentage as the performance guarantee is being reduced at the time of each performance guarantee reduction.
- o. For the purpose of releasing the obligor from liability pursuant to its performance guarantee, the amount of the performance guarantee attributable to each approved bonded improvement shall be reduced by the total amount for each such improvement, in accordance with the itemized cost estimate approved

by the Township 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 Township may retain 30 percent of the amount of the total performance guarantee and “safety and stabilization guarantee” to ensure completion and acceptability of bonded improvements, as provided above, except that any amount of the performance guarantee attributable to bonded improvements for which a “temporary certificate of occupancy guarantee” has been posted shall be released from the performance guarantee even if such release would reduce the amount held by the Township below 30 percent.

p. If the Township Engineer fails to send or provide the list and report as requested by the obligor pursuant to subsection d. of this section within 45 days from receipt of the request, the obligor may apply to the court in a summary manner for an order compelling the Township Engineer to provide the list and report within a stated time and the cost of applying to the court, including reasonable attorney’s fees, may be awarded to the prevailing party.

q. If the governing body fails to approve or reject the bonded improvements determined by the Township Engineer to be complete and satisfactory or reduce the performance guarantee for the complete and satisfactory improvements within 45 days from the receipt of the Township Engineer’s list and report, the obligor may apply to the court in a summary manner for an order compelling, within a stated time, approval of the complete and satisfactory improvements and approval of a reduction in the performance guarantee for the approvable complete and satisfactory improvements in accordance with the itemized cost estimate approved by the Township Engineer and appended to the performance guarantee pursuant to subsection a. of this section; and the cost of applying to the court, including reasonable attorney’s fees, may be awarded to the prevailing party.

r. In the event that the obligor has made a cash deposit with the Township or approving authority as part of the performance guarantee, then any partial reduction granted in the performance guarantee pursuant to this subsection shall be applied to the cash deposit in the same proportion as the original cash deposit bears to the full amount of the performance guarantee, provided that if the developer has furnished a “safety and stabilization guarantee,” the Township may retain cash equal to the amount of the remaining “safety and stabilization guarantee”.

s. If any portion of the required bonded improvements is rejected, the approving authority 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.

t. Nothing herein, however, shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the governing body or the Township Engineer.

u. The obligor shall reimburse the Township for reasonable inspection fees paid to the Township Engineer for the foregoing inspection of improvements; which fees shall not exceed the sum of the amounts set forth in subparagraphs (a) and (b) of this paragraph. The Township may require the developer to post the inspection fees in escrow in an amount:

1. not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of bonded improvements that are subject to a performance guarantee under subparagraph (a), subparagraph (b), or both subparagraph (a) and subparagraph (b) of paragraph (1) of subsection a. of this section; and

2. not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee under subparagraph (a) of paragraph (1) of subsection a. of this section, which cost shall be determined pursuant to section 15 of P.L.1991, c.256 (C.40:55D-53.4).

v. 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 Township Engineer for inspections, the developer shall deposit the remaining 50% of the inspection fees.

w. 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 Township Engineer for inspection, the developer shall make additional deposits of 25% of the inspection fees.

x. If the Township determines that the amount in escrow for the payment of inspection fees, as calculated pursuant to subparagraphs (a) and (b) of paragraph (1) of this subsection, is insufficient to cover the cost of additional required inspections, the Township may require the developer to deposit additional funds in escrow provided that the Township delivers to the developer a written inspection escrow deposit request, signed by the Township 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.

y. In the event that final approval is by stages or sections of development pursuant to subsection a. of section 29 of P.L.1975, c.291 (C.40:55D-38), the provisions of this section shall be applied by stage or section.

z. To the extent that any of the improvements have been dedicated to the Township on the subdivision plat or site plan, the municipal governing body shall be deemed, upon the release of any performance guarantee required pursuant to subsection a. of this section, to accept dedication for public use of streets or roads and any other improvements made thereon according to site plans and subdivision plats approved by the approving authority, provided that such improvements have been inspected and have received final approval by the Township Engineer.

#### **§ 21-59.4 Preparation of Estimate.**

An estimate of the cost of such improvements shall be prepared and submitted by the applicant's engineer to the Township Engineer for approval.

#### **§ 21-59.5 Deadline for Completion of Improvements.**

Unless otherwise permitted by the Planning Board in accordance with N.J.S.A. 40:55D-52b of the Municipal Land Use Law, all improvements required by the development plans must be installed no later than two years from the date of final approval. With the consent of the principal and any surety, the time allowed for the completion of improvements may be extended by the governing body by resolution. The Board shall have a thirty-day period in which to comment upon any proposed extension. As a condition or as part of any such extension, the amount of any performance guaranty shall be increased or reduced, as the case may be, to an amount not to exceed 120% of the cost of the installation of the remaining improvements as established at the time of the passage of the resolution of extension.

#### **§ 21-59.6 Inspections.**

Upon substantial completion of all required appurtenant utility improvements and connection of same to the public system and upon completion of each of the other required improvements, the obligor (or the performance guaranty) shall notify the governing body, in writing, by certified mail addressed in care of the Township Clerk, of the completion or substantial completion of improvements and shall send a copy thereof to the Township Engineer. Thereupon the Township Engineer shall, within 10 days of notification, conduct a full inspection of the specified improvements, file a detailed report in writing with the governing body, indicating either his approval, partial approval or rejection of the inspected improvements and giving the reasons for any rejection. The cost of the improvements as approved or rejected shall be set forth and certified.

#### **~~§ 21-59.7 Release.~~**

~~The governing body, by resolution, shall either approve, partially approve or reject the inspected~~

~~improvements on the basis of the report of the Township Engineer and shall notify the obligor in writing, by certified mail, of the contents of the report and the action of the approving authority with relation thereto, not later than 65 days after receipt of the notice from the developer of the completion or substantial completion of the improvements. Where partial approval is granted, the developer shall be released from all liability pursuant to the performance guaranty, except for 120% of the cost of the outstanding improvements or 30% of the amount of the original performance guaranty, whichever is greater, to ensure completion of all remaining improvements. Failure of the governing body to send or provide such notification to the developer within 65 days shall be deemed to constitute approval of the improvements, and the developer and surety if any, shall be released from all liability pursuant to the performance guaranty for the inspected improvements.~~

**§ 21-59.8-7 Developer's Agreement.**

As a condition of final approval and coincident with the furnishing of the performance guaranty by the developer, there shall be executed an agreement between the developer and the Township incorporating all of the terms and conditions of approval imposed by the Board in the form set forth in Appendix C. Developers must use the preprinted form which is available from the Township Engineering department. The Township Engineer, in consultation with the Township Attorney, may revise the preprinted form from time to time, but such revisions may not alter the substance of such forms unless authorized by an ordinance implementing the revision.

**§ 21-59.9-8 Requirement for As-Built Plans.**

Prior to the acceptance by the Township of any improvements installed in or as part of any development, the developer shall furnish to the Township Engineer a set of as-built plans for the following, drawn on Mylar base sheets not larger than 24 inches x 36 inches.

- a. Roads (plans and profiles).
- b. Surface and stormwater drainage (plans and profiles) for facilities in roads and easements.
- c. Sanitary sewers including individual lot connections and cleanouts (plans and profiles) for facilities in roads and easements.
- d. Water mains, gas mains and underground electric, telephone and community antenna television (CATV) conduits (plans and profiles) for facilities in roads and easements.

All of the foregoing improvements and utilities may be shown on the same location plans with appropriate legends.

**§ 21-59.10-9 Improvements Required for Certificate(s) of Occupancy.**

- a. In the case of a subdivision, no certificate of occupancy shall be issued for any building on any lot in a development until installment of the following improvements required for such lot shall have been completed, inspected and approved by the Township Engineer:
  1. Streets, curbs and sidewalks (except the wearing course of the pavement section).
  2. Drainage facilities and grading.
  3. Sanitary facilities.
  4. All utilities.
  5. If the development plan requires that shade trees be installed within a right of way that is or is to become public, no certificate of occupancy shall be issued for any lot unless either (a) the Township Engineer has certified that all such required trees, both upon that lot and in the portion of the right of way abutting that lot, if any, have been installed or (b) the Township Engineer has certified that the planting of such trees should await the next planting season. In the case of a certification under Clause (b), the failure of the developer to install such shade trees by April 15 next following the date of the Engineer's certification shall constitute a default of the developer's obligations and shall entitle the Township to draw upon the performance guaranty for the cost of obtaining and installing such shade trees.
- b. In the case of a site plan, no certificate of occupancy shall be issued for any building unless the Township Engineer has certified that the site improvements necessary for the occupancy of the building

have been completed or have been completed to the extent necessary to allow the safe occupancy of the building without inconvenience to the occupants of the building. In these cases, where other site improvements related to the development plan are incomplete, the applicant shall agree in writing to complete said improvements within 180 days and shall post a guaranty to cover completion of the improvements. In no case shall the final 10% of a residential development, including single-family and duplex units, be occupied until all site improvements have been completed. Notwithstanding the other provisions of this paragraph, if the development plan requires that shade trees be installed within a right-of-way that is or is to become public, no certificate of occupancy shall be issued for any lot unless either (a) the Township Engineer has certified that all such required trees, both upon that lot and in the portion of the right-of-way abutting that lot, if any, have been installed or (b) the Township Engineer has certified that the planting of such trees should await the next planting season. In the case of a certification under Clause (b), the failure of the developer to install such shade trees by April 15 next following of the date of the Engineer's certification shall constitute a default of the developer's obligations and shall entitle the Township to draw upon the performance guaranty for the cost of obtaining and installing such shade trees.

#### **§ 21-59.11-10 Approval in Sections.**

Whenever final approval is obtained for a section of a development, then all of the improvements for that section shall be completed, inspected and approved by the Township Engineer before any certificate of occupancy shall be issued for any building on a lot in any succeeding section of the development.

#### **~~§ 21-59.12 Maintenance Guaranty.~~**

~~The developer's agreement shall provide for a maintenance guaranty to be posted, and the developer shall post such guaranty, with the governing body for a period of two years after final acceptance of improvements in an amount not to exceed 15% of the total cost of the improvements. No acceptance of an improvement shall become effective until such guaranty has been posted and has been reviewed and approved by the Township Engineer and Township Attorney as to its form, sufficiency and execution and until the improvement has been accepted by vote of the governing body. If an improvement performance bond is posted by a developer, it shall recite that, upon acceptance of the improvements, the bond shall then serve as a maintenance bond in the amount of 15% of the total cost of the bonded improvements. In the event that other governmental agencies or public utilities automatically will own utilities to be installed or the improvements are covered by a performance or maintenance guaranty to another governmental agency, no performance or maintenance guaranty, as the case may be, shall be required by the Township for such utilities or improvements. In connection with the acceptance of an improvement, the developer may submit a separate maintenance bond in the appropriate amount as a proposed substitution for a previously posted improvement performance bond. The maintenance bond shall be expressly conditioned on the repair, correction of defects, replacement or restoration of an improvement or any part thereof whenever defects arise from faulty materials, poor workmanship or from natural causes. Maintenance shall also include the plowing of snow on streets or portions of streets not yet accepted by the Township in order that vehicular access is at all times provided to lots for which certificates of occupancy have been issued.~~

#### **§ 21-59.13-11 Letters of Credit.**

A developer may furnish a performance guaranty or maintenance guaranty in the form of an irrevocable letter of credit if it:

- a. Constitutes an unconditional payment obligation of the issuer running solely to the Township of Bernards for an express initial period of time in the amount determined pursuant to this chapter;
- b. Is issued by a banking or savings institution authorized to do business in the State of New Jersey, actually doing business in the state and having at least one main office or branch office in the state;
- c. Permits the presentment of drafts at a location within the state within a forty-mile radius of the Township Municipal Building, which location may be an office of the issuer or an office of any other banking or savings institution designated by the issuer;
- d. Is for a period of time of at least one year;
- e. Permits the Township to draw upon the letter of credit if the developer fails to complete any required improvements within the time provided by the Land Development Chapter of the Revised General Ordinances of Bernards Township or by the developer's resolution of approval;



- f. Permits the Township to draw upon the letter of credit if the developer fails to furnish either another letter of credit which complies with the provisions of this section or an amendment extending the existing letter of credit for a time period consistent with Paragraph d. above at least 30 days before the expiration date of the existing letter of credit;
- g. Permits drafts in the full amount or any partial amount;
- h. Recites that a draft upon the letter of credit may be signed by any one of the following: the Township Engineer, Acting Township Engineer, Township Administrator, Assistant Administrator or any member of the Township Committee;
- i. Satisfies the requirement as to form specified in the New Jersey Uniform Commercial Code (N.J.S.A. 12A:5-101 et seq.) and in the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce, both as amended or revised from time to time; and
- j. Is accompanied by a statement of an officer of the bank certifying that the bank is in compliance with all applicable capital requirements of all governmental and regulatory bodies.
- k. Is approved as to form by the Township Attorney. Developers must use the preprinted form set forth in Appendix K, which is available from the Township Engineering Department. The Township Engineer, in consultation with the Township Attorney, may revise the preprinted form from time to time, but such revisions may not alter the substance of such forms unless authorized by an ordinance implementing the revision.

**§ 21-59.14-12 Failure or Expiration of Guaranty.**

It shall be a violation of this chapter for a developer to fail to furnish an acceptable replacement performance guaranty or maintenance guaranty either (a) prior to the expiration of a letter of credit or other time-limited guaranty, or (b) within 30 days following the delivery of written notice from the Township that the developer's guaranty has become inadequate or unacceptable, or (c) within 30 days following the developer's otherwise learning that its guaranty has become inadequate or unacceptable. A guaranty becomes inadequate or unacceptable if the surety or other issuer files or is the subject of a petition under the Federal Bankruptcy Act, or otherwise becomes insolvent or becomes the subject of proceedings under any insolvency law, or if other circumstances arise which significantly jeopardize or impair the Township's present or future ability to promptly enforce the guaranty. It shall also be a violation of this chapter for a developer to perform work, or have work performed on its behalf, on any structure or improvement at a time when the developer is in violation of this subsection 21-59.14, and each day that any such work is performed shall be the basis for a separate violation. In addition, no certificate of occupancy or building permit shall be issued for a development at any time when a guaranty required by this chapter has expired or become inadequate or unacceptable and has not been replaced by the developer.

**§ 21-59.15-13 Improvements in Public Rights-of-Way.**

Any improvements in public rights-of-way or on public lands shall be subject to the requirements of section 18-3 of the Revised General Ordinances, "Requirements and Specifications for Street Openings." If the developer has posted a performance guaranty pursuant to subsection 21-59.3 above, then the total cost of completely restoring the public right-of-way or public land shall be included as a component of that performance guaranty, and the Township shall accept that performance surety required by subsection 18-3.5b.

**~~§ 21-59.16 Performance Guaranty for Site Restoration.~~**

~~In the event that an applicant for a major subdivision or site plan which is proposed to be constructed over a period of time in excess of one year decides to proceed with the installation or construction or required on-site, off-site and/or off-tract improvements prior to an application for final approval, the applicant shall be required to post a performance guaranty to restore the site to a safe and sanitary condition in order to protect the interests of the public pursuant to N.J.S.A. 40:55D-39D. The amount of the guaranty shall be 15% of the estimated cost of the improvements. Restoration of the site shall take place if the applicant ceases work on the site for a period of 18 months and has been notified in writing by the Township of the intent to invoke the performance guaranty in order to begin restoration of the site. The notice of intent shall take place after 12 months of no substantial work on the site.~~

**Explanatory Statement**

State legislation has changed bond/guarantee requirements for development. This ordinance is required in order to adopt the bond/guarantee requirements in the legislation at the municipal level.

Ordinance tabled on 2/12/19 to 2/26/19.

**TOWNSHIP OF BERNARDS  
PUBLIC NOTICE**

Ordinance #2406 was introduced and passed on first reading by the Township Committee of the Township of Bernards in the County of Somerset on 1/15/19 and then ordered to be published according to law. It will be further considered for final passage and adoption at a public hearing to be held at a meeting of the Township Committee at the Municipal Building, 1 Collyer Lane, Basking Ridge, NJ on 2/12/19, at 8 P.M., when and where, or at such time and place to which said meeting may be adjourned, all persons interested will be given an opportunity to be heard concerning said ordinance. A complete text of this ordinance is available in the Office of the Municipal Clerk, 1 Collyer Lane, Basking Ridge, NJ, from 8:30 A.M. to 4:30 P.M., Monday through Friday. Copies are also posted on [www.bernards.org](http://www.bernards.org).

By Order of the Township Committee  
Denise Szabo, Municipal Clerk

**TOWNSHIP OF BERNARDS  
PUBLIC NOTICE**

Notice is hereby given that Bernards Township Ordinance #2406 was introduced and passed on first reading at a meeting of the Township Committee on 1/15/19, and was passed on final reading and adopted following a public hearing thereon at a regular meeting of the Governing Body of the Township of Bernards on 2/26/19.

By Order of the Township Committee  
Denise Szabo, Municipal Clerk