

MONROE TOWNSHIP, MIDDLESEX COUNTY

ORDINANCE NO.: O-3-2018-011

**ORDINANCE OF THE MONROE TOWNSHIP COUNCIL
AMENDING CHAPTER 108 OF THE CODE OF THE
TOWNSHIP OF MONROE SPECIFICALLY ARTICLE XIII
ENTITLED “GUARANTIES AND IMPROVEMENT PROCEDURES”
TO COMPORT WITH RECENT AMENDMENTS TO STATE LAW
CONCERNING PERFORMANCE AND OTHER GUARANTEES
MUNICIPALITIES MAY REQUIRE FROM DEVELOPERS**

WHEREAS, the Municipal Land Use Law, N.J.S.A. 40:55D-1 *et seq.* (MLUL), permits municipalities, by ordinance, to require developers to post financial guarantees to ensure that improvements required to be made under a development approval are properly completed; and

WHEREAS, in accordance with the MLUL, Monroe has adopted Article XIII of Chapter 108 of the Code of the Township of Monroe, entitled “Guaranties and Improvement Procedures”; and

WHEREAS, on January 16, 2018, P.L. 2017, Ch. 312 was approved and changes the scope of performance and maintenance guarantees that a municipality may require from developers pursuant to the MLUL; and

WHEREAS, Article XIII of Chapter 108 requires amendment to comport with the new MLUL standards;

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Monroe, in the County of Middlesex and State of New Jersey, that the Code of the Township of Monroe, Chapter 108, Article XIII, entitled “Guaranties and Improvement Procedures” shall be repealed in its entirety and replaced as follows:

SECTION 1.

ARTICLE XIII Guarantees and Improvement Procedures

§ 108-13.1. Guarantees required; surety; release.

A. Before filing of final subdivision plats, or recording of minor subdivision deeds, or as a condition of final site plan approval, or as a condition to the issuance of a zoning permit pursuant N.J.S.A. 40:55D-65, a developer shall furnish the following guarantees for purposes of assuring the installation and maintenance of certain improvements.

(1) Performance guarantee.

(a) A developer shall furnish a performance guarantee in favor of the township in an amount not to exceed 120% of the cost of installation of the following improvements shown on the approved plans or plat required by an approval or developer’s agreement, ordinance, or regulation to be dedicated to the public entity and not yet installed: 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, water mains, sanitary sewers, community septic systems, drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements.

(b) A developer shall furnish a performance guarantee in favor of the township in an amount not to exceed 120% of the cost of installation of privately-owned perimeter buffer landscaping within an approved phase or section of a development otherwise required by this Code or imposed as a condition of approval. At a developer’s option, a separate performance guarantee may be posted for privately-owned perimeter buffer landscaping.

(c) The Township Engineer, and Director of the Utility Department in the case of water and sewer improvements, 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. The developer shall provide a

preliminary of the quantities and types of bonded improvements, to be reviewed and verified by the Township Engineer, and Director of the Utility Department in the case of water and sewer improvements, based upon the unit prices established by Township Engineer, and Director of the Utility Department in the case of water and sewer improvements, on an annual basis. The total estimated cost of constructing all improvements shall be based upon the estimated contract construction costs established by the Township Engineer, and Director of the Utility Department in the case of water and sewer improvements, and appropriate allowances for contract related costs, such as engineering, legal, financial and other usual costs, which shall be estimated to be twenty percent (20%) of the estimated contract construction costs.

(d) The performance guarantee shall be approved by the Township Attorney as to form, sufficiency and execution, and may be in the form of cash, certified check, negotiable securities, bond issued by a bonding company approved by the Township Attorney or any other type of surety acceptable to and approved by the Township Council and in a form acceptable to the Township Attorney.

(e) Such performance guarantee shall run for a period to be fixed by the Township Engineer, and Director of the Utility Department in the case of water and sewer improvements, but in no case for a term longer than the period of final approval set by N.J.S.A. 40:55D-1 et seq. for the installation of all or any portion of the improvements, except that:

(i) The time allowed for installation of the improvements for which the performance guarantee has been provided may be extended by resolution of the Township Council, provided that, if required, the period of final approval has been extended by the proper municipal agency, and provided further that:

(ii) Such extension shall not exceed one (1) year.

(iii) There shall not be more than three (3) such extensions; and

(iv) 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 percent (120%) of the cost of the installation as determined by the Township Engineer in accordance with the itemized cost estimate.

(f) If the bonded improvements are not completed or corrected in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereupon to the municipality for the reasonable cost of the improvements not completed or corrected, and the municipality may either prior to or after the receipt of the proceeds thereof complete such improvements.

(g) (1) Upon substantial completion of all required improvements, including street improvements (except for the top course) and appurtenant utility improvements, and the connection of same to the public system, the developer may request of the Township Council in writing, by certified mail addressed in care of the municipal clerk, that the Township Engineer, and Director of the Utility Department in the case of water and sewer improvements, prepare, in accordance with the itemized cost estimate appended to the performance guarantee, a list of all uncompleted or unsatisfactory completed bonded improvements. If such a request is made, the developer shall send a copy of the request to the Township Engineer, and Director of the Utility Department in the case of water and sewer improvements. The request shall indicate which bonded improvements have been completed and which bonded improvements remain uncompleted.

(2) Thereupon, the Township Engineer, and Director of the Utility Department in the case of water and sewer improvements, shall inspect all bonded improvements covered by the request and shall file a detailed list and report, in writing, with the Township Council, and shall simultaneously send a copy thereof to the developer not later than 45 days after receipt of the request.

(3) The list prepared by the Township Engineer, and Director of the Utility Department in the case of water and sewer improvements, shall state, in

detail, with respect to each bonded improvement determined to be incomplete or unsatisfactory, the nature and extent of the incompleteness or the nature and extent of, and remedy for, the unsatisfactory state of each completed bonded improvement determined to be unsatisfactory.

- (4) The report prepared by the Township Engineer, and Director of the Utility Department in the case of water and sewer improvements, 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.

(h) The Township Council, by resolution, within 45 days after receipt of the list and report prepared by the Township Engineer, and Director of the Utility Department in the case of water and sewer improvements, shall either approve the bonded improvements determined to be complete and satisfactory or reject any or all of them upon the establishment in the resolution of the 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, provided that, if the sum of the approved bonded improvements would exceed 70% of the total amount of the performance guarantee, the Township will retain 30% of the amount of the total performance guarantee and safety and stabilization guarantee as set forth below to ensure completion and acceptability of the bonded improvements, further provided that any amount of the performance guarantee attributable to bonded improvement for which a temporary certificate of occupancy guarantee has been posted shall be released, even if such release would reduce the amount held by the Township to below 30%.

(i) Upon adoption of the resolution by the Township Council, the obligor shall be released from all liability pursuant to its performance guarantee with respect to those approved improvements, except for that portion 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 as set forth below may be retained to ensure completion and acceptability of all improvements.

(2) Temporary certificate of occupancy guarantee.

(a) A developer seeking a temporary certificate of occupancy for a development, unit, lot, building or phase of development pursuant to section 108-13.8 shall furnish a temporary certificate of occupancy guarantee in favor of, and available to, the township in an amount not to exceed 120% of the cost of installation of 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 a permanent certificate of occupancy for the development, unit, lot, building or phase of development. The Township Engineer, and Director of the Utility Department in the case of water and sewer improvements, shall determine the scope and amount of the temporary certificate of occupancy guarantee.

(b) Upon posting of a temporary certificate of occupancy guarantee, all sums posted under a performance guarantee which relate to the improvements or items which remain to be completed or installed shall be released, so that a developer shall not be required to post more than one guarantee or bond of any type with respect to the same line item.

(c) The temporary certificate of occupancy guarantee shall be released upon the issuance of a permanent certificate or occupancy as to those improvements to which it relates.

(3) Safety and stabilization guarantee.

(a) A developer shall furnish a safety and stabilization guarantee in favor of, and available to, the township 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 where: (1) site disturbance has commenced and thereafter all work on the development has ceased for at least sixty (60) consecutive days for reasons other than force majeure, and (2) after such sixty-day (60) period, work has not

recommended within thirty (30) days following written notice to the developer of the Township's intent to claim payment under the guarantee.

(b) The amount of the safety and stabilization guarantee for a development with bonded improvements in an amount not exceeding \$100,000 shall be \$5,000.00. The amount of the safety and stabilization guarantee for a development with bonded improvements in an amount exceeding \$100,000.00 shall be (1) \$5,000.00 for the first \$100,000.00 of bonded improvement costs, plus two and one-half (2½ %) percent of bonded improvement costs in excess of \$100,000.00, plus one (1%) percent of bonded improvement costs in excess of \$1,000,000.00.

(c) At the developer's option, the safety and stabilization guarantee may be a separate guarantee or it may be a line item of the performance guarantee.

(d) The safety and stabilization guarantee shall be released upon the developer's furnishing of a performance guarantee which includes a line item for safety and stabilization in the amount required under this section.

(e) The safety and stabilization guarantee shall be released by resolution of the Township Council upon the Township Engineer's determination that development of the project site has reached a point that the improvements installed are adequate to avoid any potential threat to public safety.

(f) The safety and stabilization guarantee shall be reduced by the same percentage as the performance guarantee at the time of each performance guarantee reduction.

(4) Maintenance guarantee.

(a) Prior to the release of a performance guarantee, a developer shall post with the township a maintenance guarantee in favor of the township in an amount not to exceed 15% of the cost of the installation of the improvements for which the performance guarantee is being released.

(b) Upon inspection and issuance of final approval of the following private site improvements by the Township Engineer, a developer shall post with the township a maintenance guarantee in favor of the township in an amount not to exceed 15% of the cost of installation: 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.

(c) The cost of the maintenance guarantees shall be determined by the Township Engineer, and the Director of the Utility Department in the case of water and sewer improvements, according to the method of calculation set forth in subsection A(1)(c).

(d) The term of a maintenance guarantee posted by a developer shall be for a period of two years and shall automatically expire at the end of the two-year term.

(e) Upon release of the maintenance guarantee by the Township Council, the unused inspection fee shall be returned to the developer.

(5) Successor developer guarantee.

As a condition of 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, a successor developer shall furnish replacement performance and maintenance guarantees in accordance with subsection (A)(1) and (4) above.

- B. Surety. If a developer posts a bond as guarantee, there must be attached to said bond an authority of the surety company empowering the person or persons who executed said bond for the surety company to do so. If the bonding company is not a licensed New Jersey entity, there should also be attached to the bond proof of its authority to do business in New Jersey and a copy of its last financial statement, made not more than one (1) year before, showing its financial condition. If the principal on the bond is a partnership, corporation, limited liability company or other business entity, there must be attached to the bond a certified copy of a resolution adopted by its Board of Directors, members or partners, as appropriate, authorizing the execution and delivery of said bond. Said bond must also bear the seal of the surety and the principal, of a corporation.

C. Inspection fees; escrows.

(1) The cost of inspections shall be the responsibility of the developer, who shall post in escrow with the township funds to reimburse the township for reasonable inspection fees charged by the Township Engineer, and Director of the Utility Department in the case of water and sewer improvements, for inspection of the improvements to be installed, in the following amounts:

(a) except in extraordinary circumstances, the greater of \$500 or 5% of the cost of the bonded improvements that are subject to a performance guarantee; and

(b) 5% of the cost of private site improvements that are not subject to a performance guarantee.

(2) The cost shall be determined by the Township Engineer, and Director of the Utility Department in the case of water and sewer improvements, according to the method of calculation set forth in subsection A(1)(c).

(3) These funds shall be in addition to the amount of required guarantees and all application fees. These funds shall be deposited in a special escrow account and shall not accrue interest.

(4) For developments for which the total improvement inspect fees are less than \$10,000, escrow funds may be deposited 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, and Director of the Utility Department in the case of water and sewer improvements, for inspections, the developer shall deposit the remaining 50% of the inspection fees.

(5) 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.

(6) If the amount in escrow for the payment of inspection fees is insufficient to cover the cost of additional required inspections, as determined by the Township Engineer, and the Director of the Utility Department in the case of water and sewer improvements, the developer shall deposit additional funds in escrow upon receipt of a written inspection escrow deposit request signed by the Township Engineer, and Director of the Utility Department in the case of water and sewer improvements, which informs the developer of the need for additional funds, details the items or undertakings that require inspection, estimates the time required for those inspections, and estimates the cost of performing those inspections.

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

§ 108-13.2. Off-tract improvements.

A. General requirements. Where the municipal agency determines that off-tract improvements are necessary for the proper development and utilizing of the proposed site or subdivision and the surrounding area, it may require either that such off-tract improvements be installed or that the developer contribute to the installation of such off-tract improvements. Where the municipal agency has determined that off-tract improvements are required, it shall be a condition of the granting of final approval that such improvements be constructed or that the developer shall make payments toward the ultimate installation of off-tract improvements, such as, but not limited to, streets, curbs and gutters, sidewalks, water mains, sanitary sewers, storm sewers and culverts, monuments and streetlights, all in accordance with the specifications governing on-tract improvements.

B. Cost allocation. If the municipal agency determines that the developer may contribute toward required off-tract improvements in lieu of such improvements being installed, the municipal agency shall allocate the cost of same off-tract improvements in accordance with the standards hereinafter set forth. The improvement of a stream and/or widening of, or the construction of drainage or other improvements in, a street or road fronting on the tract to be subdivided and/or developed shall not constitute an off-tract improvement, and the cost of said improvement shall not be allocated.

(1) The allocation of the cost of off-tract improvements shall be determined in accordance with the following:

- (a) The municipal agency may consider the total cost of the off-tract improvements, the benefits conferred upon the site or subdivision, the needs created by the site or subdivision, population and land use projects for the general areas of the site or subdivision and other areas to be served by the off-tract improvements, the estimated times of construction of off-tract improvements and the condition of periods of usefulness, which periods may be based upon the criteria of the Local Bond Law (N.J.S.A. 40A.2-22). The municipal agency may further consider the criteria set forth below.
 - (b) Road, curb, gutter and sidewalk improvements may be based upon the anticipated increase of traffic generated by the site or subdivision. In determining such traffic increase, the municipal agency may consider traffic counts, existing and projected traffic patterns, quality of roads and sidewalks in the area and other factors related to the need created by the site or subdivision.
 - (c) Drainage facilities may be based upon the percentage relationship between the site or subdivision acreage and the acreage of the total drainage basins involved or upon calculations developing the percentage contribution that the storm runoff from a particular site or subdivision bears to the total design capacity of any improvement; the particular methods to be selected in each instance by the Township Engineer.
- (2) All monies received by the township in accordance with the provisions of this section shall be paid to the Township Clerk who shall provide for a suitable depository therefor. Such funds shall be used only for the improvements for which they are deposited or improvements serving the same purposes unless such improvements are not initiated for a period of five (5) years from the date of payment, after which time said funds shall be transferred to the capital improvement fund of the municipality.
 - (3) The apportionment of costs shall be determined by the municipal agency. The developer shall be afforded an opportunity before said Board to present evidence relative thereto.

§ 108-13.3. Assignment of interest.

Before any developer effectively assigns any of his interest in any preliminary or final approval, he must notify the Administrative Officer and supply detailed information with regard to the name, address, principals, type of organization, competency, experience and past performance of the assignee, transferee of agent. Notice of such assignments or transfer shall be given no later than ten (10) days after its effective date. The assignee must be made acquainted with all the conditions of approval, and the developer shall so certify.

§ 108-13.4. Supervision of work.

- A. No contractor, builder, developer or subcontractor shall engage any personnel in any of the work on constructing any improvements unless they are continually supervised by a competent, English speaking supervisor acceptable to the Township Engineer, and Director of the Utility Department in the case of water and sewer improvements.
- B. No less than five (5) days prior to commencing construction of any improvements on the site, the developer or his agent shall provide the Township Engineer and the Director of Utility Department in the case of water and sewer improvements with the names, addresses, phone numbers and emergency phone numbers of the subdivider and/or a representative empowered to act for the developer and/or each contractor and their supervisor in charge of the construction, setting forth the aspect of construction for which each is responsible.

§ 108-13.5. Inspection requirements.

- A. Pre-construction. Prior to beginning construction, the developer shall arrange for a preconstruction conference between the developer, contractors and Township Engineer, and Director of the Utility Department in the case of water and sewer improvements. The Township Engineer, and Director of the Utility Department in the case of water and sewer improvements shall be notified by the developer at least five (5) days in advance of the start of construction.
- B. Inspection notice. All required improvements, except those utility improvements which are not the responsibility of the township, shall be subject to inspection and approval by the Township Engineer, who shall be notified by the developer at least five (5) days prior

to the initial start of construction and again twenty-four (24) hours prior to the resumption of work after any idle period exceeding one (1) working day. All of the utility improvements shall be subject to inspection and approval by the Director of the Utility Department, who shall be notified by the developer in accordance with the utilities' requirements.

- C. Modification of improvements. At any time, whether as a result of his or her inspection of work underway or otherwise, the Township Engineer or Director of the Utility Department may recommend that the developer be required to modify the design and extent of the improvements required, notifying the township of his or her recommendations. The Township Council shall, if it considers such modifications to be major, or if requested by the developer or Township Engineer or Director of the Utility Department, take formal action to approve or disapprove such recommendations; provided, however, that it must first afford the developer an opportunity to be heard. If the Township Council takes no formal action within thirty (30) days of such recommendations, or where the developer has not requested formal action, its approval will be assumed. Similarly, the township may grant or deny the developer permission to effect such modification upon his or her application and the Township Engineer's or Director of the Utility Department's approval, as appropriate. In either event, where such modification is to be effected, the appropriate plat must be revised by the developer or his or her engineer to reflect such modification, and sufficient copies thereof submitted to the Administrative Officer (Planning Board or Board of Adjustment Secretary) for distribution.
- D. General inspection requirements. All improvements, except as otherwise provided, shall be subject to inspection and approval by the Township Engineer or Director of the Utility Department, as appropriate. No underground installation shall be covered until inspection and approval by the Township Engineer or Director of the Utility Department. If such installation is covered prior to inspection, it shall be uncovered or another inspection means shall be used, such as a television or other pipeline camera as may be deemed necessary by the Township Engineer or Director of the Utility Department, and charges for such work will be paid for by the developer.
- E. Inspection not acceptance. Inspection of any work by the Township Engineer or Director of the Utility Department or authorized representatives shall not be considered to be final approval or rejection of the work, but shall only be considered to be a determination of whether or not the specific work involved was being done to township specifications or other required standards at the time of inspection. Any damage to such work or other unforeseen circumstances, such as the effects of the weather, other construction, changing conditions, settlement, etc., between the time of installation and the time that the developer wishes to be released from a guarantee, shall be the full responsibility of the developer, and no work shall be considered accepted until release of the guarantee.
- F. Payment to contractors. No developer shall enter into any contract requiring the Township Council, the Township Engineer or any of their agents, employees or other representatives to make any declaration, written or otherwise, as a condition of payment of said developer to a contractor as to the acceptance or rejection of the work. Neither the Township Council, Township Engineer nor any of their agents, employees or representatives shall make any such declaration.
- G. Procedure on acceptance of public improvements. When the developer has constructed and installed the on-site or off-site improvements and other improvements in accordance with township regulations, standards and specifications, and desires the township to accept said improvements, he shall, in writing by certified mail, return receipt requested addressed to the Township Clerk, with copies thereof to the Township Engineer, or Director of the Utility Department in the case of water and sewer improvements, request the Township Engineer or Director of the Utility Department to make a semifinal inspection of said improvements. If the improvements have been constructed under a performance guarantee or are subject to a maintenance guarantee, the developer shall submit an as-built plan showing as-built grades, profiles and sections and locations of all subsurface utilities, such as french drains, combination drains, sanitary sewage disposal systems both public and individual, waterlines and control valves, gas lines, telephone conduits, monuments, iron property markers and any other utility or improvements installed. Said as-built plan shall be certified to by a licensed New Jersey professional engineer. If any improvements are constructed prior to final plat approval, the final plat shall reflect all changes and as-built conditions and be so certified. If any improvements are constructed prior to final plat approval, the final plat shall reflect all changes and as-built conditions and be so certified. Said as-built plan(s) shall be submitted on mylar sheets not exceeding twenty-four inches

by thirty-six (24 x 36) inches. The as-built plan(s) shall be required for any improvements which partially release the performance, safety and stabilization or temporary certificate of occupancy guarantees.

§ 108-13.6. Site maintenance during construction.

- A. It shall be the responsibility of the developer to maintain the entire site or subdivision in a safe and orderly condition during construction. Necessary steps shall be taken by the developer to protect occupants of the site or subdivision and the general public from hazardous and unsightly conditions during the entire construction period. These steps shall include, but are not limited to, the following:
- (1) Open excavations (less than three (3) feet deep) shall be enclosed by fencing or barricades during non-construction hours. Movable barricades shall be equipped with yellow flashing hazard markers or other lighting during the hours of darkness.
 - (2) The excavation of previously installed sidewalk and pavement areas which provide access to occupied buildings in the site or subdivision shall be clearly marked with signs and barricades. Alternate safe access shall be provided for pedestrians and vehicles to the occupied buildings.
 - (3) Materials stored on the site shall be screened from the view of occupants of the subdivision or site and adjoining street and properties.
 - (4) Construction equipment, materials and trucks shall not be stored within one hundred fifty (150) feet of occupied buildings in the site or subdivision and adjoining streets and properties during non-construction hours.
 - (5) Safe vehicular and pedestrian access to occupied buildings in the site or subdivision shall be provided at all times.
 - (6) Construction activities which create obnoxious and unnecessary dust, fumes, odors, smoke, vibrations or glare noticeable in occupied buildings in the subdivision or site and adjoining properties and streets shall not be permitted.
 - (7) Construction activities which will result in damage to trees and landscaping in occupied buildings in the site or subdivision or adjoining properties shall not be permitted. Trees and shrubs to be retained shall be protected at the drop line with erection of protective snow fencing.
 - (8) All locations and activities in the site or subdivision which present potential hazards shall be marked with signs indicating the potential hazard.
 - (9) Unsightly construction debris, including scrap materials, cartons, boxes and wrappings, must be removed daily at the end of each working day. Burial of any debris on site is forbidden.
 - (10) Whenever construction activities take place within or adjacent to any traveled way or, interfere with existing traffic patterns in any manner, suitable warning signs, conforming to the requirements of the Uniform Manual on Traffic Control Devices, will be erected and maintained by the developer.
 - (11) All trench excavation shall conform to all applicable Federal, State or local regulations and any trench excavations in excess of three (3) feet average depth, shall be covered during non-construction hours, and no trenches shall be left uncovered and steel road plates shall be used to cover the trench opening.

§ 108-13.7. Improvements required prior to issuance of certificate of occupancy.

- A. No permanent certificate of occupancy shall be issued for any development, unit, lot, building or phase of development until all required improvements are installed and approved by the Township Engineer or other appropriate authority.
- B. No temporary certificate of occupancy shall be issued for any development, unit, lot, building or phase of development involving the installation of utilities or street improvements, parking areas, buffer areas, storm drainage facilities, other site improvements, the alteration of the existing grade on a lot or the utilization of a new on-site well or sanitary disposal system unless the Township Engineer or other appropriate authority shall have, where applicable, certified to the following:

- (1) Utilities and drainage. All utilities, including but not limited to water, gas, storm drains, sanitary sewers, electric lines and telephone lines, shall have been properly installed and service to development, unit, lot, building or phase of development from such utilities shall be available.
 - (2) Street rights-of-way. All street rights-of-way necessary to provide access to the development, unit, lot, building or phase of development shall have been completely graded, and all slope retaining devices or slope planting shall have been installed.
 - (3) Sidewalks. All sidewalks necessary to provide access to the development, unit, lot, building or phase of development shall have been properly installed.
 - (4) Streets. Curbing and the bituminous base course of bituminous concrete streets or the curbing and pavement course for portland cement concrete streets necessary to provide access to the development, unit, lot, building or phase of development shall have been properly installed.
 - (5) Curbing and parking areas. Curbing and the bituminous base course of parking areas necessary to provide access to the required number of parking spaces for the development, unit, lot, building or phase of development shall have been properly installed.
 - (6) Obstructions. All exposed obstructions in parking areas, access drives or streets, such as manhole frames, water boxes, gas boxes and the like, shall be protected by building to the top of such exposures with bituminous concrete as directed by the Township Engineer.
 - (7) Screening, fences and landscaping. All required screening, fencing and/or landscaping related to the development, unit, lot, building or phase of development shall have been properly installed unless the Township Engineer shall direct the developer to delay the planting of screening and landscaping until the next planting season in order to improve the chances of survival of such plantings.
 - (8) Site grading. All site grading necessary to permit proper surface drainage and prevent erosion of soils have been completed in accordance with the soil disturbance plans approved by the Freehold Soil Conservation District.
 - (9) Public water supply. Where the proposed development, unit, lot, building or phase of development is served by a public water supply, said supply shall have been installed and tested and all required backflow detection devices, fire hydrants or fire connections shall have been installed, tested and approved.
 - (10) Lighting. All outdoor lighting shall have been installed and shall be operational.
 - (11) Street signs and traffic control devices. All street signs, paint lining and/or traffic control devices affecting the development, unit, lot, building or phase of development and required under the terms of approval of a subdivision or site plan or by Federal, State, County or municipal rules, regulations or laws shall have been installed.
 - (12) Other. Any other conditions established for issuance of a certificate of occupancy by the municipal agency as a condition of final site plan approval shall be complied with.
- C. Temporary certificates of occupancy shall be issued for a specified period of time, not to exceed one (1) year.

§ 108-13.8. Stormwater management facility(ies) dedications. [Added 4-7-97 by Ord. No. 0-4-97-007; amended 6-8-05 by Ord. No. O-6-2005-026]

- A. All stormwater management facilities "SMF(s)" in any multi-family residential use development shall be owned by a homeowners association or other private owner, which owner shall be designated on the approved subdivision or site plan.
- B. All SMF(s) located within or as part of a single family residential use development shall be dedicated to the Township of Monroe and are subject of the requirements of this chapter.

§ 108-13.9. Maintenance escrows for stormwater management facilities. [Added 4-7-97 by Ord. No. O-4-97-007; amended 6-8-05 by Ord. No. O-6-2005-026]

A. Maintenance escrows, general. An escrow account shall be required to be posted by a single-family residential use developer who shall have dedicated SMF(s) under Section 108-13.10B. It shall be used for the purpose of reimbursing the township for any and all costs and expenses incurred by the township for the short and long-term care and maintenance of a developer's dedicated SMF(s), including, but not limited to, the maintenance, repair, cleaning and replacement of grass, landscaping, fences and any of the immediate surroundings of a detention/retention basin, and the maintenance, repair and replacement of its drainage structures as defined in this chapter.

B. Maintenance escrow requirements.

- (1) The required escrow amount set forth in the contribution schedule hereinbelow shall be deposited with the township prior to the issuance of any certificate(s) of occupancy within a subject development. Prior to the issuance of any certificate(s) of occupancy within a subject development, the Township Engineer shall certify to the Construction Official that the developer has posted with the township an escrow amount in accordance with the contribution schedule. Failure to so deposit the required escrow amount shall prevent the issuance of any certificate(s) of occupancy.
- (2) A developer shall pay one hundred fifteen percent (115%) of the per lot contribution amount before a certificate of occupancy is issued for the first lot. A subsequent certificate of occupancy for a lot shall issue only upon payment of another one hundred fifteen percent (115%) of the per lot contribution amount. Pursuant to this formula, a developer shall have fully paid its contribution amount. The fixed contribution amount per lot shall be assessed pursuant to the following schedule for the year 2005:

Zone	Contribution per Lot
RR-FLP	\$1,250.00
R-3a	\$1,000.00
R-60	\$ 800.00
R-30	\$ 700.00
R-20	\$ 600.00
R-10	\$ 500.00
R-5	\$ 450.00
Cluster Provisions	The underlying zone will be used.

The contribution per lot amount is based on the following: (1) estimated basin requirements for the densities prescribed by the respective zone designation; (2) estimated annual cost of regular maintenance of SMF(s); and (3) determination of necessary total annual reserves based on projected useful life and estimated replacement costs of SMF(s).

Beginning in 2006, and each year thereafter, on the first of January, the contribution per lot shall be adjusted upward or downward by the change in the Cost of Living Index during the previous fiscal year. All escrow payments shall then be made in accordance with the revised contribution schedule. The "Cost of Living Index" means the "Consumer Price Index-All Items" for the New York area, as prepared and reported by the Bureau of Labor Statistics of the United States Department of Labor.

- (3) All escrow funds acquired by the township under this chapter shall be deposited in an interest bearing escrow account and applied in furtherance of the purposes of this chapter.

C. Final acceptance of SMF(s) by the Township of Monroe. Notwithstanding anything herein to the contrary, a performance guarantee and subsequent maintenance guarantee shall be provided by a developer subject to the requirements under this chapter in accordance with Sections 108-13.1, 108-13.2 and 108-13.9 of the Land Development Ordinance. Before the Township Council shall give final acceptance to SMF(s), the following conditions must be satisfied:

- (1) The Township Engineer shall certify that the SMF(s) has been constructed in accordance with the requirements and specifications of Article XII entitled "Design Standards and Improvement Specifications", and in accordance with any and all conditions established by the Board that has approved the development plan; and

- (2) The Township Council shall have released the performance and maintenance guarantees pertaining to the subject development before authorizing its final acceptance of the SMF(s).
- D. Responsibility for maintenance.
- (1) All SMF(s) dedicated to the township shall be maintained by the Monroe Township Department of Public Works.
 - (2) The township shall, out of the escrow funds created under this chapter, develop, conduct, implement or carry out any and all actions designed to maintain, clean, repair or replace all dedicated SMF(s). Such actions may include, but are not limited to, the maintenance, cleaning, repair and replacement of the grass, landscaping, fences and the immediate surroundings of a SMF(s), and the maintenance repair and replacement of their drainage structures as defined in this chapter.
 - (3) The Township Engineer shall annually inspect all dedicated SMF(s) and shall review their hydrologic characteristics in order to determine the condition, safety and effectiveness of such SMF(s) and whether such SMF(s) conform to then current technical and industrial standards. The Township Engineer shall prepare a report of such findings to the Township Council and shall make appropriate recommendations to the Director of Public Works designating which dedicated SMF(s) required special maintenance, cleaning, repair or replacement.
- E. Use of maintenance escrow accounts.
- (1) The funds of a developer's maintenance escrow account shall be applied to any and all costs and expenses incurred by the township for the maintenance, cleaning, repair and replacement of that developer's dedicated SMF(s). Any and all costs and expenses incurred by the township for such maintenance, cleaning, repair and replacement of that developer's dedicated SMF(s) shall be charged against its escrow account in accordance with the following categories of maintenance:
 - (a) Maintenance of landscaping, fences and immediate surroundings. This cost shall be calculated by multiplying the rate per hour of labor and equipment by the number of hours worked. Any and all additional stock which shall be necessary to replace or repair landscaping, fences or a SMF(s) immediate surroundings shall also be charged against the escrow account.
 - (b) Routine mowing of the property. Mowing costs shall be calculated by multiplying the rate per hour of labor and equipment by the number of acres mowed. A base number shall also be included for the mobilization and maintenance of equipment.
 - (c) Long-term maintenance, repair and replacement SMF structures. The annualized long-term maintenance/replacement cost shall be based on replacement of all SMF structures, reduced to a total annualized cost using one (1) fifteen (15) year life span. Examples of drainage structures which shall be included as part of this cost are low flow channels, outlet structures, inlets, rip-rap aprons, impervious cores and/or liners, and weirs and/or spillways.
 - (2) The township shall use the funds of a developer's maintenance escrow account to purchase liability insurance for that developer's dedicated SMF(s).

SECTION 2.

All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed.

SECTION 3.

If any section, subdivision, sentence, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply to the section, paragraph, subdivision, clause, or provision so adjudged and the remainder of the Ordinance shall be deemed valid and effective.

SECTION 4.

This Ordinance shall take effect upon final passage and publication as provided by law.

SO ORDAINED, as aforesaid.

STEPHEN DALINA, Council President

RECORDED VOTE – INTRODUCTION – March 5, 2018						
COUNCIL	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
Councilman Baskin	X		X			
Councilwoman Cohen		X	X			
Councilman Dipierro			X			
Council V. President Schneider			X			
Council President Dalina			X			

NOTICE

Notice is hereby given that the foregoing Ordinance was introduced and passed on first reading at a meeting of the Monroe Township Council held on March 5, 2018. Said Ordinance will again be read and considered for final passage at the next scheduled meeting of the Monroe Township Council to be held on April 9, 2018 at 7:00 p.m. at the Monroe Township Municipal Building, 1 Municipal Plaza, Monroe Township, New Jersey 08831. At said time and place all persons having an interest in the foregoing Ordinance will be granted an opportunity to be heard concerning the same prior to consideration for final passage by the Council.

PATRICIA REID, Township Clerk

RECORDED VOTE – SECOND READING & FINAL ADOPTION – April 9, 2018						
COUNCIL	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
Councilman Baskin	X		X			
Councilwoman Cohen		X	X			
Councilman Dipierro			X			
Council V. President Schneider			X			
Council President Dalina			X			

ORDINANCE NO.: O-3-2018-011

**ORDINANCE OF THE MONROE TOWNSHIP COUNCIL
AMENDING CHAPTER 108 OF THE CODE OF THE
TOWNSHIP OF MONROE SPECIFICALLY ARTICLE XIII
ENTITLED “GUARANTIES AND IMPROVEMENT PROCEDURES”
TO COMPORT WITH RECENT AMENDMENTS TO STATE LAW
CONCERNING PERFORMANCE AND OTHER GUARANTEES
MUNICIPALITIES MAY REQUIRE FROM DEVELOPERS**

MAYORAL APPROVAL

By virtue of the Optional Municipal Charter Law of 1950 and Chapter 3, Section 19 of the Code of the Township of Monroe, my approval of this Ordinance is effected by the affixing of my signature hereto.

GERALD W. TAMBURRO, Mayor

Date signed: April 11, 2018