

Section 3.05 Violations

A. Violations are Nuisances *Per Se*. Violations of any provisions of this Ordinance are declared to be nuisances *per se* and shall be subject to judicial abatement as provided by law. A violation includes any act that is prohibited or made or declared to be unlawful or an offense by this Ordinance and any neglect, refusal, omission or failure to act where the act is required by this Ordinance or by any permit, variance or approval under this Ordinance.

B. Notice of Violation. The Zoning Administrator shall inspect each alleged or apparent violation. Whenever the Zoning Administrator determines that a violation of this Ordinance exists, said Zoning Administrator shall issue a Notice of Violation, in writing, which specifies all circumstances found to be in violation. A Notice of Violation or stop order posted by the Zoning Administrator on a structure or dwelling shall not be removed without written authorization from the Zoning Administrator.

C. Service of Notice. Such notice shall be directed to each owner of, or a party in interest, in whose name the property appears on the last local tax assessment records. All notices shall be served upon the person to whom they are directed personally, or in lieu of personal service, may be mailed by certified mail, return receipt requested, addressed to such owner or party in interest at the address shown on the tax records.

D. Stop Work Order. Upon a finding by the Zoning Administrator that work on any structure or premises is being undertaken contrary to this Ordinance, the Zoning Administrator may issue a stop work order requiring that such work shall immediately cease. The stop work order shall be posted on the property with a copy mailed or delivered to the owner of the property in question, person occupying the property or the person doing the work, and shall state the conditions under which the work may be resumed. Any person who shall continue any work in or about the structure or premises after having been served with a stop work order, except such work as such person is directed by the Zoning Administrator to perform in order to remove violations or unsafe conditions, shall be found responsible for a violation of this Ordinance

E. Violation Correction Period. All violations shall be corrected within the time period specified on the Notice of Violation, as deemed appropriate in the reasonable discretion of the Zoning Administrator, but not more than six (6) months.

F. Legal Action. If the owner or party in interest fails to correct the violation within the time period specified, the Township Board and Township Attorney shall be notified of such failure for the commencement of appropriate legal action.

G. Violations as Civil Infractions. Violations of the provisions of this Ordinance or failure to comply with any of its requirements, including violations of conditions and safeguards established by any permit, variance or approval under this Ordinance, shall constitute a civil infraction. Any person who violates or disobeys this Ordinance or fails, refuses, omits or neglects to comply with any of its requirements or provisions may be found to be responsible for a municipal civil infraction, subject to payment of a civil fine of up five hundred dollars

(\$500.00) per violation and all costs incurred by the Township in prosecuting the violation, including up to attorney fees of five hundred dollars (\$500.00) per violation. Each day that a violation continues or recurs shall be considered and may be prosecuted as a separate offense, subject to additional civil fines, costs and attorney fees. The owner of record and tenant of any building, structure, premises, or part thereof, and any architect, building contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found liable for a separate offense and shall be subject to civil fines, costs and attorney fees under this Ordinance.

H. Other Remedies. The Township may institute injunction, mandamus, abatement or other appropriate proceedings to prevent, enjoin, abate or remove any violations of this Ordinance. The imposition of any civil fine shall not exempt the violator from other available remedies to compel compliance with the provisions of this Ordinance.

Section 3.06 Performance Guarantees for Compliance

A. Purpose. In authorizing any permit, variance or approval under this Ordinance, the body or official granting the permit, variance or approval may require that a performance guarantee be furnished to the Township: (1) to insure compliance with the conditions, improvements and specifications required by the permit, variance or approval; (2) to insure the discontinuance and complete removal of a temporary use by a required time; and (3) to provide sufficient resources for the Township to complete required conditions, improvements, specifications, removal, reclamation, restoration or other requirements in the event the applicant does not. A performance guarantee may be required as a condition for the issuance of a Zoning Permit in addition to any other condition established pursuant to Section 20.01.

B. Requirements of Performance Guarantee. The performance guarantee shall meet the following requirements:

- 1. Conditions, Improvements and Specifications Covered.** Conditions, improvements and specifications that shall be covered by the performance guarantee include those features and actions associated with the project that are considered necessary by the approving body to protect natural resources or the health, safety, and welfare of the residents of the Township and future users or inhabitants of the proposed project or project area, including, without limitation, roadways, lighting, utilities, parking facilities, common open space improvements, lighting, drainage, buffers, screening, grading, landscaping, parks, common or public amenities, sidewalks, bike and walking paths and removal, reclamation, restoration or other requirements.
- 2. Form.** The performance guarantee shall be in the form of cash, certified check or irrevocable bank letter of credit acceptable to the Township, which names the applicant or property owner as the obligor and the Township as the obligee. The letter or credit or other acceptable performance guarantee shall provide that any documents required by the Township to obtain the funds may be hand delivered to a financial institution within 50 miles of the Township or transmitted by email or facsimile. The form of the

performance guarantee shall be approved by the Township Treasurer and Township Attorney. If appropriate, based on the type of performance guarantee submitted, the Township shall deposit the funds in an account in a financial institution with which the Township regularly conducts business.

3. **Amount and Time to Provide Performance Guarantee.** The amount of the performance guarantee shall be equal to the estimated cost of completing the improvements or conditions, according to a detailed cost estimate submitted by the applicant and approved or amended by the Township, after consultation with the Township Engineer and Township Attorney. After approval of the detailed cost estimate, the performance guarantee shall be submitted at the time of issuance of the permit, variance or approval authorizing commencement of the activity or project. The Township may not require the deposit of the performance guarantee until it is prepared to authorize commencement of the activity or project.
4. **Expiration of Performance Guarantee.** The performance guarantee shall provide that it shall not terminate or expire without providing the Township at least sixty (60) days written notice prior to the date of termination or expiration. If a new performance guarantee in a form and amount acceptable to the Township is not filed with the Township Clerk at least thirty (30) days prior to the date of termination or expiration, the Township may draw upon the existing performance guarantee.
5. **Additional Performance Guarantee.** If at any time it appears the amount of the performance guarantee is inadequate to cover the purposes for which the performance guarantee was posted, and the applicant or property owner declines to provide requested additional or further performance guarantees, then the Zoning Administrator may issue a stop work order and/or decline to issue further approvals or certificates of compliance or of occupancy for buildings or other structures for which the performance guarantee is intended to benefit, or take such other action as provided by law.

C. Return of Performance Guarantee. The following procedure shall be followed in the return of performance guarantees:

1. **Request for Payment.** As required improvements, conditions and specifications are completed, or when all of the required improvements, conditions and specifications have been completed, the obligor shall send written notice to the Zoning Administrator of completion of said improvement, conditions and specifications. Thereupon, the Zoning Administrator shall inspect the project and the work and shall transmit recommendation to the Township Board indicating either approval, partial approval, or rejection of the improvements, conditions and specifications with a statement of the reasons for any rejections. If partial approval is indicated, the cost of any additional required improvements, conditions or specifications shall be set forth by the Zoning Administrator.
2. **Approval of Payment.** As the conditions, improvements and specifications covered by the

performance guarantee are satisfactorily completed, the Zoning Administrator, upon direction of the Township Board, may decrease the amount of the performance guarantee. "Satisfactorily completed" means the Zoning Administrator or Township Engineer has conducted a final inspection and recommended that the work performed by the applicant appears to meet or exceed applicable standards. The Township Board shall either approve, partially approve or reject satisfactory completion of the conditions, improvements or specifications based upon the recommendation of the Zoning Administrator and shall notify the obligor in writing of the action of the Township Board within forty-five (45) days after receipt of the notice from the obligor of the completion of the conditions, improvements or specifications. Where approval or partial approval is granted, the Township Board shall notify the Township Clerk of such approval and the Township Clerk shall release the approved payment to the applicant. The portion of the performance guarantee to be rebated shall be in the same amount as stated in the itemized cost estimate for the applicable conditions, improvement or specification.

- a. Where partial approval is granted, the obligor shall be released from liability pursuant to relevant portions of the performance guarantee, except for that portion adequately sufficient to secure satisfactory completion of the conditions, improvements and specifications not yet completed.

3. Lack of Satisfactory Completion; Forfeiture of Performance Guarantee. Upon failure to complete any condition, improvement or specification of this Ordinance or any permit, variance or approval under this Ordinance, the performance guarantee, or portion thereof, shall be forfeited by the applicant. The Township Board shall determine the amount to be forfeited, including administrative costs and attorney fees, and have the authority to correct the violation. Whenever required conditions, improvements or specifications are not completed, properly installed or are damaged within the specified time, the Township may complete, correct or repair the conditions, improvements or specifications and charge the costs, including administrative costs and attorney fees, against the performance guarantee. Any balance remaining of the performance guarantee shall be returned to the applicant, less the Township's costs to complete the conditions, improvements or specifications, including the Township's administrative costs and attorney fees.

D. Record of Performance Guarantees. A record of all authorized and required performance guarantees shall be maintained by the Zoning Administrator.