

TOWN OF GUTTENBERG
COUNTY OF HUDSON, STATE OF NEW JERSEY

ORDINANCE #29-24

AMENDING CHAPTER 26 OF THE TOWN CODE CONCERNING LAND USE PROCEDURE

CHAPTER 26. LAND USE PROCEDURE

§ 26-1 PLANNING BOARD.

§ 26-1.1 Created.
[Ord. 12/5/60 § 1; Ord. 12/20/82 § 1; Ord. #08-14]

Pursuant to the statutes in such case made and provided, known as the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), there is hereby created the Planning Board of the Town of Guttenberg (hereinafter, the "Planning Board") ~~consisting of nine members.~~

§ 26-1.2 Appointment~~Membership~~.
[Ord. 12/5/60 § 2; Ord. 12/20/82 § 2]

~~The members of the Planning Board shall be appointed by the Mayor and hold their respective offices in accordance with the terms and provisions of N.J.S.A. 40:55D-1 et seq.~~The Planning Board shall consist of nine members of the following four classes:

- a. Class I: the Mayor or Mayor's designee.
- b. Class II: one of the officials of the Town, other than a member of the Town Council, to be appointed by the Mayor; provided that if there be an Environmental Commission, the member of the Environmental Commission who is also a member of the Planning Board as required by N.J.S.A. 40:56A-1, shall be deemed to be the Class II Planning Board member for purposes of this ordinance, in the event that there be among the Class IV or alternate members of the Planning Board both a member of the the Board of Education.
- c. Class III: a member of the Town Council to be appointed by the Town Council.
- d. Class IV members: Six other residents of the Town to be appointed by the Mayor. The members of Class IV shall hold no other municipal office, position, or employment. Not more than one Class IV member may be a member of the Board of Education. For the purpose of this section, membership on a Town board or commission whose function is advisory in nature, the establishment of which is discretionary and not required by statute, shall not be considered the holding of Town office.

§ 26-1.3 Powers and Duties~~Terms~~.
[Ord. 12/5/60 § 3; Ord. 12/20/82 § 3]

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The term of the Class I member shall correspond to his or her official tenure as Mayor. The terms of the members composing Class II and Class III shall be for one year or terminate at the completion of their respective terms of office, whichever occurs first. The term of a Class IV member who is also a member of the Board of Education shall terminate whenever he or she is no longer a member of such other body or at the completion of his or her Class IV term, whichever occurs first. The term of all other Class IV members shall be four years. If a vacancy in any class shall occur otherwise than by expiration of the Planning Board term, it shall be filled by appointment, as above provided, for the unexpired term.

§ 26-1.4 Alternate Members.
[Ord. 4/18/90; Ord. #007/02]

There shall be up to four alternate members of the Planning Board. The alternate members of the Planning Board shall be appointed by the Mayor and shall serve in accordance with the provisions of N.J.S.A. 40:55D-23.1.

§ 26-1.5 Organization.

The Planning Board shall organize annually at its first meeting of each calendar year by selecting from among its Class IV members a Chairperson and a Vice Chairperson. The Planning Board shall also select a secretary who may or may not be a member of the Board or a municipal employee and create and appoint such other offices as established by ordinance.

§ 26-1.6 Legal Counsel and Other Professional Staff.

The Planning Board may annually appoint an attorney-at-law admitted to practice in the State of New Jersey other than the Town Attorney as Planning Board Attorney and may fix his or her compensation at an amount not exceeding the amount appropriated by the Town Council. The Planning Board may also employ or contract for and fix the compensation of such experts and other staff and services as it may deem necessary. The Planning Board, however, shall not authorize expenditures which exceed, exclusive of gifts or grants, the amount appropriated by the Town Council for its use.

§ 26-1.7 Conflict of Interest.

No member of the Planning Board shall be permitted to act on any matter in which he or she has any personal or financial interest, either directly or indirectly.

§ 26-1.8 Removal.

Any member other than a Class I member, after a public hearing, if requested, may be removed by the Town Council for cause.

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§ 26-2 DUTIES OF THE PLANNING BOARD

§ 26-2.1 Powers and Jurisdiction of Planning Board.

- a. Mandatory Powers. The Planning Board shall exercise its powers in accordance with the Municipal Land Use Law in regard to:
 - 1. The Town Master Plan pursuant to N.J.S.A. 40:55D-28 et seq.
 - 2. Subdivision and site plan review pursuant to the Land Development and Site Plan Review Ordinance pursuant to N.J.S.A. 40:55D-37 et seq.
 - 3. Any official map adopted by the Town Council pursuant to N.J.S.A. 40:55D-32 et seq.
 - 4. The zoning ordinance including conditional uses pursuant to the Zoning Ordinance pursuant to N.J.S.A. 40:55D-62 et seq.
 - 5. Any capital improvements programs pursuant to N.J.S.A. 40:55D-29 et seq.
 - 6. Variations and certain building permits in conjunction with subdivision, site plan and conditional use approval pursuant to this section.
- b. Other Powers. The Planning Board may:
 - 1. Participate in the preparation and review of programs or plans required by State or Federal law or regulation.
 - 2. Assemble data on a continuing basis as part of a continuous planning process.
 - 3. Perform such other duties as are assigned to it by ordinance or resolution of the Town Council.
 - 4. Adopt rules governing the procedures and conduct of meetings.
- c. Planning Board Review In Lieu of Board of Adjustment. Whenever the proposed development requires approval of a subdivision, site plan or conditional use, but not a variance pursuant to N.J.S.A. 40:55D-70(d), the Planning Board, shall have the power to grant to the same extent and subject to the same restrictions as a zoning board of adjustment:
 - 1. Variations pursuant to N.J.S.A. 40:55D-70(c).
 - 2. Direction pursuant to N.J.S.A. 40:55D-34 for issuance of a permit for a building or structure in the bed of a mapped street or public drainage way, flood control basin or public area reserved pursuant to N.J.S.A. 40:55D-32.
 - 3. Direction pursuant to N.J.S.A. 40:55D-36 for issuance of a permit for a building or structure not related to a street.
- d. Referral Powers of the Planning Board. Prior to the adoption of a development regulation, revision, or amendment thereto, the Planning Board shall make and transmit to the Town Council, within thirty-five (35) days after referral, a report including identification of any provisions in the proposed development regulation, revision, or amendment that are inconsistent with the land use plan and the housing element plan of the Town's Master Plan and recommendations concerning these

inconsistencies and any other matters as the Planning Board deems appropriate. The Town Council may adopt a zoning ordinance or amendment thereto that in whole or in part is inconsistent with the land use element plan and the housing element plan, but only by an affirmative vote of a majority of the full authorized membership. The Town Council shall state its reasons for doing so in a resolution and recorded in the minutes. Failure of the Planning Board to transmit its report within the thirty-five (35)-day period provided herein shall relieve the Town Council from the requirements of this subsection in regard to the proposed development regulation, revision, or amendment referred to the Planning Board. Nothing in this section shall be construed as diminishing the application of the provisions of N.J.S.A. 40:55D-32 to any official map or an amendment or revision thereto or of N.J.S.A. 40:55D-62 to any zoning ordinance or any amendment or revision thereto.

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§ 26-2.3 Findings for Establishment of a Planning Board pursuant to N.J.S.A. 40:55D-25(c)
[Ord. No. 017-1995, Preamble]

The Town of Guttenberg has created a Planning Board in accordance with the statutory dictates of N.J.S.A. 40:55D-23 et seq. and created a Zoning Board of Adjustment pursuant to the dictates of N.J.S.A. 40:55D-69 et seq.; and the New Jersey Legislature has amended the Municipal Land Use Law, known as N.J.S.A. 40:55D-1 et seq., so as to allow municipalities with populations less than 15,000 residents, the option of creating a Planning Board and vesting the same powers of the Zoning Board of Adjustment in the Planning Board.

The amendment is delineated in N.J.S.A. 40:55D-25(c), which states in part that a municipality having a population of 15,000 or less, may create a nine-member Planning Board with four alternates, which shall exercise to the same extent and subject to the same restrictions, all of the powers of a Zoning Board of Adjustment; but the Class I and III members (Mayor and Council person) shall not participate in the consideration of applications for development which involve relief pursuant to Subsection d of N.J.S.A. 40:55D-70.

The intent and purpose of the amendment is to allow for the selection of members to a Planning Board willing to comply with the requirements imposed upon Planning Board members in complying with the ethics disclosure statement and requiring compliance with all of the dictates of the Statutes anent the position of Planning Board member.

The legislative branch of the State took into consideration the difficulties of filling all the regular and alternate positions on the voluntary Zoning Board of Adjustment and a Planning Board and the potential negative effect this hardship had on the municipalities and applicants who sought relief from the appropriate board.

The further intent of the legislative branch of the State was to lessen the costs of operating two separate and diverse Boards and such financial outlay was considered severe and a hardship on local municipalities and their respective governing bodies.

The Planning Board and Zoning Board of Adjustment of the Town of Guttenberg had a limited number of applications filed and heard, and further, the financial expenditures for each respective Board were still tendered for that period of time pursuant to the various expenses of the Boards and the financial savings attendant to the adoption and creation of a single Planning Board is self-evident and beneficial to Guttenberg, this financial consideration being a major factor and determinative of the intent of the legislative branch.

§ 26-2.4 Duties Delineated in N.J.S.A. 40:55D-25(c).
[Ord. No. 017-1995 § 1]

In addition to those powers and duties enumerated in Section 26-2.1, when the Planning Board is convened as a zoning board of adjustment, the Planning Board shall have the following powers pursuant to N.J.S.A. 40:55D-25(c). All references in the following subparagraphs to the Planning Board shall be construed as the Planning Board when exercising the powers and performing the functions of a zoning board of adjustment.

- a. Appeals. Hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, decision or refusal made by the Zoning Officer or any other Town Official, based on or made in the enforcement of the Zoning Ordinance or Official Map.
- b. Interpretations. Hear and decide requests for interpretation of the Zoning Ordinance or Zoning Map or for decisions upon other special questions upon which such Board is authorized to pass by any Zoning or Official Map Ordinance in accordance with the Municipal Land Use Law.
- c. Bulk and Dimensional Variances:
 1. Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property, the Board may grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship; or
 2. Where in an application or appeal relating to a specific piece of property the purposes of zoning set forth in N.J.S.A. 40:55D-2 would be advanced by a deviation from the Zoning Ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, the Planning Board may grant a variance to allow departure from such zoning requirements, provided, however, that the fact that a proposed use is an inherently

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beneficial use shall not be dispositive of a decision on a variance under this subsection, and provided that no variance from those departures enumerated in this section shall be granted under this subsection; and provided further that the proposed development does not require approval by the Planning Board of a subdivision, site plan or conditional use in conjunction with which the Planning Board has the power to review a request for a variance pursuant to N.J.S.A. 40:55D-60(a).

d. "d" Variances. Pursuant to N.J.S.A. 40:55D-70(d), in particular cases and for special reasons, the Board may grant a variance to allow departure from zoning regulations to permit (1) a use or principal structure in a district restricted against such use or principal structure, (2) an expansion of a nonconforming use, (3) deviation from a specification or standard pursuant to N.J.S.A. 40:55D-67 pertaining solely to a conditional use, (4) an increase in the permitted floor area ratio as defined in N.J.S.A. 40:55D-4, (5) an increase in the permitted density as defined in N.J.S.A. 40:55D-4 except as applied to the required lot area for a lot or lots for detached one or two dwelling unit buildings which lot or lots are either an isolated undersized lot or lots resulting from a minor subdivision, or (6) a height of a principal structure which exceeds by ten (10) feet or ten percent (10%) the maximum height permitted in the district for a principal structure. A variance under this subsection shall be granted only by an affirmative vote of at least five members.

e. Additional Powers. Pursuant to this section, the Planning Board shall have the following additional powers:

1. To direct issuance of a permit pursuant to N.J.S.A. 40:55D-34 for a building or structure in the bed of a mapped street or public drainageway, flood control basin, or public area reserved pursuant to N.J.S.A. 40:55D-32.
2. To direct issuance of a permit pursuant to N.J.S.A. 40:55D-36 for a building or structure not related to a street.
3. To grant to the same extent and subject to the same restrictions as the Planning Board subdivision or site plan approval or conditional use approval whenever the proposed development requires approval by the Planning Board of a variance pursuant to this section of this Chapter. The developer may elect to submit a separate application requesting approval of the variance and a subsequent application for any required approval of a subdivision, site plan or conditional use. The Planning Board shall condition the separate approval of the variance upon grant of all required subsequent approvals of a site plan or subdivision. No such subsequent approval shall be granted unless such approval can be granted without substantial impairment to the public good and without substantial impairment to the intent and purpose of the zone plan and zoning ordinance. The number of votes of Planning Board members required to grant any such subsequent approval shall be as otherwise provided in this chapter for the approval in question, and the special vote pursuant to N.J.S.A. 40:55D-70(d) shall not be required.

§ 26-2.5 Standards for Consideration.

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- a. Relief Not Enumerated As a "d" Variance to be Decided Under Bulk and Dimensional Variance Criteria. If an application for development requests one or more variances but not a "d" variance, the decision on the requested variance or variances shall be rendered under the bulk and dimensional variance criteria.
- b. Requirement For Showing of No Substantial Detriment. No variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the Zone plan and Zoning Ordinance.
- c. Referral of Application to Other Agencies. An application under this section may be referred to any appropriate person or agency for its report; provided that such reference shall not extend the period of time within which the Planning Board shall act.

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§ 26-2.6 Annual Report on Variances Heard by the Planning Board.

The Planning Board shall, at least once a year, review its decisions on applications and appeals for variances and prepare and adopt by resolution a report of its findings on zoning ordinance provisions which were the subject of variance requests and its recommendations for zoning ordinance amendment or revision, if any. The Planning Board shall send copies of the report and resolution to the Mayor, Town Council, and the Town Clerk.

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§ 26-2.7 Subdivision and Site Plan Committee.

The Chairperson of the Planning Board may appoint a Subdivision and Site Plan Committee. The Committee shall consist of at most three (3) Planning Board members and such technical and other staff members as the Chairperson may deem appropriate. The purposes of the Committee shall be as follows:

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- a. To review, comment and make recommendations with respect to subdivision and site plan applications.
- b. To act on minor subdivision and minor site plan applications pursuant to N.J.S.A. 40:55D-47 and N.J.S.A. 40:55D-46.1 provided that no variances are required pursuant to Chapter 28 of the Town Code of the Town of Guttenberg.
- c. To perform other advisory activities and duties conferred upon it by the Planning Board through a motion duly adopted and recorded.

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§ 26-3 DEVELOPMENT APPLICATION FEES.

§ 26-3.1 Purpose.
[Ord. #008-10, § 1]

The purpose of this section is to provide for the establishment of a fee schedule for the payment of fees with respect to all applications submitted to the Town of Guttenberg pursuant to the Town's zoning and land use regulations.

§ 26-3.2 Procedures.
[Ord. #008-10, § I]

- a. Administration of Fees and Escrow Deposits.
 1. Application fees covering administration and overhead shall be charged to the applicant and shall be submitted at the time of an application for a review or hearing by the [Planning Board](#).
 2. In addition to the fees to be paid herein, the applicant shall submit escrow deposits at the time of submission of an application for a review or hearing by the [Planning Board](#).
 3. All application fees and escrow funds shall be paid in cash, certified check, attorney's check, or money order made payable to the Town of Guttenberg. Application fees and escrow funds shall be paid to the Town with separate certified checks or money orders. Along with the application fees and escrow funds, the applicant shall submit a letter breaking out the totals into its component parts, pursuant to Subsections 4 and 5 below.
 4. Where an application involves more than one of the categories itemized below, the fees and escrow deposit applicable to each category shall be required.
 5. The escrow funds shall be deposited into a separate trust account by the Town, pursuant to N.J.S.A. 40:55D-53.1, and if the deposit amount required is greater than \$5,000, interest will accrue to the applicant. Disbursements may be made from the escrow fund only after approval by the Town of Guttenberg's Chief Financial Officer.
 6. Escrow funds shall be placed in an escrow account by the Chief Financial Officer [of the Town](#). Such funds shall be used to pay the [Planning Board](#) Attorney, Professional Engineer, Professional Planner, Traffic Engineer, and other experts deemed necessary to review and comment on the application. Said experts shall submit vouchers to the Town for all reasonable and necessary fees for review of the application, which fees shall be paid from the escrow account in a manner prescribed in N.J.S.A. 40:55D-53.2(e) and N.J.S.A. 40A:5-16 through 40A:5-18.
 7. Where the review costs exceed the escrow deposit fee, the applicant shall pay the additional amount within [fifteen \(15\)](#) days of the request. Failure to remit the additional required deposit within the requested timeline shall render the application incomplete, and no further action or proceedings shall be taken by the [Planning Board](#) until after compliance. Where the review costs are less than the amount of the escrow deposit, the difference shall be returned to the applicant within 120 days of final disposition of the application.
 8. In the event that an application is withdrawn, application fees are nonrefundable, but any escrow funds remaining at the time of withdrawal

shall be returned to the applicant. If the same application is resubmitted at a later time, the applicant shall be required to repay all application fees and establish a new escrow account.

9. An application is deemed incomplete until all application fees and escrow deposits are submitted.
10. No construction shall commence, nor shall a certificate of occupancy be issued, until the inspection fees required by Subsection 26-3.3d of this section have been submitted.

§ 26-3.3 Schedule of Fees and Escrow Deposits.
[Ord. #008-10, § 1]

- a. Site Plan or Subdivision.
 1. Application Fees.

(a)	Minor site plan	\$500
(b)	Preliminary residential site plan	\$500, plus \$50 per dwelling unit
(c)	Preliminary site plan under 5,000 square feet	\$500
(d)	Preliminary site plan between 5,000 and 9,999 feet	\$1,000, plus \$50 for every 1,000 square feet
(e)	Preliminary site plan between 10,000 and 25,000 square feet	\$1,500, plus \$50 for every 1,000 square feet
(f)	Preliminary site plan over 25,000 square feet	\$2,000, plus \$50 for every 1,000 square feet
(g)	Final site plan	50% of preliminary site plan fee
(h)	Amendment or extension of preliminary or final site plan	\$500
(i)	Minor subdivision	\$500, plus \$100 per lot
(j)	Preliminary major subdivision	\$500, plus \$100 per lot
(k)	Final major subdivision	\$500, plus \$50 per lot
(l)	Amendment or extension of preliminary or final subdivision	\$500

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2. Escrow Deposits.

(a)	Minor site plan	1,000
(b)	Preliminary residential site plan	\$1,000, plus \$100 per dwelling unit
(c)	Preliminary site plan under 5,000 square feet	\$1,000
(d)	Preliminary site plan between 5,000 and 9,999 feet	\$4,000
(e)	Preliminary site plan between 10,000 and 25,000 square feet	\$4,000
(f)	Preliminary site plan over 25,000 square feet	\$5,000
(g)	Final site plan	50% of preliminary site plan fee

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(h)	Amendment or extension of preliminary or final site plan	\$1,000
(i)	Minor subdivision	\$1,000
(j)	Preliminary major subdivision	\$2,500
(k)	Final major subdivision (three to five lots)	\$3,000
(l)	Final major subdivision (over five lots)	\$5,000
(m)	Amendment or extension of preliminary or final subdivision	\$1,000

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b. Appeals, Interpretations, and Variances.
 1. Application Fees.

(a)	Hear and decide appeals, pursuant to N.J.S.A. 40:55D-70(a)	\$300
(b)	Hear and decide interpretation of the Zoning Map or Ordinance, pursuant to N.J.S.A. 40:55D-70(b)	\$300
(c)	Variance pursuant to N.J.S.A. 40:55D-70(c)	\$300 for the first variance, \$150 for each additional variance
(d)	Variance pursuant to N.J.S.A. 40:55D-70(d)	\$500 for the first variance, \$250 for each additional variance

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2. Escrow Deposits.

(a)	Hear and decide appeals, pursuant to N.J.S.A. 40:55D-70(a)	\$500
(b)	Hear and decide interpretation of the Zoning Map or Ordinance, pursuant to N.J.S.A. 40:55D-70(b)	\$500
(c)	Variance pursuant to N.J.S.A. 40:55D-70(c)	\$1,000 if not part of site plan or subdivision
(d)	Variance pursuant to N.J.S.A. 40:55D-70(d)	\$1,000 if not part of site plan or subdivision

c. Other Fees.
 1. Application Fees.

(a)	Special meeting	\$1,000
(b)	Informal or concept reviews	\$250
(c)	Requests for extensions	\$250

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2. Escrow Deposits.

(a)	Special meeting	\$1,000
(b)	Informal or concept reviews	\$500

d- Inspection Fees. Inspection fees for drainage, paving, landscaping, curbing, and other improvements which relate to matters involving public facilities: The greater of \$100 or 10% of the cost of the improvements.

e. [Application Fees for Building Permit.](#)

(a)	For construction less than \$350,000	\$200
(b)	For construction of \$350,000 to \$750,000	\$300
(c)	For construction from \$750,000 to \$1,500,000	\$400
(d)	For construction of \$1,500,000 and over	\$500

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[§ 26-3.4 Escrow Fees for Professional Review and Expert Witness.](#)

- a. [Escrow Deposits. The Planning Board shall require, in addition to its base application fees, escrow deposits in accordance with the provisions of this section. Such deposits shall be utilized to pay the cost of any professional services incurred by professionals retained by the Planning Board for the review of an application for development to the Planning Board. The Town shall make all of the payments to professionals for services rendered to the municipality for review of applications for development, review and preparation of documents, inspection of improvements or other purposes under the provisions of N.J.S.A. 40:55D-1 et seq. The deposit received from an applicant shall be placed in an escrow account pursuant to the provisions of N.J.S.A. 40:55D-53.1. Such deposit shall be utilized to pay the cost of any professional services incurred for the review of an application for development to the Board and may also be utilized to pay the cost of review and testimony by an expert witness or witnesses retained by the municipal agency. All payments charged to the deposit shall be pursuant to vouchers from the professionals stating the hours spent, the hourly rate and the expenses incurred. The municipality shall render a written final accounting to the applicant on the uses to which the deposit was put. Thereafter the municipality shall, upon written request, provide copies of the vouchers to the developer. Payment due professionals retained by the municipality shall be made upon receipt of adequate moneys from applicants for development.](#)
- b. [Professional Services Defined. The term “professional services,” as utilized herein, shall include the services of a duly licensed engineer, surveyor, planner, attorney, scientist, realtor, appraiser, certified shorthand reporter, or other professional or expert who provided services for review, advice, preparation of reports and expert testimony, for inspection of the property and surrounding area and for tests](#)

performed, in order to assist the Planning Board in the review of the application before it.

c. Amount of Escrow. Subject to the provisions of paragraph d below, each applicant shall, prior to his or her or its application being ruled complete pursuant to the provisions of the Municipal Land Use Law and this section, submit the sums requested by Section 26-3.3 to the Chief Financial Officer of the Town of Guttenberg.

d. Completeness of Application; Escrow Fees.

1. Within forty-five (45) days after the filing of an application for development, the Planning Board or its authorized committee or designee, as the case may be, shall, in connection with the appropriate representatives of the staff of the Town of Guttenberg, review said application for development to determine whether the escrow amount set forth above is adequate. In conducting such review, said Planning Board shall consider the following criteria:

(a) The presence or absence of public water or sewer servicing the site.

(b) Environmental considerations, including but not limited to geological, hydrological, and ecological factors.

(c) The traffic impact of the proposed development.

(d) The impact of the proposed development on existing water quality.

(e) Any other unique land use concerns relating to the application.

2. Upon completion of said review and within said forty-five (45)-day period, the Planning Board or its authorized committee shall adopt a resolution specifying whether the escrow amount specified above is sufficient, excessive or insufficient. In the event that the Planning Board or its authorized committee shall determine that the amount is excessive, it shall in the resolution specify the amount that shall be deemed sufficient, including a specification, if appropriate, that no escrow be posted. In the event that the Planning Board or its authorized committee shall determine that the amount specified above is insufficient, it shall so specify and shall further set forth the amount required to be posted in light of the criteria specified herein.

3. No application for development shall be deemed complete until such time as the applicant shall have posted with the Town of Guttenberg in cash, certified check, or money order the amount of escrow deposit determined by the Planning Board to be required in accordance with the provisions of this section.

e. Additional Escrow Deposits.

1. The Board may require additional escrow deposits by the applicant to be posted during the course of the review of an application, provided that:

(a) The original amounts escrowed pursuant to this section have been exhausted; and

(b) Additional professional services or expert services must reasonably be incurred because of the presence of one or more factors enumerated in paragraph d above, in order to complete the review of the application and to properly decide the same.

2. In the event that additional escrow moneys are required they shall not be deemed items required for the application to be complete but may be required as additional information reasonably required to decide the application. Their payment shall be required as a condition of any approval granted.
- f. Charge for Certain Professional Services to the Applicant. Applicants shall be responsible to reimburse the Town with regard to certain specific professional services in accordance with the following:
 1. The applicant shall be required to reimburse the Town for the cost of attendance by the Town's professional personnel at any meeting of the Town agency or board at which a hearing is held on the application. However, where hearings on other applications are held at the same meeting at which the attendance of the Town's professional personnel are also required, the cost of the attendance of the Town's professional personnel shall be reimbursed to the Town on a pro rata basis.
 2. The Town shall be entitled to be reimbursed for attendance of its professional personnel at special meetings of a Town agency or Board which were requested to be called by the applicant.
 3. The applicant shall pay for the review of any revisions of the applications or maps in the event that the application is declared incomplete.
 4. The cost of the preparation of a resolution or memorializing resolution setting forth the findings of fact and conclusions of law of the Town agency or board with respect to an application shall be reimbursable to the Town.
 5. The fees for other professional services incurred by the Board shall be reimbursed by the applicant to the Town.
- g. Reasonable Charges for Professional and Expert Services. No professional personnel submitting charges to the Town for any of the services referred to in this subsection shall charge for any of the services at any higher rate or in any different manner than would normally be charged the Town for similar work, as ascertained by the professional's contract of employment with the Town or by provisions of the Municipal Salary Ordinance. The charges shall be reasonable.
- h. Deposit of Escrow Funds; Refunds. Deposits received from any applicant shall be held by the Chief Financial Officer of the Town in a special interest-bearing deposit account, and upon receipt of bills for professionals duly approved by the Planning Board, or governing body, as appropriate, the Chief Financial Officer may use such funds to pay the bills submitted by such professionals or experts. All sums not actually so expended and any interest earned thereon shall be refunded to the applicant within sixty (60) days after the final decision by the Planning Board with respect to such application, upon certification by the Board Secretary that such application has been finally decided and all professional fees have been paid.
- i. Reimbursement for Inspection of Improvements. The applicant shall reimburse the Town for all reasonable inspection fees paid to the Town Engineer for the inspection or testing of improvements. The Town may require the applicant to make a deposit for all or a portion of the reasonably anticipated fees to be paid for the Town Engineer for such inspections pursuant to N.J.S.A. 40:55D-53(h).

j. Inspection of Improvements. All of the improvements in a subdivision or site plan shall be inspected and approved by the Town Engineer. The subdivider or his, her or its agent, employee or contractor shall notify the Town Engineer and the Secretary of the reviewing Town Board when the work is ready for any required inspection specified herein or required to be performed by the Town Engineer, the Construction Official or the appropriate subcode official. This notice shall be given at least forty-eight (48) hours prior to the time the inspection is desired. The inspection shall be performed within three business days of the time for which it was requested; however, failure to inspect within three business days shall in no way constitute approval of the work. The work shall not proceed in a manner which shall preclude the inspection until it has been made. No underground installation shall be covered until inspected and approved.

k. Liens on Property.

1. Should any fees for applications for development, expert witness fees, consultant's fees, review fees, inspection fees, or fees of any nature connected with an application for development be due and unpaid by an applicant for development and/or owner of a subject property for a period of fourteen (14) days after written notice of the amount due was mailed to the owner and applicant, the Town Clerk or Mayor or Assistant Clerk or other officer or employee of the Town of Guttenberg may execute a written statement of lien showing the amount due to the Town and may record the same in the Hudson County Register's and/or Clerk's office as a lien on the subject property. The lien shall include interest at the rate of twelve percent (12%) per annum, recording fees and a reasonable attorneys' fee.
2. Should the lien remain unpaid, the Town Tax Collector, Clerk or other officer authorized by the Mayor and Board of Council shall have the power to foreclose the property to collect the amount of the lien, together with interest, attorney's fees and recording fees pursuant to N.J.S.A. 54:5-19 et seq., and other applicable laws of the State of New Jersey.

§ 26-3.5 Waiver of Fees.

Any board, agency, committee, or entity of the Town of Guttenberg may make application to the Planning Board without the requirement for making payment of any of the fees hereinabove provided. Notwithstanding any other provision of this subsection to the contrary, the Planning Board may waive any base application fees or supplemental base application fees, or portions thereof as hereinabove provided, for nonprofit organizations and other organizations, persons or entities where it is deemed to be in the best interests of the Town of Guttenberg; provided, however, that the Planning Board shall not be empowered to waive the making of a review fee escrow deposit absent the concurrence of the Mayor and Board of Council, which concurrence shall be expressed in a formal resolution of the Mayor and Board of Council adopted by two-thirds (2/3) of the full membership thereof.

§ 26-3A SUBMISSION OF APPLICATION.

§ 26-3A.1 Application Form.

All applications for minor subdivisions, preliminary and final major subdivisions, minor site plan approval, preliminary and final major site plan approval, appeals, and any other application to the Planning Board shall in a form adopted by the Planning Board.

§ 26-3A.2 Application Fees.

All applications shall be accompanied by the fees and escrow deposits set forth in Section 26-3 of this Chapter.

§ 26-3A.3 Number and Format of Application.

The applicant shall file an original and two (2) copies of the application together with all maps, plans, reports, and other supporting materials with the Planning Board Secretary. The applicant shall also transmit one (1) copy of the application together with all maps, plans, reports, and other supporting materials to the Board Attorney and such other professionals who have been retained by the Planning Board. The applicant shall also provide an electronic copy of all application documents in readable portable document file (pdf) format.

§ 26-3A-4 Completeness Checklist.

All applications shall be accompanied by a completeness checklist for those items identified in Chapter 27 pertaining to each specific application.

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§ 26-4 PERFORMANCE AND MAINTENANCE GUARANTEES.
[Added 3-25-2019 by Ord. No. 05-19]

§ 26-4.1 Developer's Agreement.

With respect to all applications for subdivision and site plan approval, the Planning Board shall condition any such approval upon the execution of a developer's agreement between the Town of Guttenberg and the applicant specifying, in part, off-site, on-tract or off-tract improvements, public improvements, bonding requirements, escrow requirements, other conditions imposed by the Town and such other terms and conditions as the Town deems appropriate. The Planning Board may waive the requirement of a developer's agreement in appropriate circumstances. Unless so waived, no certificate of occupancy or building permit shall be issued respecting any application for development requiring subdivision or site plan approval unless the applicant has entered into a developer's agreement of a form specified herein.

§ 26-4.2 Furnishing of Performance Guarantees; Improvements.

- 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 to N.J.S.A.

40:55D-65, or 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, the Town shall require and shall accept in accordance with the standards set forth hereinbelow and regulations adopted pursuant to N.J.S.A. 40:55D-53(a) for the purpose of assuring the installation and maintenance of certain on-tract improvements, the furnishing of a performance guarantee, and provision for a maintenance guarantee as set forth in this section.

1. The developer shall furnish a performance guarantee in favor of the Town 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 Town Engineer, according to the method of calculation set forth in N.J.S.A. 40:55D-53.4, for the following improvements as shown on the approved plans or plat:
 - (a) Streets.
 - (b) Pavement.
 - (c) Gutters.
 - (d) Curbs.
 - (e) Sidewalks.
 - (f) Street lighting.
 - (g) Street trees.
 - (h) [All content required by N.J.S.A. 46:26B-1 -8.](#)
[All content required by N.J.S.A. 46:26B-1 -8.](#)
All content required by N.J.S.A. 46:26B-1 -8.
 - (i) Water mains.
 - (j) Sanitary sewers.
 - (k) Community septic systems.
 - (l) Drainage structures.
 - (m) Public improvements of open space.
 - (n) Any grading necessitated by the preceding improvements.
2. The developer shall also furnish a performance guarantee to include, within an approved phase or section of a development, privately owned perimeter buffer landscaping, as required by the Town Code or imposed as a condition of approval. At a developer's option, a separate performance guarantee may be posted for the privately held perimeter buffer landscaping.
3. The Town 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.

§ 26-4.3 Safety and Stabilization.

- a. The developer shall also furnish to the Town a safety and stabilization guarantee in favor of the Town. 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 Town 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 sixty (60) consecutive days following such commencement for reasons other than force majeure.
2. Work has not recommenced within thirty (30) days following the provision of written notice by the Town to the developer of the Town's intent to claim payment under the guarantee.
3. The Town shall not provide notice of its intent to claim payment under a safety and stabilization guarantee until a period of at least sixty (60) days has elapsed during which all work on the development has ceased for reasons other than force majeure. The Town shall provide written notice to the developer by certified mail or other form of delivery providing evidence of receipt.
4. 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.
5. The amount of a safety and stabilization bond 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:
 - (a) Five thousand dollars for the first \$100,000 of bonded improvement costs, plus 2.5% of bonded improvement costs in excess of \$100,000 up to \$1,000,000; plus
 - (b) One percent of bonded improvement costs in excess of \$1,000,000.
6. The Town 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 subsection.
7. The Town shall release a safety and stabilization guarantee upon the Town Engineer's or other municipal official's (designated by ordinance) 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.

§ 26-4.4 Temporary Certificate of Occupancy; Guarantee.

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 Town 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 previously furnished by the developer 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 Town Engineer or such other municipal official designated by ordinance. The temporary certificate of occupancy guarantee shall be released by the Town 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.

§ 26-4.5 Acceptance of Performance Guarantee from Successor Developer.

- a. The Town may accept a performance guarantee in favor of the municipality from a successor developer as a replacement for a performance guarantee that was previously furnished, pursuant to N.J.S.A. 40:55D-53, for the purpose of assuring the installation of improvements. The Town shall not accept a replacement performance guarantee without securing:
 1. Written confirmation from the new obligor that the intent of the new obligor is to furnish a replacement performance guarantee, relieving the predecessor obligor and surety, if any, of any obligation to install improvements; and
 2. Written verification from the Town Engineer that the replacement performance guarantee is of an amount sufficient to cover the cost of the installation of improvements, but not to exceed 120% of the cost of the installation, which verification shall be determined consistent with N.J.S.A. 40:55D-53.
- b. An approving authority shall notify the governing body whenever it accepts a replacement performance guarantee. Notice shall contain a copy of the written confirmation of the new obligor's intent to furnish a replacement performance guarantee and the municipal engineer's written verification of the sufficiency of the amount of that replacement performance guarantee.
- c. Within thirty (30) days after receiving notice from the approving authority of its acceptance of a replacement performance guarantee, the governing body, by resolution, shall release the predecessor obligor from liability pursuant to its performance guarantee.

§ 26-4.6 Maintenance Guarantee.

- a. Prior to the release of a performance guarantee required pursuant to this section, the developer shall post with the Town a maintenance guarantee in an amount not to exceed fifteen percent (15%) of the cost of the installation of the improvements which are being released.
 1. The developer shall post with the Town, upon the inspection and issuance of final approval of the following private site improvements by the Town Engineer, a maintenance guarantee in an amount not to exceed fifteen

percent (15%) of the cost of the installation of the following private site improvements, which cost shall be determined according to the method of calculation set forth in (N.J.S.A. 40:55D-53.4:

- (a) Stormwater management basins;
 - (b) In-flow and water quality structures within the basins; and
 - (c) The out-flow pipes and structures of the stormwater management system, if any.
2. 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.

§ 26-4.7 Other Agencies; Utilities.

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 Town for such utilities or improvements.

§ 26-4.8 Regulations Concerning Performance Guarantees.

- a. 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 Town Engineer according to the method of calculation set forth in N.J.S.A. 40:55D-53.4 as of the time of the passage of the resolution.
- b. 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 Town for the reasonable cost of the improvements not completed or corrected, and the Town may either prior to or after the receipt of the proceeds thereof complete such improvements. Such completion or correction of improvements shall be subject to the public bidding requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.
- c. 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 Town Clerk, that the Town Engineer prepare, in accordance with the itemized cost estimate prepared by the Town Engineer and appended to the performance guarantee pursuant to 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 Town 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 Town 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 [forty-five \(45\)](#) days after receipt of the obligor's request.

1. The list prepared by the Town 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 Town 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 prepared by the Town Engineer and appended to the performance guarantee pursuant to Subsection [a](#) of this section.
2. The governing body, by resolution, shall either approve the bonded improvements determined to be complete and satisfactory by the Town 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 prepared by the Town Engineer and appended to the performance guarantee pursuant to this section. This resolution shall be adopted not later than 45 days after receipt of the list and report prepared by the Town 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 [thirty percent \(30%\)](#) 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.
3. For the purpose of releasing the obligor from liability pursuant to its performance guarantee, the amount of the performance guarantee attributable to each approved bond improvement shall be reduced by the total amount for each such improvement, in accordance with the itemized cost estimate prepared by the Town 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% of the total amount of the performance guarantee, then the Town may retain 30% of the amount of the total performance guarantee and safety and stabilization guarantee to ensure completion and acceptability of all 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 Town below 30%.

4. If the Town Engineer fails to send or provide the list and report as requested by the obligor pursuant to 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 Town 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.
 5. If the governing body fails to approve or reject the bonded improvements determined by the Town 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 Town 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 prepared by the Town Engineer and appended to the performance guarantee pursuant to this section; and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.
 6. In the event that the obligor has made a cash deposit with the Town 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 Town may retain cash equal to the amount of the remaining safety and stabilization guarantee.
- d. 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.
 - e. Nothing herein shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the governing body or the Town Engineer.

§ 26-4.9 Regulations Concerning Inspection Fees.

- a. The obligor shall reimburse the Town for reasonable inspection fees paid to the Town Engineer for the foregoing inspection of improvements; which fees shall not exceed the sum of the amounts set forth hereinbelow. The Town shall require the developer to post the inspection fees in escrow in an amount:
 1. Not to exceed, except for extraordinary circumstances, the greater \$500 or 5% of the cost of bonded improvements that are subject to a performance guarantee under this section; and

2. Not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee under this section, which cost shall be determined pursuant to N.J.S.A. 40:55D-53.4.

- b. 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 fifty percent (50%) of the inspection fees. When the balance on deposit drops to ten percent (10%) of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Town Engineer for inspections, the developer shall deposit the remaining 50% of the inspection fees.
- c. For those developments for which the inspection fees are 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 twenty-five percent (25%) of the inspection fees. When the balance on deposit drops to ten percent (10%) of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Town Engineer for inspection, the developer shall make additional deposits of twenty-five percent (25%) of the inspection fees.
- d. If the Town determines that the amount in escrow for the payment of inspection fees, as calculated hereinabove, is insufficient to cover the cost of additional required inspections, the developer shall deposit additional funds in escrow. In such instance, the Town shall deliver to the developer a written inspection escrow deposit request, signed by the Town 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.

§ 26-4.10 Approved by Stages or Sections.

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

§ 26-4.11 Dedication of Improvements to Town.

To the extent that any of the improvements have been dedicated to the Town on the subdivision plat or site plan, the 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 Town Engineer.

§ 26-5 PROJECT LABOR AGREEMENTS

§ 26-5.1 Definitions.

As used in this article, the following terms shall have the meanings indicated:

AFFORDABLE HOUSING

Housing that is restricted for occupancy and affordable to households with incomes no greater than 80% of area median income by family size as established by the U.S. Department of Housing and Urban Development (HUD) including, but not limited to, housing that is funded by HUD, Section 42 of the Internal Revenue Code or which is covered and regulated by the State Council on Affordable Housing (COAH).

APPRENTICE

A worker who participates in a federally approved apprenticeship program or, as an apprentice equivalent, participates in a federally approved training program, takes a construction apprenticeship test, and receives benefits and pay not less than those received by an apprentice.

APPRENTICESHIP PROGRAM

A registered apprenticeship program operated by a labor organization engaged in the construction industry providing to each trainee combined classroom and on-the-job training under the direct and close supervision of a highly skilled worker in an occupation recognized as an apprenticeable trade, and registered by the Bureau of Apprenticeship and Training of the U.S. Department of Labor and meeting the standards established by the Bureau.

DEVELOPER

The recipient of a tax exemption or abatement for a tax abatement project or the awardee of a public construction contract for a Public Works project, and/or their contractors, subcontractors or agents.

LABOR ORGANIZATION

An organization which represents, for purposes of collective bargaining, employees involved in the performance of Public Works projects or tax abatement projects and eligible to be paid prevailing wages under the "New Jersey Prevailing Wage Act," P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.), and has the present ability to refer, provide or represent sufficient numbers of qualified employees to perform the contracted work, in a manner consistent with this article and the enabling statute (N.J.S.A. 52:38-1 et seq.) and any plan mutually agreed upon by the labor organization and the Town of Guttenberg or the developer, as relevant to the situation.

NOT-FOR-PROFIT

Any entity that is organized as a nonprofit or not-for-profit entity, corporate or otherwise, or a governmental entity.

PROJECT COMPLETION

The determination by the Town of Guttenberg that the project, in whole or in part, is ready for the use intended, which ordinarily shall mean the date on which the project receives its final certificate of occupancy.

PROJECT LABOR AGREEMENT

A pre-hire collective bargaining agreement between a labor organization and the Town of Guttenberg or a developer, as the situation dictates, that contains at a minimum the requirements set forth in this article, which cover the terms and conditions of a specific project.

PUBLIC WORKS PROJECT

Any Public Works project for the construction, reconstruction, demolition or renovation of buildings entered into by the Town using public funds, for which:

- a. It is required by law that workers be paid the prevailing wage determined by the State Commissioner of Labor pursuant to the provisions of the New Jersey Prevailing Wage Act, P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.); and
- b. The total estimated cost of the project, exclusive of any land acquisition costs, will equal or exceed \$5,000,000.

TAX ABATEMENT PROJECT

A project that has an estimated total construction cost that is equal to or exceeds \$5,000,000, exclusive of any land acquisition costs, for which the Town has granted a tax abatement pursuant to the Long Term Tax Exemption Act, N.J.S.A. 40A:20-1 et seq. However, any project that is being undertaken by a not-for-profit organization or which shall contain more than 50% affordable housing units shall be excluded.

TOWN OF GUTTENBERG

The Town or the Town Administrator and/or her/his designee.

TOWN REPRESENTATIVE

The individual designated by the Town to provide services in support of the contractors', subcontractors' or agents' local, minority, and women hiring goals.

§ 26-5.2 Project labor agreements required for certain projects.

All tax abatement projects and all requests for proposals, specifications and final contracts for Public Works projects shall require the execution of a project labor agreement that complies with the requirements of this article, unless the Town Administrator determines, taking into consideration the amount of Town financial resources required and the increased cost and feasibility challenges that would result to the project, the nature, phasing, size and complexity of

the project, including the height of the buildings, the presence or absence of elevators and the utilization or nonutilization of steel, that a project labor agreement is not appropriate. In all cases, the project labor agreement must advance the interests of the Town of Guttenberg, including labor cost savings, efficiency, quality, safety, timeliness, skilled labor force, labor stability, predictability of workflow, safety, and consistent with and following the State of New Jersey's own policy to advance minority- and women-owned businesses as provided under state law, regulations, and executive orders.

§ 26-5.3 General requirements.

The project labor agreements shall contain the following terms pursuant to this article and in accordance with N.J.S.A. 52:38-1 et seq.:

a. General terms.

1. A guarantee that there will be no strikes, lock-outs or other similar actions.
2. Set forth effective, immediate and mutually binding procedures for resolving jurisdictional and labor disputes arising before the completion of the work.
3. A provision to bind all contractors and subcontractors on a Public Works project or tax abatement project in all relevant project documents, including bid specifications.
4. Evidence that each contractor and subcontractor working on a Public Works project or tax abatement project has an apprenticeship program.
5. A requirement that 20% of the labor hours required shall be performed by apprentices and that 100% of the apprentices shall be Guttenberg residents. However, if the labor organization can demonstrate in writing it made good faith efforts to increase enrollment of Guttenberg residents in their apprenticeship programs but, despite these good faith efforts, fulfilling this requirement is not possible because there are not enough apprentices available, the required percentages of apprentices will be decreased accordingly. Upon written request of the Town, the labor organization will provide the Town with a list of all Guttenberg residents enrolled in their apprenticeship programs.
6. Conformity with all statutes, regulations, executive orders and applicable Town ordinances regarding the implementation of affirmative action requirements for women- and minority-owned businesses, the obligation to comply with which shall be expressly provided for in the project labor agreement.
7. State that contractors and subcontractors need not be a party to a labor agreement with the applicable labor organization other than for the project covered by the project labor agreement.
8. If applicable, require that each contractor agree to be monitored by a New Jersey State and federal agency to ensure that minorities, women or economically disadvantaged persons are afforded the opportunities to participate in apprenticeship programs, which result in the placement of apprentices on the project.

9. State that any and all Guttenberg residents, who are already in any signatory union or an apprenticeship program, shall be referred to contractors or subcontractors who request them.
 10. Include a publicly available plan regarding the shares of employment and apprenticeship positions in the Public Works project or tax abatement project for minority group members and women, which is in full conformance with the requirements of all applicable statutes, regulations, executive orders and local ordinances and is mutually agreed upon by the participating labor organizations engaged in the construction industry and the Town or the developer, which will own the facilities, which are built, altered or repaired, provided that any shares mutually agreed upon pursuant to this subsection shall equal or exceed the requirements of other statutes, regulations, executive orders or local ordinances.
 11. Require the contract to provide whatever resources may be needed to prepare for apprenticeship a number of women and minority members sufficient to enable compliance with the plan agreed upon pursuant to Subsection A(10) of this section and provide that the use of those resources be administered jointly by the participating labor organizations engaged in the construction industry and the Town, or the developer or the community-based organizations selected by the Town or the developer.
 12. Require the Town to monitor, or arrange to have a state agency monitor, the amount and share of work done on the project by minority group members and women and the progression of minority group members and women into apprentice and journey worker positions and require the Town to make public, or have the State agency make public, all records of monitoring conducted pursuant to this subsection.
- b. A requirement that developers and labor organizations engaged in the construction industry complete the following pre-construction actions:
1. Pre-construction meeting. Not less than 90 days prior to the commencement of construction, the developer will meet with the Town Administrator and/or her/his designee to present workforce needs, which will include the job description of the positions to be filled and the duration of the project. In addition, the developer will provide the construction schedule. The labor organization will present the developer and the Town with the projected availability and trades of eligible apprentices, who are projected to be available to work on the project.
 2. Advertisement. Not less than 60 days prior to the commencement of construction, the labor organization will advertise in two newspapers regularly published and distributed in Guttenberg and outreach via other media, such as cable television, the internet, and/or radio. The advertisement will solicit apprenticeship applications for the labor organization's apprenticeship program, describe the basic requirements for admission, describe the job training and set for the range of salaries.
 3. Job fairs. The developer and the labor organization will jointly participate in at least two job fairs to be held at a location to be provided by the Town in order to explain the apprenticeship programs and solicit applications from

attendees. Each participating developer shall pay a pro rata share of the costs of each job fair.

- c. A requirement for local, minority, and women hiring goals providing that for each contractor or subcontractor performing work on a covered project, the project labor agreement shall provide that at least 30% of all project work hours will be performed by Guttenberg residents and at least 30% of all project work hours will be performed by minorities and/or women. A contractor or subcontractor shall not be subject to enforcement actions for violations of this section if that contractor or subcontractor can demonstrate that it made good faith efforts to comply with same. For the purposes of this section, “good faith efforts” for a contractor or subcontractor shall at a minimum include compliance with the following:
1. Entry into a project labor agreement and obtaining letters of assent from each contractor and subcontractor.
 2. Convene pre-bid and pre-construction meetings to educate construction managers and subcontractors about the local, minority, and women hiring goals.
 3. Cooperate with Town representative. The Contractor shall cooperate with the Town representative designated by the Town. Among other things, the Town representative will:
 - (a) Establish a point of contact to provide information about available job opportunities;
 - (b) Develop and maintain an up-to-date list of qualified Guttenberg residents by trade and confirm their residence in Guttenberg;
 - (c) Assist contractors with reporting by working with contractors and the Town where appropriate.
 4. Regularly contacting and documenting of contact with Town representative, and providing certified payroll and other records on a regular basis to the Town representative.
 5. Use and documenting use of Town-approved craft request forms sent to both unions and the Town representative. “Craft request form” means a document through which contractors shall request workers from unions.
 6. Requesting local, minority and women hires from union hiring halls.
 7. Documenting reasons for not hiring referred candidates from target populations, if applicable.
 8. Allowing the Town representative prompt and willing access to documentation of all of the above activities and to the work site if requested.

§ 26-5.4 Reports and records.

The project labor agreement shall require the submission of the following reports to the Town Administrator on the 15th day of each month for the previous month, for each year of construction until project completion.

- a. Manning report. The developer’s report will accurately reflect the total hours in each construction trade or craft, and will list separately the work hours performed by Guttenberg residents, including a list of minority resident and women resident

workers in each trade or craft, by such employees of the contractor and each of its subcontractors during the previous quarter.

- b. Certified payroll report. The developer's report that will specify the residence, gender and ethnic/racial origin of each worker, work hours and the rate of pay and benefits provided.
- c. Equal employment opportunity reports. The labor organization's Local Union Report (EEO-3) and Apprenticeship Information Report (EEO-2), which are required to be filed with the US Commission of Equal Employment Opportunity Commission by the labor organization.
- d. Apprenticeship report. The Report of the labor organization shall list the names of all persons who were accepted in to the Apprenticeship Program.
- e. Other reports. The developer or labor organization shall immediately furnish such reports or other documents to the Town as the Town may reasonably request from time to time in order to carry out the purposes of this article.
- f. Records. Records to support the work hours stated in the above reports must be maintained for a period of three years after project completion. All records shall be made available to the Town upon 10 days' prior written notices.
- g. Site access. Officials, employees and representatives of the Town shall be permitted to have appropriate access to all work sites and to all applicable records in order to monitor compliance with the provisions of this article.

§ 26-5.5 Town remedies.

In the event of default, the developer shall be provided with a written notice of default allowing the developer 10 days to cure the default. Should the developer fail to cure, then in addition to any other remedies available at law or in equity including termination, the Town shall be permitted to seek the following remedies for the failure to comply with this article, which remedies shall also be included in the project labor agreement.

- a. Suspending or terminating the contract, grant, subsidy agreement or tax abatement agreement in question.
- b. For Public Works projects, debarring the developer, contractor or subcontractor from eligibility for future Town contracts.
- c. Such other remedies available at law or in equity.

§ 26-5.6 Pre-apprenticeship training program.

- a. Inter-agency cooperation. The Town and the labor organization will solicit the support of the Town of Guttenberg Board of Education; colleges, vocational schools, and other educational institutions located within Guttenberg; the Guttenberg Housing Authority; and other Guttenberg-based organizations to maximize individuals' participation in the apprenticeship program among eligible Guttenberg residents.
- b. Preparatory services. The Town and the labor organization shall be responsible for the development of a program to provide all necessary preparatory services for

- enrolled pre-apprentices, including assistance with GED preparation, obtaining driver's licenses, mentoring, and other supportive services for pre-apprentices. The pre-apprenticeship program shall be operated in such a manner that its successful graduates will be equipped and eligible for entry into the apprenticeship programs.
- c. Mentoring. The Town shall have the right to supervise pre-apprenticeship programs that may be operated by labor organizations engaged in the construction industry sponsoring apprenticeship programs and shall retain authority to review and approve the curriculum and procedures used to recruit and select participants.

§ 26-5.7 Implementation.

- a. The Town shall include language requiring compliance with this article in all financial agreements and other documents approved by the Town that provide a tax abatement.
- b. Any advertisement for a Public Works project published 60 days or more following the effective date of this article shall contain provisions conditioning the award of any contract on compliance with this article.
- c. Any tax abatement where the tax abatement application is filed after the effective date of this article shall be subject to compliance with this article, if applicable.