

§23-04 Insurance, Bonding, Security, and Indemnity Requirements for Private Sewers or Private Drains.

(a) *General requirements.*

(1) *Duty to continuously maintain required insurance.* No person may voluntarily cancel, terminate, modify, or allow to expire or lapse any insurance required by this rule without the prior express written consent of the department and presentation of proof that comparable continuous coverage, as determined by the department, has been secured from another insurer meeting the requirements of this rule. The owner shall present certificates of insurance evidencing continuation of insurance coverage as required by this rule no less than 30 days in advance of the date of cancellation, termination, or expiration of the existing insurance.

(2) *Proof of insurance.* Proof of insurance as required by this rule shall be made by presentation of a certificate of insurance issued directly by the insurer to the appropriate department borough records office specifying the named insured, the effective dates of each policy, the limits of each policy, the coverage afforded by each policy, and the name and address of the broker and agency for each policy.

(b) *Insurance and indemnity requirements for private sewer or private drain construction.*

(1) *Indemnity.* The following indemnity shall apply without exception or modification as a precondition to the department's approval of any private sewer or private drain construction permit or the relocation of an existing sewer. All indemnities required by this section shall provide exactly as follows:

"If the persons or property of the city or of others sustain loss, damage or injury resulting from the intentional or negligent acts or omissions of the owner or his or her employees, subcontractors, or agents in the performance of construction of the private sewer or private drain, or from his or their failure to comply with the provisions of local laws or of the permit, then the owner shall indemnify, defend, and hold the city harmless from any and all claims and judgements for damages, fees, costs, and expenses to which the city may be subjected or which it may suffer or incur by reason thereof".

(2) *General liability insurance.* As a precondition to the department's approval of an application for a private sewer or private drain construction permit or the relocation of an existing sewer, the owner shall obtain and maintain general liability insurance from a company authorized to write commercial general liability insurance in the State of New York. The required general liability insurance shall:

- (i) have the following coverage provisions:
 - (A) premises and operations;
 - (B) products/completed operations;
 - (C) independent contractors;
 - (D) collapse, explosion and underground hazards; and

(E) deletion of railroad property damage exclusions, where applicable;

(ii) be maintained by the Owner, his or her heirs, successors, assigns, and transferees until title to the private sewer or private drain has been vested in the city. For the relocation of existing sewers, the insurance shall be maintained as required herein for a period of one year from the date of final inspection and approval by the department;

(iii) be equivalent to the most recent version of the Insurance Services Offices' comprehensive general liability form GC-00-01 or equivalent, and shall provide not less than \$1,000,000 per occurrence in bodily injury and property damage combined, \$1,000,000 products completed operations and not less than \$2,000,000 general aggregate per policy year. Excavations in central business districts shall be subject to a required limit of \$3,000,000 per occurrence, \$3,000,000 products/completed operations, and \$6,000,000 general aggregate. The department shall be named as the insured on form CG-20-13 or equivalent;

(iv) expire no sooner than one year after the date of the private sewer or private drain construction permit application and shall name as insured the owner as identified on the private sewer or private drain construction permit application or approval and the title evidenced in connection herewith; and

(v) be endorsed to provide not less than sixty days advance notice by the insurance company or its agents to the department of any cancellation, termination, expiration, or modification of the policy. The endorsement shall give the name, title, and proper mailing address of the person in the appropriate department borough records office responsible for oversight of insurance and indemnity requirements.

(3) *Insurance of sub-contractors.* The owner shall require that all sub-contractors performing work pursuant to a private sewer or private drain construction permit obtain and maintain general liability insurance as required by paragraph (b)(2) of this section and naming the department as the insured. Proof of sub-contractor insurance coverage shall be made as required by paragraph (a)(2) of this section.

(c) *Insurance and indemnity requirements for drainage proposals incorporating special conditions.*

(1) *Required indemnity.* The following indemnity shall apply without exception or modification as a precondition to the department's approval of any drainage proposal incorporating such special conditions as the use of a private on-site detention basin, private pumping station, or private sewage treatment plant. All indemnities required by this subdivision shall provide exactly as follows:

"If the persons or property of the city or of others sustain loss, damage or injury resulting from the intentional or negligent acts or omissions of the owner or his or her employees, subcontractors, or agents by the operation, maintenance, or use of a private on-site detention basin, private sewage treatment plant, or a private pumping station, or their failure to comply with the provisions of local law or of the permit, then the owner shall indemnify, defend, and hold the city harmless from any and all

claims and judgements for damages, fees, costs, and expenses to which the city may be subjected or which it may suffer or incur by reason thereof".

(2) *Insurance.* As a precondition to the department's approval of drainage proposals and private drain plans incorporating the use of a private on-site detention basin, a private pumping station, or a private sewage treatment plant, the owner shall obtain and maintain a liability insurance policy in an amount determined by the department in accordance with this section insuring the city against any damages that may be sustained by virtue of the operation, maintenance, use or failure thereof of the private on-site detention basin, a private pumping station, or a private sewage treatment plant.

(d) *Duty to maintain and security for the maintenance of private sewers or private drains.*

(1) *When required.* The owner of a private sewer or private drain constructed in an unopened record or a finally mapped street to which the city does not have title, an opinion of dedication, or in a sewer easement within the boundaries of the proposed development where access to the public is regulated by the owner thereof, shall maintain the private sewer or private drain and appurtenances thereto in good working order at all times for as long as such maintenance obligation remains in effect. The owner shall further post a security deposit in a form acceptable to the comptroller in an amount determined by the department in accordance with this rule for the purpose of guaranteeing the proper and continuous maintenance of the private sewer or private drain and appurtenances thereto.

(2) *Duration of security.* The security shall remain on deposit with the comptroller until such time as the city acquires title to the streets or sewer easements wherein the private sewer or private drain and appurtenances thereto are located or until such time as the private sewer or private drain is no longer needed due to construction of city drainage plan sewers by the department according to the department's capital sewer construction program schedule.

(e) *Determination of the dollar amount of title insurance, security deposits, and performance or maintenance bonds.* The department shall determine the required dollar amount of title insurance, security deposits, and performance or maintenance bonds required by this rule as follows:

(1) the dollar amount of the title insurance policy shall be determined on the basis of the following information and documentation submitted by the applicant:

(i) a current tax map showing all the tax blocks and Lots involved in the proposed development;

(ii) the area and assessed valuations of each lot, land only, fronting the proposed private sewers or private drains;

(iii) the schematic layout of the proposed pipes in the streets or sewer easements indicating the length of the pipes; and

(iv) the dimensions and total area of the streets and/or sewer easements to be covered by the title insurance policy.

(2) The dollar amount of security deposits required by this rule shall be equal to the linear footage of the private sewer or private drain multiplied by seven, provided, however, that in no event shall the total amount of the required security deposit be less than five thousand dollars. The department may increase the required amount of security deposit in situations involving special conditions as outlined in §23-02(c). All maintenance securities shall be deposited with the comptroller's office and shall be in a form acceptable to the comptroller.

(3) The dollar amount of performance and maintenance bonds shall be an amount that is equal to the cost of construction, as determined by the department, of the proposed private sewers or private drains.

(f) *Accident reporting.* The owner, applicant, supervising professional engineer or registered architect, or any other person who knows or has reason to know of any accident occurring in connection with any operations related to the construction of a private sewer or private drain and appurtenances thereto, or the relocation of an existing sewer shall make immediate written notice to the department. Such report shall be made whether or not a claim has been or may be made by or against any party to the accident or occurrence causing property damage or bodily injury.

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