

BILL NO. 2610

ORDINANCE NO. _____

AN ORDINANCE AMENDING CERTAIN SECTIONS OF THE CITY CODE TO STANDARDIZE SURETY AND BOND REQUIREMENTS RELATED TO DEVELOPMENT.

WHEREAS, developers are required under Section 12 of the City Code to guarantee performance of grading activities and restoration of any damage to streets, curbs, sidewalks or public facilities by trucks, hauling or grading equipment engaged in grading activities; and

WHEREAS, developers are required under Section 26 of the City Code to guarantee performance of work on City right of way; and

WHEREAS, developers are required under the Tree Manual, Section 27.5 of the City Code, to guarantee installation and maintenance of proposed landscaping as well as preservation of specific tree canopies; and

WHEREAS, developers are required under the Zoning Ordinance, Section 1003 of the City Code, to guarantee removal of any temporary structure from a tract within thirty (30) days of substantial completion of development work; and

WHEREAS, developers are required under the Subdivision Ordinance, Section 1005 of the City Code, to guarantee construction and maintenance of required subdivision improvements; and

WHEREAS, a comprehensive analysis of all sureties related to development was conducted in order to standardize and streamline requirements.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD AS FOLLOWS:

Section 1. Section 12-21 of the City Code, Surety, which addresses surety requirements related to grading, is hereby amended by addition of the following:

(g) The deposit agreement referenced under Subsection (f) above shall be entered into with the City of Chesterfield, be in a form approved by the City Attorney, shall require the developer to agree to fulfill the obligations imposed by this Chapter, and shall have such other terms as the City Attorney may require consistent with this Chapter.

Section 2. The last sentence of Section 12-23 (a) of the City Code, Use of Streets During Grading Operations, which addresses surety requirements related to pavement restoration, is hereby amended by replacing the word "bond" with "surety" and adding two sentences about the type of surety accepted, as shown below:

Before construction actually commences or while work on the streets is in progress, the department may require the applicant to post a pavement restoration **surety bond**, in such sum as is directed by the department, with the City to guarantee the City compensation for any damage to streets, curbs, sidewalks or public facilities. **The surety may be in the form of cash, letter of credit, or bond in a form approved by the City Attorney and Director of Planning and Public Works. All other provisions of Section 12-21 shall also apply.**

Section 3. The first sentence of Section 26-7 of the City Code, Deposits, which addresses special use permit requirements, is hereby amended by replacing the word "bond" with "surety".

Section 4. Section 26-7 (2) of the City Code, Surety, is hereby amended to require any bond to be in a form approved by the City Attorney and by deleting any reference to indemnity agreements, as follows:

(2) *Surety.* In lieu of cash escrow, a ~~surety of bond or indemnity agreement~~ **in a form approved by the City Attorney** for not less than one thousand dollars (\$1,000.00) for each permitted site, subject to all the terms and conditions of this article, may be provided, subject to the approval of the City Attorney. In the case of owners, contractors or builders who have previously violated the subject and provisions of this section, the amount of the bond ~~or escrow or indemnity~~ shall be increased in each case based on such previous experience.

Section 5. Section XIII.E of the Tree Manual, Section 27.5-13(e) of the City Code, Installation and Maintenance, concerning landscape proposals is hereby modified by inserting new bullet points (1) and (2) and renumbering the existing bullet points appropriately. The new bullet points shall be as follows:

- (1) *Completion period.* Required landscaping shall be installed within two (2) years of approval of the landscape plan or record plat for a development, whichever is later. Landscaping shall be maintained by the developer for a period of two (2) years after installation is approved by the Department of Planning and Public Works.
- (2) *Extension of completion period.* If, at the end of the landscape installation period, all the landscaping shown on the approved plans has not been completed, the developer may request and the Director of Planning and Public Works may grant, an extension to the completion period for a period of up to one (1) year if after review by the Department of Planning of Public Works such longer period is deemed necessary so long as all guarantees are extended and approved by the City Attorney; provided, that the Director of Planning and Public Works may require as a condition of the extension completion of certain items, execution of a new agreement, recalculation of deposit amounts, satisfaction of new code requirements or other reasonable conditions as may be needed to ensure that the extended agreement fully complies with the terms of this Section.

Section 6. Section XIII.F of the Tree Manual, Section 27.5-13(f) of the City Code, Landscape Bonds, concerning landscape proposals is hereby deleted in its entirety and replaced as follows:

(f) *Landscape Surety.*

(1) *Surety required.* When the estimated costs of materials for new landscaping shown on the site development plan exceeds one thousand dollars (\$1,000), as determined by a plant nursery, a surety guaranteeing the installation and subsequent maintenance of required landscaping within allotted time periods shall be deposited with the City in conjunction with a deposit agreement. Required sureties shall be posted prior to the signing of any mylar for a record plat or approval of any Municipal Zoning Authorization other than for a display house.

(2) *Form of surety.* Deposits may be in the form of cash, letter of credit or bond as follows:

1. Cash deposited with the City Director of Finance and Administration to be held in an interest-bearing account dedicated for that purpose, with all interest accruing to the City to offset administrative and other costs of maintaining the cash deposits;
2. An irrevocable letter of credit drawn on a local financial institution acceptable to and in a form approved by the City Attorney and the Director of Planning and Public Works. The instrument may not be drawn on any financial institution with whom the developer or a related entity has any ownership interest or with whom there is any joint financial connection that creates any actual or potential lack of independence between the institution and the developer. The letter of credit shall be with a local banking institution in the Greater St. Louis Metropolitan Area of Missouri and not Illinois. The letter of credit shall provide that the issuing institution will pay on demand to the City such amounts as the City may require to fulfill the obligations herein and may be reduced from time to time by a writing of the Director of Planning and Public Works. The letter of credit shall be irrevocable for at least two (2) years and shall state that any balance remaining at the expiration, if not renewed, shall automatically be deposited in cash with the Director of Finance and Administration, unless a new letter of credit is issued and agreed to by the City or the City issues to the institution a written release of the obligations for which the letter of credit was deposited. The developer shall pay a non-refundable fee of two hundred dollars (\$200.00) to the City with submission of a letter of credit and one hundred dollars (\$100.00) for any amendment or extension thereto, to partially reimburse the City's administration and review costs in accepting and maintaining such letter of credit.

3. Bond in a form approved by the City Attorney and the Director of Planning and Public Works.
 4. As an alternative to establishing a separate landscape surety, the landscape surety may be included in the subdivision construction and maintenance deposits, as approved by the Director of Planning and Public Works.
- (3) *Amount of surety.* The amount of the surety required by this Section shall be calculated as follows:
1. *Installation surety.* The surety required of a developer pursuant to Subsection f(1) for installation shall be in the amount of a bid submitted by a landscape company. The bid shall address all items required on the approved plan.
 2. *Maintenance surety.* The surety required of a developer pursuant to Subsection f(1) for maintenance obligations shall be in the amount of 100 percent of the estimate of the cost of installation. The installation deposit may be converted to a maintenance deposit upon approval of the installation or a separate deposit may be established.
- (4) *Deposit agreement.* The deposit agreement shall be entered into with the City of Chesterfield, be in a form approved by the City Attorney, shall require the developer to agree to fulfill the obligations imposed by this Section, and shall have such other terms as the City Attorney may require consistent with this Section.

Section 7. Section XIV of the Tree Manual, Section 27.5-14 of the City Code, Surety and Escrow Procedures, concerning tree preservation is hereby deleted and replaced as follows:

27.5-14 Tree Preservation Surety

- (a) *Surety required.* Prior to the issuance of any grading permit or improvement plan approval, a surety guaranteeing replacement or compensation for irreparable damage to or loss of trees that were shown to be left in place on the approved tree preservation plan shall be deposited with the City in conjunction with a deposit agreement.
- (b) *Guarantee period.* The developer shall be responsible for replacement or compensation for irreparable damage to or loss of trees that were shown to be left in place on the approved tree preservation plan for two (2) years after cessation of grading or completion of required improvements, whichever is later.
- (c) *Amount of surety.* The amount of the surety required by this Section shall be the lesser number calculated as follows:

- (1) \$10,000 per 100 linear feet, or portion thereof, of wooded canopy perimeter to be preserved adjacent to any proposed clearing, grading or other disturbance;
 - (2) \$20,000 per acre of canopy to be preserved. If the developer is protecting more than the required 30% of existing tree canopy, this calculation shall be based on only the required 30%. Surety requirements shall not be increased because a developer is preserving more tree canopy than required.
- (d) *Form of surety.* Deposits may be in the form of cash, letter of credit or bond as follows:
- (1) Cash deposited with the City Director of Finance and Administration to be held in an interest-bearing account dedicated for that purpose, with all interest accruing to the City to offset administrative and other costs of maintaining the cash deposits;
 - (2) An irrevocable letter of credit drawn on a local financial institution acceptable to and in a form approved by the City Attorney and the Director of Planning and Public Works. The instrument may not be drawn on any financial institution with whom the developer or a related entity has any ownership interest or with whom there is any joint financial connection that creates any actual or potential lack of independence between the institution and the developer. The letter of credit shall be with a local banking institution in the Greater St. Louis Metropolitan Area of Missouri and not Illinois. This letter of credit shall provide that the issuing institution will pay on demand to the City such amounts as the City may require to fulfill the obligations herein and may be reduced from time to time by a writing of the Director of Planning and Public Works. The letter of credit shall be irrevocable for at least two (2) years and shall state that any balance remaining at the expiration, if not renewed, shall automatically be deposited in cash with the Director of Finance and Administration, unless a new letter of credit is issued and agreed to by the City or the City issues to the institution a written release of the obligations for which the letter of credit was deposited. The developer shall pay a non-refundable fee of two hundred dollars (\$200.00) to the City with submission of a letter of credit and one hundred dollars (\$100.00) for any amendment or extension thereto, to partially reimburse the City's administration and review costs in accepting and maintaining such letter of credit.
 - (3) Bond in a form approved by the City Attorney and the Director of Planning and Public Works.

- (e) *Deposit agreement.* The deposit agreement shall be entered into with the City of Chesterfield, be in a form approved by the City Attorney, shall require the developer to agree to fulfill the obligations imposed by this Section, and shall have such other terms as the City Attorney may require consistent with this Section.
- (f) *Tree Replacement.* A landscape plan shall be developed for the replacement of trees according to the specifications shown in this tree manual. The total caliper inches of trees to be planted shall equal or exceed the total DBH of trees that were lost.
- (g) *Default.* Failure to replace trees or provide compensation within time frames indicated by written notice shall constitute default and the City of Chesterfield shall be entitled to proceed against the surety. Monies collected shall be used to have replacement trees installed or will be placed in the Tree Preservation Account according to Section XV of this tree manual.

Section 8. Sections 1003.167.12 (1) and (2) of the Zoning Ordinance, Miscellaneous Regulations, which address surety requirements related to temporary structures are hereby amended by deletion of the last sentence of each, concerning surety.

Section 9. Section 1003.167.12 of the Zoning Ordinance, Miscellaneous Regulations, is hereby further amended by addition of the following:

- (5) A bond, in a form approved by the City Attorney and the Director of Planning and Public Works, or cash deposit in the amount of one thousand dollars (\$1,000.00) guaranteeing removal of any such temporary structure or facility shall be posted with the City of Chesterfield prior to issuance of approval.
- (6) Deposits required by this Section shall be in conjunction with a deposit agreement. The deposit agreement shall be entered into with the City of Chesterfield, be in a form approved by the City Attorney, shall require the developer to agree to fulfill the obligations imposed by this Section and shall have such other terms as the City Attorney may require consistent with this Section. The Director of Planning and Public Works shall release the deposit only after the temporary structure is removed and any disturbed areas have been restored and approved by the Department.

Section 10. This ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this _____ day of _____, 20__.

Mayor

ATTEST:

City Clerk

FIRST READING HELD _____

