

Memorandum

Department of Public Works



TO: Michael O. Geisel, P.E.
City Administrator

FROM: James A. Eckrich, P.E. *JAE*
Public Works Dir. / City Engineer

DATE: June 1, 2023

RE: Special Use Permit Code Revision

As you know, for some time I have been working with the City Attorney on revisions to the City Code related to Special Use Permits (SUP). An SUP is a permit which allows work in the public right of way. Work within the public right of way has recently become a problem due to the expansion of telecommunication services. In many cases residents do not want these companies working in front of their house and do not understand why the City permits such work. While we have no authority to prohibit the work, we can ensure that adequate notice is provided to residents and that any restoration in the public right of way is restored to City standards. This code modification is our attempt to do so.

The biggest change in the draft legislation is that (if adopted) companies who use the public right of way will need to register as Right of Way Users. This will ensure we have accurate and current contact information for these companies in cases where there are problems. The new code will require that permits only be issued to registered right of way users OR to contractors working directly for residents adjacent to the public right of way (for mailboxes, driveway approaches, etc.). Right of Way Users, along with any subcontractors, will have to provide the necessary fee, escrow/bond, indemnity agreement, and insurance certificate. Any company constructing a major project (new installation, facility replacement, or repair in excess of 90 days) will need to provide written notice to all property owners within 200 feet of the project site.

The entire SUP section of Code (Chapter 505, Article 1, Division 2) has been reviewed comprehensively by City Staff and the City Attorney. We believe these changes will allow the City to better manage its right of way and will be an improvement for the City's residents.

Attached are a revised ordinance with new code language, supporting appendices A-F, and existing code language.

Action Recommended

This matter should be forwarded to the Planning and Public Works Committee of City Council. Should PPW concur with Staff's recommendation it should recommend approval of the ordinance implementing a new Special Use Permit code to the full City Council.

Please forward to PPW for consideration and recommendation.

McTeish 2023-6-1

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF CHESTERFIELD REPEALING AND REPLACING CHAPTER 505, ARTICLE I, DIVISION 2 OPENING AND EXCAVATION OF PUBLIC STREETS.

WHEREAS, the City of Chesterfield, Missouri (the “City”) is authorized under RSMo 67.1832 to regulate and manage the City’s rights-of-way and to recover the City’s actual costs in managing the City’s rights-of-way; and

WHEREAS, City staff initiated a review of the City’s ordinances related to the management of the City’s rights-of-way and determined that a comprehensive update was necessary in light of changes in state statutes since the rights-of-way ordinances were last updated in 1997; and

WHEREAS, City staff have prepared a comprehensive update to Chapter 505, Article I, Division 2 which will allow the City to better protect the City’s substantial public investment in its rights-of-way, minimize costs to taxpayers, and ensure that the rights-of-way are restored to their original condition; and

WHEREAS, the City desires to adopt the comprehensive update prepared and recommended by City staff in light of the benefits to the health, safety, and general welfare of those that use the City’s rights-of-way.

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

Section I: Chapter 505, Article I, Division 2 Opening and Excavation of Public Streets shall be repealed in its entirety and replaced with Exhibit A attached hereto.

Section II: This ordinance shall be codified within the Municipal Code of the City of Chesterfield.

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

Passed and approved this _____ day of _____, 2023.

Presiding Officer

Bob Nation, Mayor

ATTEST:

Vickie McGownd

FIRST READING HELD:

Exhibit A

Section 505.065 **Declaration of Findings and Intent; Scope of Division**

- A. This Article is enacted to define the authority of the City and its officers and employees with regard to public ownership, control and management of its right-of-way. The right-of-way is a valuable public resource that has required and will continue to require substantial public investment and is intended to be used by the public in travel and utilities when such use does not inconvenience the public.
1. Declaration of Findings and Intent. The City of Chesterfield finds that the public streets, alleys, easements and other right-of-way within the City:
 - a. Are critical to the travel and transport of persons and property in the business and social life of the City and in the conduct of the health, education and commerce of its residents;
 - b. Are intended for appropriately regulated public and private uses and must be managed and controlled consistent with that intent;
 - c. Can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare, and general economic well-being of the City and its residents;
 - d. Are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation, and maintenance in the right-of-way;
 - e. Are assets of the City that taxpayers have spent millions of dollars to improve and maintain, and that when utility and similar companies and other users of the right-of-way excavate and otherwise disturb the right-of-way, the City must repave, repair and at times reconstruct the right-of-way;
 - f. Passage of a right-of-way ordinance to deal in a competitively neutral fashion with telecommunications and other utility providers will have a beneficial effect on all the residents and users of the right-of-way as competition among utilities and telecommunications providers within the City continues to increase due to changes in technology, modifications in Federal and State law, and increased demand for such services by City residents, businesses, educational institutions,

governmental officers and other public and private institutions.

2. The City finds that the conditional right to occupy portions of the right-of-way for the business of providing telecommunications services or utility services is a valuable economic right to use a unique public resource that has been acquired and is maintained at great expense to City and its taxpayers, and the economic benefit of such right should be shared with all the taxpayers of City.
3. The City finds that while telecommunications and fiber optic facilities are in part an extension of interstate commerce, their operations also involve right-of-way, municipal franchising, and vital business and community service, which are of local concern.
4. The City finds that it is in the best interest of its residents to promote the rapid, but safe, development of telecommunications, fiber optic and utility facilities responsive to community and public interest, to assure that telecommunications and utility companies provide adequate, economical and efficient service to their subscribers, and to assure availability for municipal services, educational and community services while not compromising the public's right to use of the right-of-way for travel.
5. The City finds that it is in the interest of the public to establish standards for all users of the right-of-way not covered by a specific franchise agreement regardless of type of service being provided that:
 - (a) Establish the fees to be paid and actual expenses of the City for reimbursement;
 - (b) Encourages competition by establishing terms and conditions under which users may use valuable public property to serve the public while creating and maintaining a level playing field among similarly situated participants;
 - (c) Fully protects the public, other right-of-way users and the City from any harm that may arise from such private commercial use of right-of-way while providing for innovative uses of technology;
 - (d) Protects the authority of the City, in a manner consistent with Federal and State law;
 - (e) Otherwise protects the public interests in the development and use of City infrastructure, including recognizing that disturbance of the right-of-way and infrastructure therein for utility and facility deployment impacts the right-of-way in a different and greater manner than other

users both private and public;

- (f) Minimizes physical disruption of the right-of-way for other users, the City, and travelers while maintaining aesthetic quality throughout the City while also recognizing the right of abutting landowners;
6. This Chapter shall apply to all users of the right-of-way engaged in any activities defined in, regulated by, or requiring a permit pursuant to this Chapter.
 7. This Chapter and its application is in addition to all other City Codes, provisions of this Chapter and any other manuals, guidelines, or supplements as adopted, approved, maintained and modified from time to time by the Director of Public Works.

Section 505.070 Work In Streets — Permit.

- A. Required. Except in case of municipal work authorized by the Director of Public Works, no person or entity shall make any opening or excavation or place any object in the right-of-way, which is not otherwise permitted to be placed in the right-of-way, without a written Special Use Permit from the Director of Public Works.
- B. Work Requiring Permit Authorization. All work which results in a physical disturbance of the public right-of-way shall require permit authorization. This requirement shall include, but not be limited to, all excavations and installations relating to conduit, poles, pole lines, wires, mains, pipes, valves, conductors, sewers, drains, driveways, sidewalks or appurtenances thereof.
 1. Registration. A Special Use Permit shall only be issued to applicants who have registered as right-of-way users with the Director of Public Works and provided such information as required by the Director of Public Works.
 - (a) All current users of the public right-of-way must register within ninety (90) days of the effective date of this Section.
 - (b) Any person who is not a user of the public right-of-way prior to the effective date of this Section and who wishes to become a user of the public right-of-way must first register with the City.
 - (c) No user of the public right-of-way shall be authorized to use the right-of-way in any capacity or manner without registering with the City and obtaining a Special Use Permit from the Director of Public Works.
 - (d) In order to register as a right-of-way user the following will be required.

The Public Works Director shall have the authority to require additional information at his/her discretion:

- a. Name of Company
- b. Service(s) being provided within the public right-of-way
- c. Contact name
- d. Contact phone number
- e. Email address
- f. Emergency Contact Number

(e) The user of the public right-of-way shall be responsible for all costs incurred by the City due to the failure to provide any information to the City required for registration or for any information which is incomplete or inaccurate

(f) The Director of Public Works may, at the Director of Public Works' discretion, waive registration for work done by or on behalf of property owners adjacent to the right-of-way (examples include residential driveway replacement, mailbox replacement). The Director of Public Works has the authority to create a policy including a list of activities that do not require a permit for work in the right-of-way.

C. Other Work. Work which does not result in a physical disturbance of the public right-of-way and does not interrupt traffic shall not require permit authorization. Examples of this type of work shall include the opening and/or inspection of manholes, maintenance of lighting fixtures, the sealing of driveway aprons, etc.

D. Record. The Director of Public Works shall keep a full and complete account of all permits issued showing the date of issuance, the person to whom the permit was issued and the location of proposed work.

E. Permit Issuance. Any person having occasion to make any excavation within the right-of-way shall make written application for a permit from the Director of Public Works who is given authority to issue such permits. The application shall state the location and nature of the proposed work, when the work is to commence, and shall include a traffic control plan. No permit shall be issued for a period in excess of ninety (90) days unless the permit is for new installation, facility replacement, or major facility repair as detailed in subsection H below.

- F. Emergency Work. In cases where timely or emergency work within the public right of way is required, the agency responsible for the emergency work shall complete all necessary work in a timely manner. All precautions shall be taken to ensure the area is safe and signed in accordance with the Manual of Uniform Traffic Control Devices (MUTCD). This work must be followed by a permit application within seven (7) days of beginning work in the right of way. In cases where the public safety or welfare is endangered the agency responsible for the facility within the right of way shall contact the Public Works Department during regular business hours or the Police Department at other times.
- G. Permit Review. The Director of Public Works shall review each permit request and in cases where all requirements are met shall issue a written permit with a number and expiration date. It shall be the duty of any permittee to maintain a copy of the permit at the site of the work being performed. It shall be unlawful for any person to perform work without a permit (except as authorized in subsection F above), to perform work outside the scope of the permit, or to exceed or misrepresent the location, limits, or expiration of a permit.
- H. Major Projects. Any person performing a new installation, facility replacement, or major repair (in excess of 90 days required) which results in a physical disturbance of the public right of way shall, in addition to all other permit requirements, provide written notice to all property owners within 200 feet of the site where work is being performed at least seven days prior to any work beginning. Notice shall be in a form approved by the Director of Public Works.
1. The notice described above shall require any person performing work which results in a physical disturbance of the public right-of-way to have a designated contact person available to answer calls from residents between the hours of 9am and 5pm Monday through Sunday, beginning with the date notice is sent and ending seven days following completion of installation, repair, replacement, or other disturbance occurring in the right-of-way.
 2. The notice described above shall require the person performing work which results in a physical disturbance of the public right-of-way to take such other action as directed by the Director of Public Works to provide notice to all property owners within 200 feet of the site depending on the size, scope, and/or duration of the disturbance of the right-of-way, including but not limited to providing door hanger notice or other forms of contact with property owners within 200 feet of the site.
- I. Notice. Except as contained within subsection (F) above no construction work

shall commence within any public right-of-way, nor shall any street, curb or sidewalk within any public right-of-way be cut without at least forty-eight (48) hours notice to the Director of Public Works of intention to commence work.

- J. Underground Structures. Right-of-way users shall comply with all applicable provisions of Chapter 620 including but not limited to Section 620.510 regarding the placement of all accessory utility facilities underground as set forth therein.

Section 505.075 **Transferability.**

Except as provided in this Chapter, or as otherwise required by law, no permit or registration may be transferred without the written consent of the Director of Public Works. Any person not named on a valid permit or registration, including any affiliates or successors in interest to a registered user of the public right-of-way, must register and/or obtain a permit in accordance with this Chapter or receive written authorization to transfer the permit or registration. Written authorization to transfer a permit or registration shall be granted according to the same standards for issuing the same. The Director of Public Works shall not unreasonably withhold its consent to transfer as provided herein. This Section shall not prohibit the use of subcontractors so long as the user of the public right-of-way provides reasonable supervision of the subcontractor(s), provides notice in the permit application of their intent to use subcontractor(s), and secures the agreement of all subcontractor(s) to be bound by the terms of this Chapter and the terms of the permit issued by the Director of Public Works.

Section 505.080 **Fee, Escrow, Surety.**

- A. The applicant shall accompany the permit application with the required fee, escrow or surety, and insurance as required below.
 - 1. Fee. All applications for a special use permit shall require a fee, in an amount determined by the Director of Public Works, for the estimated costs of performing the necessary project management, administration, and inspections related to the special use permit. Said fee is non-refundable, but may be increased if the scope of work is increased from the original application.
 - (a) The Director of Public Works shall implement a standardized table of values to assist in determining the required fee, but in no case shall the Director of Public Works be required to use the fee amounts specified by such a table. Any such table created by the Director of Public Works will be made available to users of the public right-of-way.
 - (b) The exclusive remedy for a special use permit applicant who wishes to challenge the amount of the fee shall be to make an appeal to the City

Administrator within ten (10) business days of the final decision of the Director of Public Works.

2. Escrows. Permittee shall provide the City a cash escrow in an amount equal to that which would be required to ensure the restoration and maintenance of the City right-of-way within the scope of the project. Said escrow amount shall be set by the Director of Public Works. Any portion of the escrow not expended or retained by the City shall be refunded without interest not less than one (1) year after the restoration is completed and approved by the City.
 - (a) The Director of Public Works shall implement a standardized table of values to assist in determining the required escrow amount, but in no case shall the Director of Public Works be required to use the escrow amounts specified by such a table. Any such table created by the Director of Public Works will be made available to users of the public right-of-way.
 - (b) The exclusive remedy for a special use permit applicant who wishes to challenge the amount of the escrow shall be to make an appeal to the City Administrator within ten (10) business days of the final decision of the Director of Public Works.
3. Surety. In lieu of a cash escrow, a registered right-of-way user may provide a surety bond to cover all its work within the public right-of-way. Such a surety bond shall be issued in an amount approved by the Director of Public Works, but not less than twenty-five thousand dollars (\$25,000.00). The surety bond shall be provided in a form approved by the City Attorney.
4. Violations. In the case where the Director of Public Works determines users of the public right-of-way previously violated the subject and provisions of this Section or any policy, procedure, or agreement related thereto, the amount of any fee, escrow or surety required may be increased in each case at the discretion of the Director of Public Works.
5. Repair. If the applicant fails to restore the right-of-way in satisfactory form, the City shall use the escrow or surety for the purpose of employing others to restore the pavement and surface and the applicant shall be liable to the City for any cost in excess of the amount of the escrow or surety actually expended by the City to restore the same. The use of a surety or escrow to restore the right-of-way shall be done in accordance with the provisions of Section 505.100. If the escrow or surety is more than needed to restore the surface, the City shall retain out of the excess the City's fee for arranging and supervising the restoration and refund the balance, if any, to the applicant. If the escrow or surety is not sufficient to pay the cost of restoration and the liquidated damages hereinafter provided, the applicant

shall be liable for the difference.

6. Condition. As a prerequisite to the issuance of a special use permit, the applicant shall agree in writing to be bound by the terms of this Chapter and to such conditions as may be prescribed by the Director of Public Works as to traffic control measures, the time within which the excavation is to be filled and the surface restored and for notice thereof, and to repair as required during the one-year period allowed herein. If the surface is not restored within the time established, the applicant shall pay the sum of one hundred dollars (\$100.00) per day as liquidated damages and not as a penalty, to be deducted from the escrow or surety, if sufficient.

7. Insurance.

(a) The user of the public right-of-way and their subcontractors shall procure and maintain insurance of the types and minimum amounts during the life of the special use permit as follows:

(1) Workers' Compensation in full compliance with statutory requirements of Federal and State of Missouri law and employers' liability coverage in the minimum amount of \$500,000.00 for E.L. - each accident, \$500,000.00 disease - policy limit, \$500,000.00 disease - each employee.

(2) Comprehensive general liability and bodily injury:

a. Including death:

i. Each person: two million dollars (\$2,000,000.00).

ii. Each occurrence: two million dollars (\$2,000,000.00).

b. Property damage:

i. Each person: two million dollars (\$2,000,000.00).

ii. Aggregate: two million dollars (\$2,000,000.00).

(3) Comprehensive automobile liability, bodily injury:

a. Including death:

i. Each person: two million dollars (\$2,000,000.00).

ii. Each occurrence: two million dollars (\$2,000,000.00).

b. Property damage:

i. Each accident: two million dollars (\$2,000,000.00).

(4) Owner's protective bodily injury:

a. Including death:

i. Each person: two million dollars (\$2,000,000.00).

ii. Each occurrence: two million dollars (\$2,000,000.00).

b. Property damage:

i. Each occurrence: two million dollars (\$2,000,000.00).

ii. Aggregate: two million dollars (\$2,000,000.00).

(5) Professional:

a. Liability:

i. Each occurrence: two million dollars (\$2,000,000.00).

(6) Excess Coverage:

a. Five million dollars (\$5,000,000.00).

(b) The owner's protective policy shall name the City as the insured. Certificates evidencing such insurance shall be furnished to the City prior to issuance of the permit.

(c) If the ROW-user is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts.

Section 505.085 **Indemnification.**

- A. All users of the right-of-way and their subcontractors operating under the provisions of this Chapter or performing any temporary traffic control, excavation or work in the right-of-way shall fully indemnify, release, defend and hold harmless the City, officers, elected officials, employees and agents of the City from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other persons for damages, losses, costs, and expenses, including attorney fees, to the extent caused by acts or omissions of the person, or its agents, contractors, or subcontractors, in the performance of the permitted temporary traffic control, excavation or work. In no event shall the requirements of this Chapter and more specifically any provision dealing with indemnification be construed as a waiver of any sovereign or other immunity available to the City, its officers, employees or agents.
- B. Nothing herein shall be deemed to prevent the City, or any agent, from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the person from its duty to defend against liability or its duty to pay any judgment entered against the City, or its agents.
- C. All right-of-way users shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor performing permitted temporary traffic control, excavation or work for such right-of-way user hereunder.
- D. Any person operating under the provisions of this Chapter or performing any excavation or work in the right-of-way shall be liable for any damages to facilities due to excavation or work performed by the person, including

damage to underground facilities.

Section 505.090 **Procedure — Inspection.**

- A. Inspection. The Director of Public Works may cause a qualified inspector to be present during the construction of any work within the right of way, such as street, sidewalk, curb, or driveway entrance, and the Director of Public Works or the inspector on the site shall have authority to reject any material not meeting the standards specified by the Director of Public Works. If any portion of the restoration work fails to meet the minimum requirements, the Director of Public Works or his/her designated inspector on the site shall cause all work within the right-of-way to be stopped until the unsatisfactory conditions are remedied.

- B. Protection Of Watercourses. All watercourses and inlets shall be protected as detailed in the City's Sediment and Erosion Control Manual. The permittee shall not obstruct the gutter of any street and shall use proper measures to allow for the free passage of stormwater. The permittee shall address all surplus water, mud, silt, slickness, or other stormwater related condition within the construction limits throughout the duration of construction and shall be responsible for any damage resulting from the failure to so provide.

Section 505.100 **Backfilling And Restoration.**

- A. All site restoration shall meet the specifications established by the Director of Public Works. Restoration details shall be made part of the Special Use Permit application.
 - 1. Failure to Restore. If the right-of-way user fails to restore the right-of-way in the manner and to the condition required by the Director of Public Works, or fails to satisfactorily and timely complete all restoration, the City may, at its option, serve written notice upon the right-of-way user and its surety that, unless within ten (10) days after serving of such notice, a satisfactory arrangement is made for the proper restoration of the right-of-way, the City shall immediately serve written notice of failure to comply upon the surety and the right-of-way user, and the surety shall have the right to arrange for and complete the restoration excavation or work; provided, however, that if the surety does not commence performance thereof within fourteen (14) days from the date of notice, the City may perform its own restoration excavation or work and prosecute same to completion, by contract or otherwise. In situations where there is no surety and the City has taken an escrow instead, the City may, at its option, serve written notice upon the right-of-way user that, unless within ten (10) days after serving of such notice, a satisfactory arrangement is made for the proper restoration of the right-of-way, the City may perform its own restoration excavation or work and may use the escrow for the costs of

such restoration.

- (a) Upon determination by the Director of Public Works that the failure to repair, replace or restore creates a threat to public safety, all such repair or replacement shall be corrected within twenty-four (24) hours of notice from the City, or the City will perform its own restoration excavation or work and prosecute same to completion, by contract or otherwise.
 - (b) Upon determination by the Director of Public Works that the failure to repair, replace or restore creates an immediate threat to public safety, all such repair or replacement shall be corrected within two (2) hours of notice from the City, or the City will perform its own restoration excavation or work and prosecute same to completion, by contract or otherwise.
 - (c) The right-of-way user and its surety shall be liable to the City for its actual costs of such restoration, including the value of any time or overtime incurred through the labor of City employees, the value of the use of City equipment, and the cost of City materials used in the restoration project.
2. Guarantee of Restoration. In restoring the right-of-way, including but not be limited to plant coverings, landscaping and grading, the ROW-user shall guarantee its excavation or work on all surfaces and settlement and shall maintain such restoration and work result for a period of twelve (12) months.
- (a) During said guarantee period the right-of-way user shall, upon notification from the Director of Public Works, correct all restoration work to the extent necessary, using any method as required by the Director of Public Works.
 - (b) Said restoration work shall be completed within a reasonable time, not to exceed thirty (30) calendar days, of the receipt of notice from the Director of Public Works. In cases where the Director of Public Works determines that there is a safety concern, the time to complete such restoration work may be shortened to twenty-four hours.
 - (c) In the event the right-of-way user is required to perform new restoration pursuant to the foregoing guarantee, the Director of Public Works shall have the authority to extend the guarantee period for such new restoration for up to an additional twelve (12) months.
 - (d) When any required corrective actions have been completed and

inspected to the Director of Public Works' satisfaction, the guarantee period will restart.

(e) The guarantee period shall be applicable to failure of the pavement surface as well as failure below the pavement surface.

3. Safeguards To Public. No person shall make any street excavation without providing traffic control devices around the same as a warning to the public. Traffic warning signs and devices shall be provided in accordance with the "Manual on Uniform Traffic Control Devices" (latest revision) and as required by the Director of Public Works or his/her designee. If the road is a collector or arterial roadway lights may be required.
4. Attractive Nuisance. It shall be unlawful for the permittee to suffer or permit to remain unguarded at the place of excavation or opening any machinery, equipment or other device having the characteristics of any attractive nuisance likely to attract children and hazardous to their safety or health.
5. The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this Chapter. The City shall have a cause of action for all fees, expenses and amounts paid out and due it for such work and shall apply in payment of the amount due if any funds of the permittee deposited as herein provided and the City shall also enforce its right under the permittee's surety bond provided pursuant to this Chapter.

Section 505.125 **Failure To Enforce.**

The City's failure to enforce or remedy any non-compliance of the terms and conditions of this Chapter or of any right-of-way permit or temporary traffic control permit granted hereunder shall not constitute a waiver of the City's right nor a waiver of any person's obligation as herein provided.

Section 505.130 **Liability Of City.**

This Chapter shall not be constructed as imposing upon the City or any official or employee any liability or responsibility for damages to any person injured by the performance of any excavation work for which a Special Use Permit is used hereunder; nor shall the City or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit or the approval of any work.

Section 505.140 **Penalty For Removal Of Barricades Or Warning Devices.**

It shall be unlawful for any individual to remove, deface, obscure or in any other way alter signs or warning devices erected around any opening or excavation in the public right of way or around any object placed in the public right of way, including streets, sidewalks, parkways or driveway approaches, regardless of whether these devices were placed by the City or by any other individual or entity for the protection of the public.

Section 505.150 **Violations and Penalties**

A. Any person, persons, firm, association or corporation violating any of the provisions of this Chapter or any employee, agent or other person taking part in, joining or aiding in a violation of any provision of this Chapter may be prosecuted as provided by law for the violation of ordinances of the City and, upon conviction thereof, shall be subject to the penalties provided for violation of City ordinances. Each day a violation continues shall constitute a separate offense. Violation of this Chapter shall be a misdemeanor punishable by a fine not more than one thousand dollars (\$1,000.00) in addition to any amount necessary to restore the right-of-way.

1. The City may issue a summons as follows:

a. Summons, Service Of. The inspector shall fill out and sign as the complainant a complaint and information form, hereinafter referred to as a summons, directed by name to the individual or entity in violation of this Chapter (the "Violator") and, if applicable, the right-of-way user the Violator was performing work on behalf of (the "User"), showing the address of property on which the violation occurred, and such other information as may be available to the inspecting officer as shown on the summons, and specifying the Section of the Article which is being violated and setting forth in general the nature of the violation, and may serve the summons on the Violator and, if applicable, the User. The summons shall contain a date on which the case will be on the Municipal Court docket for hearing. The Prosecuting Attorney shall sign the original copy of all such summons, and the original thereof shall be forwarded to the Clerk of the Municipal Court for inclusion on the Court's docket for the date shown on the summons.

B. In addition to the penalties described above, the Director of Public Works may, at the Director of Public Works' discretion, investigate and make a determination as to whether the violations of this Chapter present a substantial threat to public health, safety, and the general welfare which necessitate the revocation of a right-of-way user's permit. If the Director of Public Works finds permit revocation is required, the Director of Public Works shall notify the right-of-way user that further failure to comply with this Chapter could result in revocation of the users' registration to work in the right-of-way following a hearing as set forth herein.

1. The notice of hearing described above shall contain:

- (a) The right-of-way user, the permit, and the location of the alleged violations of this Chapter, if applicable;
- (b) Ordinance number and a copy of the ordinance being violated;
- (c) Nature of the violation of these regulations;
- (d) Notice that the hearing will determine whether the right-of-way user's permit to work in the right-of-way may be revoked; and
- (e) The time, date, and location for the hearing.

C. The City Administrator or the City Administrator's designee shall serve as the hearing officer and hold the hearing referenced in Subsection (B) above at the time and place indicated in the notice of hearing. The hearing officer shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received. The hearing officer shall prepare findings of fact, conclusions of law, and an order stating whether a substantial threat to public health, safety, and the general welfare exists which necessitates the revocation of a right-of-way user's permit. If the hearing officer finds permit revocation appropriate, the hearing officer has the authority to enter an order to have the Director of Public Works cancel the right-of-way user's permit. The decision of the hearing officer may be appealed to the Board of Adjustment within ten days of receipt of the hearing officer's order.

D. The Director of Public Works or the Director of Public Works' designee shall track the violations of this Chapter. Any entity, corporation, partnership, or individual which receives three (3) or more tickets for violations of this Chapter in a 12-month period (a "Repeat Offender"), shall be prohibited from doing any work in the right-of-way for a period of six months from the date of the latest violation of this Chapter. Any additional violations during the aforementioned six-month period will restart the six month period from the latest violation date. Any right-of-way users that seek a permit pursuant to this Chapter may not use any entity, corporation, partnership, or individual who is a Repeat Offender.

Fee Schedule

Escrow Amounts



City of Chesterfield
690 Chesterfield Parkway West
Chesterfield, MO 63017
636-537-4762

RIGHT-OF-WAY USER APPLICATION

Agency

Service(s) Being Provided within the City of Chesterfield Right of Way

Agency Contact Information

Secondary Contact

Phone Number

Email Address

Secondary Contact

Phone Number

Email Address

Emergency Contact

Cell Phone Number

Email Address

(For use outside of business hours)

Please note that the City of Chesterfield will use the information above to contact our agency regarding any problems within the public right-of-way caused by or impacting your agency's facilities. The public right-of-way user will be responsible for any and all costs incurred by the City of Chesterfield if your agency is non-responsive or the information provided above is incomplete or inaccurate. This Registration Form is a public document.

(For Office Use Only)

Approved

____ Yes ____ No

Approved by:

Approval Date:



City of Chesterfield
 690 Chesterfield Parkway West
 Chesterfield, MO 63017
 636-537-4762

SCHEDULE OF FEES – Section 505.080(1)

Isolated Facility Repair – one excavation	\$120.00
Isolated Facility Repair – two excavations	\$240.00
Driveway Approach / Street Tree	No Charge
Facility Installation / Replacement or Repair With More Than Two Excavations	Calculated based upon plans City to estimate Staff time & costs

Please note that the City of Chesterfield will generally charge fees in accordance with the schedule above. However, the Director of Public Works reserves the right to assess additional/different fees based upon the plans provided. Fees will be set in an amount to cover the estimated Staff time to issue, administer, and inspect the requested Special Use permit. Permit fees are non-refundable.

SCHEDULE OF ESCROWS – Section 505.080(2)

Pavement Restoration (asphalt or concrete)	\$80.00 / SY
Sidewalk	\$15.00 / SF
Grass / Treelawn	\$3.00 / SY
Street Tree	\$350.00 / EA

Please note that the City of Chesterfield will consider the costs above when assessing the required escrow deposit for each Special Use Permit. The actual escrow deposit required will be determined by the Director of Public Works. Any unused escrow will be returned to the applicant in accordance with Section 505.080(2).

PERMIT BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS, that we _____

_____ (name and address), as Principal, and
_____ (name and address),
as Surety, are held and firmly bound unto City of Chesterfield, as obligee, in the penal sum of
_____, to the payment of which well and truly to be made, we bind
ourselves, our heirs, executors, administrators, successors, assigns, jointly and severally, firmly by
these present.

SIGNED, SEALED AND DATED THIS ____ day of _____, 20__.

THE CONDITIONS OF THE FOREGOING OBLIGATION IS SUCH,

WHEREAS, said Principal is registered as a right-of-way user with the City of Chesterfield
Director of Public Works; and

WHEREAS, said Principal may obtain special use permits from the City of Chesterfield
throughout the calendar year to perform work in the City of Chesterfield's right of way; and

WHEREAS, the City of Chesterfield requires work within the right of way to be guaranteed
for 1 year after restoration is completed and approved by the City of Chesterfield; and

WHEREAS, any damage to the right-of-way including, but not limited to, streets,
sidewalks or curb must be restored to its original condition by the earlier of 30 days after written
notification from the City of Chesterfield or within the time for restoration set by the City of
Chesterfield Director of Public Works as part of the permit application process; and

WHEREAS, the Principal must comply with the City of Chesterfield Municipal Code and
any terms described within the Special Use Permit application or set by the City of Chesterfield
Director of Public Works in the issuance of the Special Use Permit; and

WHEREAS, the Principal is required by law to file with the City of Chesterfield a bond
for the terms and conditions as hereinafter set forth.

NOW, THEREFORE, if the Principal shall faithfully perform the duties, including, but not
limited to, restoration of the right-of-way to its original condition, and in all things comply with
the laws and ordinances, including all amendments thereto, pertaining to any permits applied for,
then this obligation to be void, otherwise to remain in full force and effect until the date set forth
below.

PROVIDED the term of this Permit Bond is as indicated opposite the block checked below:

___ Beginning the ___ day of _____, 20___ and ending the ___ day of _____, 20___.

___ Continuous, beginning the ___ day of _____, 20___.

PROVIDED FURTHER, that if this Permit Bond is for a fixed term, it may be continued by Certificate executed by the Surety hereon; and

PROVIDED FURTHER, that regardless of the number of years this Permit Bond shall continue or be continued in force and of the number of premiums that shall be payable or paid, the Surety shall not be liable hereunder for a larger amount, in the aggregate, than the amount of this Permit Bond; and

PROVIDED FURTHER, that if this is a continuous Permit Bond and the Surety shall so elect, this Permit Bond may be cancelled by the Surety as to subsequent liability by giving thirty (30) days' notice in writing to the City of Chesterfield.

_____(Principal)

Signature

By: _____

Title: _____

_____(Surety)

Signature

By: _____

Title: _____



CERTIFICATE OF LIABILITY INSURANCE

Appendix D

DATE (MM/DD/YYYY)

PRODUCER Insurance Agent/Broker & Contact Information	THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED Insured Party & Contract Information	INSURER A: Insurance Company A	XXXXX
	INSURER B: Insurance Company B (if applicable)	XXXXX
	INSURER C: etc.	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR/ADD'L LTR/INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	Policy #			BODILY INJURY(occurrence)	\$ 2,000,000
					BODILY INJURY (person)	\$ 2,000,000
					PROPERTY DAMAGE (person)	\$ 2,000,000
					PROPERTY DAMAGE (aggregate)	\$ 2,000,000
						\$
						\$
						\$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	Policy #			BODILY INJURY (person)	\$ 2,000,000
					BODILY INJURY (occurrence)	\$ 2,000,000
					PROPERTY DAMAGE (accident)	\$ 2,000,000
						\$
A	PROFESSIONAL LIABILITY	Policy #			PER OCCURENCE	\$ 2,000,000
						\$
						\$
A	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$	Policy #			EACH OCCURRENCE	\$ 5,000,000
					AGGREGATE	\$
						\$
						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	Policy #			<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTH-ER
					E.L. EACH ACCIDENT	\$ 500,000
					E.L. DISEASE - EA EMPLOYEE	\$ 500,000
					E.L. DISEASE - POLICY LIMIT	\$ 500,000
A	OWNER'S PROTECTIVE BODILY INJURY	Policy #			BODILY INJURY(occurrence)	2,000,000
					BODILY INJURY (person)	2,000,000
					PROPERTY DAMAGE (person)	2,000,000
					PROPERTY DAMAGE (aggregate)	2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

RE: Project:

The owner's protective policy shall name the City as the insured.

CERTIFICATE HOLDER City of Chesterfield 690 Chesterfield Pky W Chesterfield, MO 63017 Fax (636) 537-4798	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
---	--

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

SAMPLE

RIGHT-OF-WAY
INDEMNITY AGREEMENT

THIS RIGHT-OF-WAY INDEMNITY AGREEMENT (the “**Agreement**”) made by and between _____ (the “**Indemnitor**”) and the **CITY OF CHESTERFIELD, MISSOURI**, a city of the third class and political subdivision of the State of Missouri, with an address of 690 Chesterfield Parkway West, Chesterfield, Missouri 63017 (the “**City**”). Indemnitor and the City shall each be a “**Party**” and are collectively the “**Parties**”.

WHEREAS, the City is authorized under RSMo 67.1832 to regulate and manage the City’s rights-of-way and the City has enacted ordinances to protect the City’s substantial public investment in its rights-of-way; and

WHEREAS, Indemnitor wishes to perform work in the City’s rights-of-way which requires a registered user of the rights-of-way to obtain a permit to do work in the rights-of-way; and

WHEREAS, the City requires those wishing to do work in the City’s rights-of-way, whether a registered user of the rights-of-way or a subcontractor of a registered user, to enter into this indemnity agreement.

THEREFORE, in consideration of the promises and mutual covenants below, the parties agree as follows:

1. As consideration for this Agreement, Indemnitor shall be eligible to perform work in the City’s rights-of-way with a Special Use Permit as set forth in Chapter 505 of the City Code. All conditions set forth in the City Code, in the Special Use Permit, or as otherwise set by the City’s Director of Public Works shall apply to Indemnitor’s performance of work in the rights-of-way.

2. Indemnitor shall indemnify, protect, defend, and hold the City, and its officers, employees, and agents, harmless from and against any and all claims, demands, liabilities, and costs, including attorney’s fees, arising from (i) any work Indemnitor or Indemnitor’s subcontractors perform in the rights-of-way; or (ii) any act of negligence, omission, or willful conduct of Indemnitor or any subcontractor of Indemnitor. Indemnitor shall defend City in any action or proceeding brought in connection with any of the foregoing. The City shall give written notice to the Indemnitor as soon as practicable after it becomes aware of any action or proceeding against the City brought in connection with the foregoing. Indemnitor shall select legal counsel reasonably acceptable to the City. The City may, at its own cost, participate in the investigation, trial, defense of any such proceeding and employ its own counsel in connection therewith. Indemnitor may not compromise or settle any such proceeding or consent to the entry of any judgment related to such proceeding without the prior written consent of the City.

3. This Agreement shall be binding upon Indemnitor and each of its administrators, representatives, executors, predecessors, successors, and assigns.

4. Should any provision of this Agreement be declared by any court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not

be affected thereby.

5. The validity, interpretation, and performance of this Agreement shall be controlled and construed under the laws of the state of Missouri without regard to conflicts of laws principles, and the parties hereby irrevocably consent that the Circuit Court of St. Louis County, 21st Judicial Circuit of the State of Missouri shall have exclusive jurisdiction over any legal action concerning or relating to this Agreement and that venue for purposes of adjudicating any matter arising out of or relating to this Agreement shall be exclusively in the Circuit Court of St. Louis County. The parties expressly waive their right of removal to federal court.

Executed on the date(s) indicated below.

Indemnitor

By: _____

Date



Mail To:
City of Chesterfield
Department of Public Works
690 Chesterfield Parkway West
Chesterfield, MO 63017-0760
Attn: Special Use Permits

Questions: Call (636) 537-4762

OFFICE USE ONLY	
Special Use Permit #:	_____
Issue Date:	_____
Expiration Date:	_____
Issued By:	_____
Permit Fee:	_____
Required Escrow:	_____

SPECIAL USE PERMIT APPLICATION

Project Address or Location: _____

Description of Work (Be Specific): _____

Specify Size of Disturbed Area:

- Concrete Pavement _____ SY (include full slabs – no partial repairs)
- Asphalt Pavement _____ SY
- Sidewalk _____ SF
- Grass/Tree Lawn _____ SF
- Street Tree _____ EA

Proposed Starting Date: _____

Days Required to Complete (including restoration): _____

If work is a Major Project and will exceed 90 days, the Applicant must adhere to the requirements contained within Section 505.070(H) of the City of Chesterfield Municipal Code including a designated contact person (with phone number) and provide notice to all property owners within 200 feet of the project limits.

Applicant Agency: _____
(Agency must be a registered Right-Of-Way User OR working on behalf of an adjacent resident)

Applicant Name: _____ **Phone #:** _____

Applicant Address: _____

City: _____ **State:** _____ **Zip:** _____

Email: _____

Onsite Representative: _____ **Cell #:** _____

Subcontractors to be used by Applicant who will be working under this permit.

Please note that all subcontractors must provide a Certificate of Insurance and Indemnification Form. Any subcontractor utilized who is not listed on this permit and/or does not provide the required insurance certification/indemnification form, will be in violation of City Code and subject to all penalties detailed in Section 505.150.

Subcontractor A:

Name: _____ **Cell #:** _____

Email: _____

Work to be Performed: _____

Subcontractor B:

Name: _____ **Cell #:** _____

Email: _____

Work to be Performed: _____

Subcontractor C:

Name: _____ **Cell #:** _____

Email: _____

Work to be Performed: _____

A detailed plan showing the project details, dimensions and location of the Applicant's proposed work must be included with this application. Please include proximity to the street, curb, sidewalk, streetlights, street trees and other facilities as well as any proposed disturbance of trees and/or landscaping within the right-of-way.

The Applicant **is prohibited** from placing backfill or installing sidewalks, pavement or driveway aprons without a City Inspector present. After the Special Use Permit is issued, applicant must notify the **Department of Public Works by contacting 636-537-4762 a minimum of 24 hours prior to commencement of work.**

The Applicant understands that the Permit expires on the date contained within the Permit authorization and that the Applicant is responsible for maintenance of the disturbed area until such time as the restoration is completed. **If restoration is not completed by the expiration date, or sooner if required by the City, liquidated damages will be assessed in an amount of \$100 per day** in accordance with Section 505.080(6) of the City of Chesterfield Municipal Code. In cases where the City requires restoration sooner than the expiration of the Permit, such requirement will be provided to the Applicant in writing.

Extensions to the Permit expiration date may be considered by the Director of Public Works. Any such request for extension must be submitted in writing at least ten days prior to the expiration date.

In addition to the liquidated damages clause, the City of Chesterfield reserves the right to complete the restoration and charge the Applicant in accordance with Section 505.080(5) of the City of Chesterfield Municipal Code.

I have read, and fully understand, the City of Chesterfield Special Use Permit policy and procedures and I hereby agree to restore right-of-way in accordance with the conditions of the Special Use Permit.

Applicant Signature: _____ **Date:** _____



SPECIAL USE PERMIT

All work, which results in a physical disturbance of the public right-of-way shall require a Special Use Permit. This requirement includes, but is not limited to, all excavations and installations relating to conduit, poles, wires, mains, pipes, valves, conductors, sewers, drains, driveways, trees, and sidewalks. A Special Use Permit is not required for opening and/or inspection of manholes, vaults, and other structures, maintenance of lighting fixtures, or driveway maintenance. The installation of a lawn irrigation system does not require a Special Use Permit as it is covered under a separate application process (go to website form: Lawn Irrigation Backflow Preventer Application).

Please note that these Special Use Permit Instructions are intended to assist an applicant through the permitting process. They do not supersede or replace any requirements contained within Chapter 505 of the City of Chesterfield Municipal Code, City restoration details, or any other specification or City Policy related hereto.

APPLICATION INSTRUCTIONS

- A. In order to obtain a Special Use Permit an applicant or agency must be a Registered Right-of-Way User. This requires a submittal to the Director of Public Works. There is no cost to register as a Right-of-Way User. A contractor working on behalf of a resident abutting the right-of-way does not need to register as a Right-of-Way User and can be granted a Special Use Permit.
- B. A Registered Right-of-Way User can obtain a Special Use Permit by completing the Application, paying the required fee, and depositing the necessary Escrow or Surety. Please note that any subcontractors working on the project must be listed within the application and must provide the required Certificate of Insurance and Indemnification Form.
- C. A **Certificate of Insurance** must be submitted with the application if one is not already on file with the City. Insurance must be for the life of the permit. A sample certificate with required coverage limits is attached. Contractors must provide an original completed Certificate with the producer, the name of the insured, the effective dates of coverage, an NAIC policy number, and an authorized signature. The description field shall state the following:

Project: City of Chesterfield, Special Use Permit

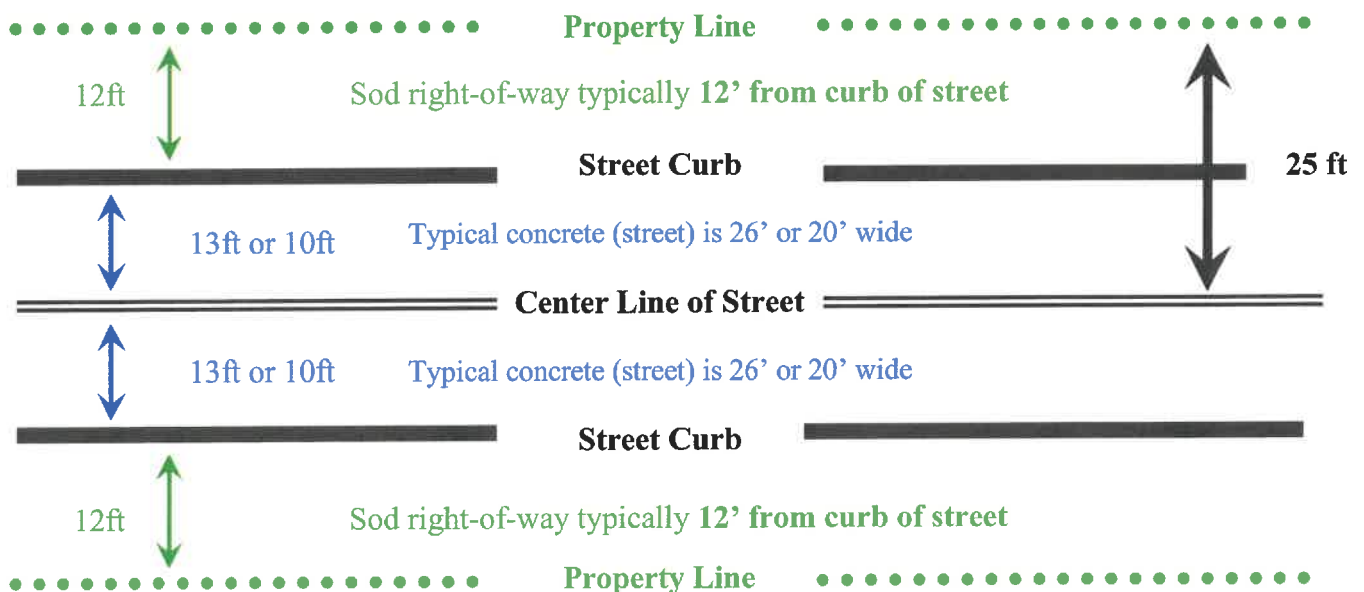
The City of Chesterfield, its officers, officials, employees and agents must be added as an additional insured for general liability, automobile liability and umbrella liability policies. Coverage under such policies shall be primary and non-contributory coverage with the Additional Insured's coverage being excess and shall include Completed Operations coverage. Certificates evidencing such insurance must be furnished to the City prior to issuance of the permit.

- D. Prior to the issuance of a Special Use Permit a **Permit Fee** shall be provided in an amount set by the Director of Public Works. Permit fees will generally be in accordance with the attached Fee Schedule set by the Director of Public Works. Permit fees are non-refundable.
- E. Prior to the issuance of a Special User Permit, a **Cash Escrow** shall be provided in an amount set by the Director of Public Works. Escrows will generally be in accordance with the Escrow Schedule set by the Director of Public Works. Escrow funds will be used, if necessary, to restore the right-of-way in accordance with Section 505.080(5). Any unused Escrow will be returned to the applicant one year after work is completed.
- F. Registered Right-of-Way Users may elect to provide an annual **Surety Bond** in lieu of a Cash Escrow. Any Registered Right-of-Way User desirous of utilizing an annual Surety Bond should contact the Director of Public Works so an amount can be set. The minimum Surety Bond permitted is \$25,000. A standard Surety Bond form is attached and must be utilized.

- G.** Approximately 300 days after work is completed, the project area will be inspected by the City of Chesterfield. If the area has been restored successfully, the Cash Escrow will be returned. In the case of an annual Surety, the applicant will simply be notified that the work has successfully been completed and the permit is closed.
- If the area has not been properly restored, the applicant will be notified that they have 30 days to rectify any deficiencies. If the deficiencies are not rectified within 30 days, the City will use the escrow funds or notify the surety and complete the work in accordance with Section 505.100.
- H.** If the proposed work will impact any driving lanes, the Applicant must submit a **Traffic Control Plan** with the application. **This plan shall be in conformance with the latest version of Part VI of the Manual of Uniform Traffic Control Devices (MUTCD).**
- I. UTILITY LOCATES ARE THE RESPONSIBILITY OF THE APPLICANT. THE APPLICANT MUST CONTACT MISSOURI ONE CALL PRIOR TO DIGGING IN ACCORANCE WITH MISSOURI LAW.**
- J.** The applicant is **prohibited** from placing backfill or installing sidewalks, concrete pavement or driveway aprons without authorization from a City Inspector. **The Department of Public Works must be notified a minimum of 24 hours prior to commencement of work at 636-537-4762.**
- K.** Any excavation within the public right of way under pavement must be backfilled with compacted rock in accordance with County Specification 726.6.3 and in such a manner that settlement will not occur. Clean rock may be permitted in certain applications with written permission from the Director of Public Works.

Please see the City restoration specifications and details regarding street restoration in concrete or asphalt. All areas outside pavement within the right-of-way shall be restored with sod. If sidewalk within right of way is disturbed it shall be replaced with standard concrete with a broom finish.

Typical Right-of-Way



Chapter 505. Streets and Sidewalks

ARTICLE I. In General

Division 2. Opening And Excavation Of Public Streets

Section 505.070. Work In Streets — Permit.

[CC 1990 § 26-6; Ord. No. 1337 § 1, 11-3-1997]

- A. Required. Except in case of municipal work authorized by the Director of Public Works, no person or entity shall make any opening or excavation or place any object in any public street, alley, sidewalk, parkway or other public place or thoroughfare without a written special use permit from the Director of Public Works.
- B. Work Requiring Permit Authorization. All work which results in a physical disturbance of the public right-of-way shall require permit authorization. This requirement shall include, but not be limited to, all excavations and installations relating to conduit, poles, pole lines, wires, mains, pipes, valves, conductors, sewers, drains, driveways, sidewalks or appurtenances thereof.
- C. Other Work. Work which does not result in a physical disturbance of the public right-of-way and does not interrupt traffic shall not require permit authorization or telephone notification. Examples of this type of work shall include the following: the opening and/or inspection of manholes, vaults and other structures located outside the pavement surface, maintenance of lighting fixtures, maintenance and/or replacement of driveways and sidewalks, etc.
- D. Record. The Director of Public Works shall keep a full and complete account of all permits issued showing the date, the person to whom issued and the location of proposed work.
- E. Permit Placard. Any person having occasion to make any such excavation shall make written application for a permit therefor to the Director of Public Works who is given authority to issue such permits. The application shall state the location and nature of the proposed work and when the work is to be commenced. No permit shall be issued for a period in excess of ninety (90) days.
- F. Emergency work, where the public safety and welfare are endangered, which results in a physical disturbance of the public right-of-way, shall require immediate notification of the proposed work to the Director of Public Works during regular work hours or by telephone to the City Police Department at all other times. Notification should be followed by permit application to the Director of Public Works as soon as possible.
- G. The Director of Public Works shall provide each permittee at the time a permit is issued hereunder a suitable placard plainly written or printed in English letters at least one (1) inch high with the following notice: "City of Chesterfield, Permit No. _____ Expires _____" and in the first blank space there shall be inserted the number of said permit and after the word "expired" shall be stated the date when permit expires. It shall be the duty of any permittee hereunder to keep the placard posted in a conspicuous place at the site of the work. It shall be unlawful for any person to exhibit such placard at or about any site not covered by such permit or to misrepresent the number of the permit or the date of expiration of the permit.

Section 505.080. Deposits.

[CC 1990 § 26-7; Ord. No. 1337 § 1, 11-3-1997]

- A. The applicant shall accompany the permit application with an escrow, bond, insurance, affidavit, etc., indicated herein as necessary for that type of permit.
1. Escrows. Special use permits shall be issued upon the approval of the Department of Planning and the developer depositing with the City a sum equal to that which would be required to assure the completion of said project. Said escrow funds are meant to guarantee the restoration, maintenance and/or rehabilitation of said site if the project does not proceed in accordance with the plans as approved by the Department of Planning of the City. Said escrow can be approved by the Department of Planning and the City Attorney without approval of the City Council. Any portion of the deposit not expended or retained by the City hereunder shall be refunded without interest, not less than one (1) year after the excavation or building is completed and approved by the City.
 2. Surety. In lieu of a cash escrow, a surety of bond or indemnity agreement 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, escrow or indemnity shall be increased in each case based on such previous experience.
 3. Refund. If the applicant has restored the pavement in satisfactory form, such deposit shall be refunded to him/her; otherwise, the City shall use the deposit for the purpose of employing others to restore the pavement and surface and the applicant shall be liable to the City for any cost in excess of the amount of the deposit actually expended by the City to restore the same. If the deposit is more than needed to restore the surface, the City shall retain out of the excess the City's fee for arranging and supervising the restoration and refund the balance, if any, to the applicant. If the deposit is not sufficient to pay the cost of restoration and the fee therefor and liquidated damages hereinafter provided, the applicant shall be liable for the difference.
 4. Condition. As a prerequisite to the issuance of a special use permit, the applicant shall agree in writing to be bound by the terms of this Article and to such conditions as may be prescribed by the Director of Public Works as to lights and barricades, the time within which the opening is to be filled and the surface restored and for notice thereof, and to repair as required during the one-year period allowed herein. If the opening is not closed within the time established, the applicant shall pay the sum of one hundred dollars (\$100.00) per day as liquidated damages and not as a penalty, to be deducted from his/her deposit if sufficient.
 5. Insurance.
 - a. The contractor and his/her subcontractors shall procure and maintain during the life of the special use permit, insurance of the types and minimum amounts as follows:
 - (1) Workers' Compensation in full compliance with statutory requirements of Federal and State of Missouri law and employers' liability coverage in the minimum amount of five hundred thousand dollars (\$500,000.00).
 - (2) Comprehensive general liability and bodily injury:
 - (a) Including death:
 - i. Each person: five hundred thousand dollars (\$500,000.00).
 - ii. Each occurrence: one million dollars (\$1,000,000.00).
 - (b) Property damage:

- i. Each person: one million dollars (\$1,000,000.00).
 - ii. Aggregate: one million dollars (\$1,000,000.00).
- (3) Comprehensive automobile liability, bodily injury:
 - (a) Including death:
 - i. Each person: five hundred thousand dollars (\$500,000.00).
 - ii. Each occurrence: one million dollars (\$1,000,000.00).
 - (b) Property damage:
 - i. Each accident: one million dollars (\$1,000,000.00).
- (4) Owner's protective bodily injury:
 - (a) Including death:
 - i. Each person: five hundred thousand dollars (\$500,000.00).
 - ii. Each occurrence: one million dollars (\$1,000,000.00).
 - (b) Property damage:
 - i. Each occurrence: five hundred thousand dollars (\$500,000.00).
 - ii. Aggregate: five hundred thousand dollars (\$500,000.00).
- (5) Professional:
 - (a) Liability:
 - i. Each occurrence: one million dollars (\$1,000,000.00).
- b. The owner's protective policy shall name the City as the insured. Certificates evidencing such insurance shall be furnished to the City prior to issuance of the permit.

Section 505.090. Procedure — Notification, Inspection.

[CC 1990 § 26-8; Ord. No. 1337 § 1, 11-3-1997]

- A. **Notice To Director Of Public Works.** No construction work shall commence in any public right-of-way, nor shall any curb on any public street be cut until at least forty-eight (48) hours' notice of intention to commence work is given to the Director of Public Works by the owner, developer or contractor.
- B. **Inspection.** The Director of Public Works may cause a qualified inspector to be present during the construction of such street, sidewalk, curb, way, alley or driveway entrance, and the Director of Public Works or the inspector on the job shall have authority to condemn any material not meeting the standards specified by the Director of Public Works or City Engineer. If any portion of the street fails to meet the minimum requirements, the Director of Public Works or his/her designated inspector on the job shall cause all work on the right-of-way to be stopped until the unsatisfactory conditions are remedied.
- C. **Removal Of Substandard Work.** If any portion of any street, sidewalk, curb, way, alley or driveway entrance is constructed contrary to the provisions of this Section, in the absence of the Director of Public Works or his/her designee, the latter may order the installed material removed unless the owner, contractor, builder or developer shall cause borings and other tests at his/her expense according to the requirements of the Director of Public Works and satisfying him/her that the work done is in conformity with the applicable specifications.

- D. Liability. The owner, developer, builder and contractor shall be jointly and severally responsible for all notices required hereunder, for failure to have an inspector present or for failing to comply with any lawful order of the Director of Public Works or his/her designee.
- E. Protection Of Watercourses. The permittee shall provide for the flow of all watercourses, sewers or drains intercepted during the work and shall replace the same in as good condition as it found them or shall make such provisions for them as the Director of Public Works may direct. The permittee shall not obstruct the gutter of any street and shall use all proper measures to provide for the free passage of surface water. The permittee shall make provision to take care of all surplus water, muck, silt, slickings or other runoff pumped from the work site or resulting from sluicing or other operations and shall be responsible for any damage resulting from the failure to so provide.

Section 505.100. Backfilling And Restoration.

[CC 1990 § 26-9; Ord. No. 1337 § 1, 11-3-1997]

- A. All paving excavations restored shall meet the specifications established by the Director of Public Works.
 - 1. Backfilling. It shall be unlawful for any person to make any backfill in any such excavation unless a duly authorized inspector of the City is present to observe the work, and the backfill is made in accordance with the standards established by the Director of Public Works. It shall be unlawful for any subdivider or any other person to install any paving on any public street in the City unless the provisions of this Section with respect to backfill have been complied with; failure to comply with these provisions on backfilling shall be grounds for refusal by the City to accept any street for maintenance.
 - 2. Breaking Through Pavement. Whenever it is necessary to break through existing pavement for excavation purposes, the pavement shall be removed to at least six (6) inches beyond the outer limits of the subgrade that is to be disturbed in order to prevent settlement, and a six-inch shoulder of undisturbed material shall be provided on each side of the excavated trench. The face of the remaining pavement shall be approximately vertical. A power-driven concrete saw shall be used so as to permit complete pavement or base removal without ragged edges. Asphalt paving shall be scored or otherwise cut in a straight line.
 - 3. Restoration Of Surface. The Director of Public Works shall prepare, and have available for persons making excavations in public streets and other places, a detailed set of specifications for backfilling and restoring paving.
 - 4. Safeguards To Public. No person shall make any street excavation without providing barricades around the same as a warning to the public, and between sunset and sunrise adequate lights shall be provided around the excavation. Traffic warning signs and devices shall be provided in accordance with the "Manual on Uniform Traffic Control Devices" (latest revision) and as required by the Director of Public Works or his/her designee.
 - 5. Attractive Nuisance. It shall be unlawful for the permittee to suffer or permit to remain unguarded at the place of excavation or opening any machinery, equipment or other device having the characteristics of any attractive nuisance likely to attract children and hazardous to their safety or health.
 - 6. City's Right To Restore Surface. If the permittee shall have failed to restore the surface of the street to its original and proper condition or shall otherwise have failed to complete the excavation work covered by such permit, the Director of Public Works, if he/she deems it advisable, shall have the right to do all work and things necessary to restore the street and to complete the excavation work. The permittee shall be liable for the actual cost thereof and twenty-five percent (25%) of such cost in addition thereto for general overhead and administrative expenses. The City shall have a cause of action for all fees, expenses and amounts paid out and due it for such work and shall apply in payment of the amount due if any

funds of the permittee deposited as herein provided and the City shall also enforce its rights under the permittee's surety bond provided pursuant to this Article.

7. Guarantee. It shall be the duty of the permittee to guarantee and maintain the site of the excavation work in the same condition it was prior to the excavation for a period of one (1) year after restoration to its original.

Section 505.110. Sidewalks — Curbs — Gutters — Driveway Entrances.

[CC 1990 § 26-10; Ord. No. 1337 § 1, 11-3-1997]

- A. Construction — Grade — Width. All sidewalks, curbs and gutters constructed, reconstructed or repaired in the City shall be of concrete and shall conform to the established grade of the street. All sidewalks shall be not less than four (4) feet in width.
- B. Supervision Of Work. All work of constructing, reconstructing or repair of sidewalks, curbs and gutters and driveway entrances shall be done under the supervision of the Director of Public Works.

Section 505.120. Specifications Governing Building, Construction, Etc.

[CC 1990 § 26-11; Ord. No. 1337 § 1, 11-3-1997]

The Director of Public Works is hereby authorized and directed to prepare general regulations governing the building, construction, reconstruction or repairing of sidewalks and shall prepare plans and specifications for sidewalks and parkways, parkways shall include all the space between the curb and the property line, or any space in the center of a street which may be set aside as a parkway, and prescribing and requiring certain materials to be used and the manner and form of doing said work, including the kind of shade trees and shrubbery to be planted and the manner of their care and preservation.

Section 505.130. Liability Of City.

[CC 1990 § 26-12; Ord. No. 1337 § 1, 11-3-1997]

This Article shall not be construed as imposing upon the City or any official or employee any liability or responsibility for damages to any person injured by the performance of any excavation work for which a special use permit is used hereunder; nor shall the City or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit or the approval of any work.

Section 505.140. Penalty For Removal Of Barricades Or Warning Devices.

[CC 1990 § 26-14; Ord. No. 1337 § 1, 11-3-1997]

It shall be unlawful for any individual to remove, deface, obscure or in any other way alter warning devices erected around any opening or excavation or around any object placed in a public street, or any warning devices which are placed in any alley, sidewalk, parkway or other public place or thoroughfare either by the City or by any other individual or entity for the protection of the public.