BILL NO. 3123 **ORDINANCE NO. 2924**

AN ORDINANCE AMENDING ARTICLE 2 SECTION 02-12 OF THE UNIFIED DEVELOPMENT CODE (ARTICLE 2-12 INSTALLATION OR GUARANTEE OF REQUIRED IMPROVEMENTS).

WHEREAS, the City of Chesterfield Unified Development Code contains regulations and requirements pertaining to the development of land within the City; and,

WHEREAS, the Unified Development Code serves to promote the public health, safety, and general welfare of the citizens of the City of Chesterfield; and,

WHEREAS, the City of Chesterfield seeks to update regulations and requirements pertaining to the Installation or Guarantee of Required Improvements; and,

WHEREAS, the Planning and Public Works Committee, having considered said amendments, recommended approval; and,

WHEREAS, the City Council, having considered said amendments, voted to approve the updates to Article 2 of the Unified Development Code pertaining to the Installation or Guarantee of Required Improvements.

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

Section 1. The City of Chesterfield hereby repeals Article 2 Section 12 of the Unified Development Code and replaces it with a new Section as set out in Attachment "A" which is attached hereto and made part thereof.

Section 2. If any section, paragraph, subsection, clause or provision of this Ordinance shall be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Ordinance as whole, or any part thereof.

Section 3. The provisions of the Ordinance may be amended in the future by the City Council of the City of Chesterfield.

Section 4. Where this Ordinance differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by

the County, State, or Federal government, the more restrictive or protective of the City and the public shall apply.

Section 5. This Ordinance shall be codified within the Municipal Code of the City of Chesterfield.

Section 6. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 5TH day of December, 2016.

Bob Nation
PRESIDING OFFICER

Bob Nation
Bob Nation, MAYOR

ATTEST:

Vickie Hass
Vickie Hass, CITY CLERK

FIRST READING HELD: 11/21/2016

ATTACHMENT A

UNIFIED DEVELOPMENT CODE AMENDMENTS

Sec. 02-12. IMPROVEMENTS INSTALLED OR GUARANTEED.

A. Completion Guarantee by Developer.

After the improvement plans have been substantially complete and all inspection fees and review fees paid, but before approval of the record subdivision plat, the developer shall guarantee the completion of required improvements. The developer shall either:

1. Complete the improvements in accordance with the approved improvement plans under the observation and inspection of the appropriate inspection agency; or

2. Deposit cash under an escrow agreement or post a land subdivision bond or provide the appropriate surety as set forth in this UDC to guarantee the construction, completion, and installation of the improvements shown on the approved improvement plans within the improvement completion period approved by the Planning and Development Services Director, which shall not exceed two (2) years. The land subdivision bond or escrow agreement or other required surety shall be prepared and executed on forms furnished by the Department and shall be submitted to the City Council for approval or disapproval after review and approval by the Planning and Development Services Director and the City Attorney.

3. For plats approved after the effective date of this UDC, any guarantee or deposit required by the City for sanitary and storm sewers within the jurisdiction of MSD may be reduced proportionally, by the amount of any guarantee or escrow collected and held by MSD if MSD confirms that its requirement for assurance of completion is satisfied. This provision shall not affect the intent or enforcement of any existing guarantee, escrow, or renewal, extension or replacement thereof.

4. The Planning and Development Services Director may require any specific improvement to be installed prior to approval of the record plat where failure to install such improvement prior to further development could result in damage to the site or surrounding properties.

5. The City shall not permit or accept the posting of any bond issued or proposed to be issued by a surety or an affiliate of a surety which has, in the preceding ten (10) years, refused to pay upon formal demand all or part of a claim of the City on any other surety bond. Any individual, corporation or property owner aggrieved by this section may appeal to the

City Council to request the City to accept the posting of such bond. The City Council may consider whether the refusal to pay resulted in litigation, mediation or arbitration of the claim, whether the claim was wholly or partially determined in favor of the City, whether the prior refusal to pay was settled between the City and surety or any other hardship evidence presented by the individual, corporation or property owner. In no instance shall a bond be accepted from a surety while in litigation, mediation or arbitration with the City.

6. The City shall not accept the posting of any bond issued or proposed by any surety or an affiliate who has refused to pay upon formal demand of the City or been involved in any litigation pertaining to said failure to pay within the past ten (10) years as of the effective date of this section of the UDC.

B. Deposit Options.

Deposits required by this Article shall be in conjunction with a deposit agreement and may be in the form of cash or letter of credit as follows:

1. Deposit Agreements. Deposit agreements shall provide that there shall be deposited with the City of Chesterfield a cash amount by escrow or surety not less than the Department estimate of the cost of the construction, completion, certifications and installation of the required improvements indicated on approved improvement plans.

2. Cash deposited with the City Director of Finance 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;

3. 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 Development Services. 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 Public Services (the Director) or their designee. 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, 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

$200.00 to the City with submission of a letter of credit and $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.

4. Certificates of deposit, treasury bill, or other readily negotiable instruments, the type of which has been approved by the Department, endorsed to the City and the cash value of which shall be in an amount not less than the amount specified by the Department in its estimate of the cost of the improvements and/or maintenance as reflected by the approved improvements plan.

C. Amount of Deposit.

The amount of the deposit required by this Article shall be calculated as follows:

1. Construction deposit. The deposit required of a developer establishing a deposit agreement pursuant to this Section shall be, in addition to the separate maintenance deposit sum, in the amount of 110% of the Department estimate of the cost of the construction, completion and installation of the required improvements. The Planning and Development Services Director shall adopt, to the extent practical, schedules reflecting current cost estimates of typically required improvements.

2. Maintenance deposit. The deposit required of a developer pursuant to this Section for maintenance obligations shall be in the amount of ten percent (10%) of the Department estimate of the cost of the construction, completion and installation of all required improvements. The maintenance deposit shall be established by cash sum or submission of a separate letter of credit.

3. Where certain improvements are installed and approved by the City prior to approval of the record plat pursuant to subsection A.1., the gross amount for the construction deposits shall be reduced by the estimated cost of such improvements.

4. Other sureties as established in this UDC. The deposit required of a developer for any and all other required sureties pursuant to this Section shall be as set forth in the applicable Section of this UDC.

D. Deposit Agreement – Releases.

The deposit agreement shall be entered into with the City of Chesterfield, and shall require the developer to agree to fulfill the obligations imposed by this Article, and shall have such other terms as the City Attorney may require consistent with this Article. The agreement shall authorize the Director (or designee) to release the cash or reduce the obligation secured under the letter of credit as permitted herein. Such releases or reductions may occur upon completion, inspection and approval by the Director of all required improvements within a category of improvements,

or may occur from time to time, as work on specific improvements is completed, inspected and approved, provided however, that:

1. Releases – General. The Director shall release the cash or release the letter of credit as to all or any part of its obligation only after construction, completion and installation of some phase of work on the improvements indicated on the approved improvement plans, receipt of requisite written notification from the appropriate inspecting public authority, and approval by the Department; and only in the amounts permitted herein.

2. Extension of completion period. If, at the end of the improvement completion period, all the improvements shown on the approved improvement plans have not been completed, the developer may request and the Director may grant an extension to the improvement completion period for a period of up to one (1) year if after review by the Department such longer period is deemed necessary to facilitate adequate and coordinated provisions for transportation, water, sewerage, schools, parks, playgrounds, or other required improvements, facilities or requirements so long as all guarantees are extended and approved by the City Attorney; provided, that the Director 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 Section 02-12 of this Article.

3. Construction deposit releases. After an inspection of any specific improvements, the Director may at their discretion release no more than 95% of the original sum deposited for the construction of such specific required improvements. Irrespective of any discretionary prior releases that may be authorized by the Director after completion of any component of the guaranteed improvements (i.e. less than all of the improvements in a given category), the remaining amount held for any category of improvements for the entire subdivision shall be released within 30 days of completion of all of the improvements in such category of improvement, minus a retention of five percent (5%) which shall be released only upon completion of all improvements for the subdivision. The Director shall establish the improvement categories, which may consist of improvement components or line items, to be utilized for calculation of deposit amounts, but such categories, components, and line items shall in no way modify or reduce the developer's guarantee as to all required improvements, irrespective of any release or completion of any category, or underlying component or line item. All improvements in a category shall be deemed complete only when:

   a.) Each and every component and line item within a category for the entire subdivision has been constructed and completed as required,

b.) The developer has notified the Director in writing of the completion of all components of the category, provided all necessary or requested documentation, and requests an inspection,

c.) The developer is not in default or in breach of any obligation to the City under this Article including, but not limited to, the Director's demand for maintenance or for deposit of additional sums for the subdivision,

d.) The inspection has been completed and the results of the inspection have been approved in writing by the Director,

e.) The developer has paid any sums due related to the project. Releases of the maintenance deposit amounts shall be as provided elsewhere in this Article for maintenance deposits.

4. Releases of other sureties as established in this UDC. The release procedure for any and all other sureties required of a developer pursuant to this Section shall be as set forth in the applicable Section of this UDC.

5. Effect of release – Continuing obligations. The developer shall continue to be responsible for defects, deficiencies and damage to streets and other required improvements during development of the subdivision. No inspection approval or release of funds from the construction deposit as to any component or category shall be deemed to be City approval of improvement or otherwise release the developer of its obligation relating to the completion of the improvements until the final subdivision release on all improvements and maintenance is issued declaring that all improvements have in fact been constructed as required. Inspection and approval of any or all required improvements shall not constitute acceptance of the improvement by the City as a public improvement for which the City shall bear any responsibility.

6. Deficient improvements. No approval of required improvements shall be granted for improvements that fail to meet the specifications established herein or otherwise adopted by the Department or City Council.

7. Final construction deposit release. Upon final inspection and approval of all required improvements, the remaining amount of the construction deposit shall be released; provided, that no such funds shall be released on a final inspection until the development of the subdivision is complete, as determined by the Director. Completion is when the particular item has had all documentation and certification filed in a complete and acceptable form, the specific items have been inspected, all identified deficiencies have been corrected and the work has been approved by the City.

8. Appeals. If the developer believes that a release or certificate of completion has been improperly denied, including, but not limited to, under this Section, an appeal shall be filed pursuant to the City's Public Works

Board of Variance, and no such denial shall be deemed final until such appeal procedure has been exhausted.

E. Maintenance Guarantee.

1. Scope and duration. Upon commencement of installation of the required improvements within the subject subdivision, the developer shall be responsible for the maintenance of the improvements, including, but not limited to: undeveloped lots, streets, sidewalks, trees, common areas, erosion and siltation control, and storm and drainage facilities, until (1) expiration of 12 months after occupancy permits have been issued on 80% of all of the lots in the subdivision plat(s), or (2) 12 months after completion of the subdivision and acceptance/approval of all required improvements by the City, whichever is longer, subject to the deposit agreement. Maintenance shall include repair or replacement of all defects, deficiencies and damage to the improvements that may exist or arise, abatement of nuisances caused by such improvements, removal of mud and debris from construction, erosion control, grass cutting, removal of construction materials (except materials to be used for construction on the lot or as permitted by site plan), and snow removal. All repairs and replacement shall comply with City specifications and standards. Any maintenance on improvements accepted by the City for public dedication shall be completed under the supervision of and with the prior written approval of the Director. The maintenance obligation for required improvements to existing public roads or other existing public infra-structure already maintained by a public governmental entity shall terminate on and after the date such improvements have been inspected, deposit released, and accepted by the City or appropriate agency for dedication. Irrespective of other continuing obligations, the developer's snow removal obligations shall terminate on the date a street is accepted by the City for public maintenance. The maintenance requirements and procedures for improvements guaranteed by any and all other sureties required of a developer pursuant to this Section shall be as set forth in this UDC.

2. Maintenance deposit – Amount – Use.

a.) The maintenance deposit shall be retained by the City to guarantee maintenance of the required improvements and, in addition to being subject to the remedies of subsection G. and other remedies of this UDC, shall be subject to the immediate order of the Director to defray or reimburse any cost to the City of maintenance or repair of improvements related to the subdivision which the developer fails or refuses to perform. Except in emergency circumstances or where action is otherwise required before written notice can be provided, the Director shall provide the developer with a written demand and opportunity to perform the maintenance before having such maintenance performed by the City, or its agents. Where the amount of maintenance deposit remaining is determined to be insufficient or where the maintenance deposit was drawn upon by

the City for maintenance, the Director shall have the authority to require the maintenance deposit to be replaced or replenished by the developer in any form permitted for an original deposit.

b.) In determining the amount of maintenance deposit that shall continue to be held, portions of the deposit amount that were attributable to improvements that have been accepted by any third-party governmental entity or utility legally responsible for the maintenance of the improvement may be released upon such acceptance of the improvement by the entity. The Director may approve such further releases if it is determined in his or her discretion, after inspection of the improvements, that the total maintenance amount retained is clearly in excess of the amount necessary for completion of the maintenance obligation, after all reasonable contingencies are considered.

3. Final maintenance deposit release. Upon expiration of the maintenance obligations established herein, the Director shall cause a final inspection to be made of the required improvements. Funds shall then be released if there are no defects or deficiencies found and all other obligations, including payment of all sums due, are shown to be satisfied on inspection thereof, or at such time thereafter as any defects or deficiencies are cured with the permission of, and within the time allowed by, the Director. This release shall in no way be construed to indemnify or release any person from any civil liability that may exist for defects or damages caused by any construction, improvement or development for which any deposit has been released.

F. Acceptance and Final Approval.

Before the developer's obligation to the City of Chesterfield is terminated, all required improvements shall be constructed under the observation and inspection of the inspecting agency and accepted for maintenance or given final approval by the City of Chesterfield.

G. Failure to Complete Improvements.

The obligation of the developer to construct, complete, install and maintain the improvements indicated on the approved improvement plans and provide for street maintenance shall not cease until the developer shall be finally released by the Director, nor shall any deposit agreements or obligations hereunder be assignable by developer. If, after the initial improvement completion period, or after a later period as extended pursuant to this Section, the improvements indicated on the approved improvement plans are not constructed, completed, installed, accepted and maintained as required, or if the developer shall violate any provision of the deposit agreement, the Director may notify the developer to show cause within not less than ten (10) days why the developer should not be declared in default. Unless good cause is shown, no building or other permit shall be issued to the developer in the subdivision during any period in which the developer is in violation

of the deposit agreement or Subdivision Code relating to the subdivision. If the developer fails to cure any default or present compelling reason why no default should be declared, the Director shall declare the developer in default and may take any one (1) or more of the following acts:

1. Require the developer to submit an additional cash sum sufficient to guarantee the completion or maintenance of the improvements indicated on the approved improvement plans after recalculation in order to allow for any inflated or increased costs of constructing, maintaining, or redesign of the improvements.

2. Deem the balance under the deposit agreement not theretofore released as forfeited to the City to be then placed in an appropriate trust and agency account subject to the order of the Director for such purposes as letting contracts to bring about the completion or maintenance of the improvements indicated on the approved improvement plans or other appropriate purposes in the interest of the public safety, health and welfare; or

3. Require the developer or surety to pay to the City the balance of the deposit not therefore released.

The failure of a developer to complete the improvement obligations within the time provided by the agreement (or any extension granted by the City), including the payment of funds to the City due to such failure, or an expiration of a letter of credit, shall be deemed an automatic act of default entitling the City to all remedies provided in this Section without further or prior notice. It shall be the sole responsibility of the developer to timely request an extension of any deposit agreement if the improvements are not completed in the original time period provided by the deposit agreement, or extension granted by the City. No right to any extension shall exist or be assumed.

H. Other Remedies for Default.

If the developer or surety fails to comply with the Director's requirements for payment as described above, fails to complete the improvements as required or otherwise violates the deposit agreement provisions, the Director may in addition or alternatively to other remedies:

1. Suspend the right of anyone to build or construct in the subdivision by issuance of a stop work order (SWO). Issuance of a SWO shall result in a suspension of all construction activity on the site, until the cause is resolved to the City's satisfaction. The SWO shall also suspend the right of the permittee, applicant, owner, contractor, developer or any related entity to build or construct any structure or public improvement on any portion of the site. The Director of Public Services and the Planning and Development Services Director, upon the issuance of a SWO, are authorized to suspend the issuance of building permits and occupancy permits for structures on any portion of the site, and to suspend all inspections and plan review

related to any work on the site, until such time as the cause is resolved to the City's satisfaction. SWO's shall specifically state the provisions of this Article being violated. Any person, who shall continue any work in or about the site after a SWO has been posted, except such work related to remediation of the violation, shall be subject to penalties specified in this UDC. The Director shall give the developer ten (10) days' written notice of an order under this subsection, with copies to all known sureties, as appropriate, who have outstanding obligations for any undeveloped portion of the subdivision, and shall record an affidavit of such notice with the Recorder of Deeds. If, within the ten (10) day period after notice is given, the Director is not convinced by compelling evidence that completion of the improvements is adequately assured and maintenance of streets assured as provided herein, the Director shall order construction suspended on the undeveloped portion of the subdivision. The order shall be served upon the developer, with a copy to the issuer/holder of the surety as appropriate, and a copy recorded with the Recorder of Deeds. Public notice of said order shall be conspicuously and prominently posted by the Director at the subdivision. The notice shall contain the following minimum language, which may be supplemented at the discretion of the Director:

> THIS SUBDIVISION, (name of subdivision), HAS BEEN DECLARED IN DEFAULT BY THE CITY OF CHESTERFIELD DIRECTOR OF PUBLIC SERVICES. NO DEVELOPMENT, CONSTRUCTION, BUILDING OR DEMOLITION IN ANY MANNER SHALL TAKE PLACE WITHIN THE LIMITS OF THIS SUBDIVISION UNTIL SUCH TIME AS THE CITY OF CHESTERFIELD DIRECTOR OF PUBLIC SERVICES REMOVES THIS PROHIBITION. ANY DEVELOPMENT, CONSTRUCTION, BUILDING OR DEMOLITION IN ANY MANNER WHILE THIS PROHIBITION IS IN EFFECT IS ILLEGAL AND SHALL BE ENFORCED PURSUANT TO ARTICLE 02 OF THE UNIFIED DEVELOPMENT CODE OF THE CITY OF CHESTERFIELD.

The Director of Public Services (the Director) and the Planning and Development Services Director shall not thereafter authorize construction to take place contrary to the Director's order. The suspension shall be rescinded in whole or in part only when the Director is convinced that completion of the improvements is adequately assured in all or an appropriate part of the subdivision and a guarantee of public street maintenance provided; or

2. Suspend the rights of the developer, or any related entity, to construct structures in any development platted after the effective date of such suspension throughout the City of Chesterfield. The Director shall give the developer ten (10) days' written notice of an order under this clause, with a copy to sureties known to the Director to have obligations outstanding on behalf of the developer or related entities and shall record an affidavit of such notice with the Recorder of Deeds. If, within the ten (10) day period after notice is given, the Director is not convinced by compelling evidence

that completion of the improvements is adequately assured and maintenance of streets assured as provided herein, the Director shall order construction suspended. The order shall be served upon the developer, with a copy to the surety as appropriate, and a copy recorded with the Recorder of Deeds. The Director of Public Services (the Director) and the Planning and Development Services Director shall not thereafter authorize construction to take place contrary to the Director's order. The suspension shall be rescinded only when the Director is convinced that completion of the improvements is adequately assured and public street maintenance is assured.

I. Suspension of Development Rights.

From and after the effective date of this Section if a developer, or any related entity, has a subdivision development improvement guarantee that is in default, as determined by the Director, including any escrow, fees, or bond under any prior version of this Section:

1. The Director shall be authorized, but not be limited, to thereafter pursue the remedies of subsection H. of this Section; and

2. The rights of the developer, or any related entity, to receive development approval, which approval shall include, but not be limited to, approval of any plat or deposit agreement for new or further development in the City, shall be suspended. The suspension shall be rescinded only when the Director is convinced that completion and maintenance of the improvements is adequately assured.

J. Additional Remedies.

If any party or related entity fails to comply with any obligation of this Section, the Director may recommend that the City Attorney take appropriate legal action and may also withhold any building or occupancy permits to this developer or related entities until such compliance is cured. The City shall also have the right to partially or wholly remedy a developer's deficiencies or breached obligations under this UDC by set-off of any funds or assets otherwise held by the City of the developer to the maximum extent permitted by law. Such set-off shall occur upon written notice of such event by the Director of Public Services or the Planning and Development Services Director to the developer after the developer has failed to timely cure the deficiencies. It shall be deemed a provision of every deposit agreement authorized under this Article that the developer shall pay the City's costs, including reasonable attorney's fees, of enforcing such agreement in the event that the developer is judicially determined to have violated any provision herein or in such agreement. The developer may appeal any decision taken pursuant to this Section by filing an appeal under the City's administrative review procedure.

K. Related Entities.

For purposes of this Section, "related entity" has the following meaning: a developer is a "related entity" of another person:

1. If either has a principal or controlling interest in the other, or

2. If any person, firm, corporation, association, partnership, or other entity with a controlling interest in one has a principal or controlling interest in the other. The identification of related entities shall be supported by documentation from the Secretary of State's Office, Jefferson City, Missouri.