

ORDINANCE NO. 0-03-25

AN ORDINANCE TO REPEAL AND REPLACE CHAPTER 8 OF THE CITY CODE, ENTITLED, "EROSION AND SEDIMENT CONTROL AND STORMWATER MANAGEMENT"

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in public meeting assembled, that Chapter 8 of the City Code, is repealed and replaced as follows:

~~Chapter 8 – EROSION AND SEDIMENT CONTROL AND STORMWATER MANAGEMENT~~

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**Chapter 8**  
**EROSION AND SEDIMENT CONTROL AND STORMWATER MANAGEMENT AND ILLICIT DISCHARGE DETECTION, CONNECTION, AND ELIMINATION**

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<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<del>Single strikethrough</del>	<i>Deleted from existing law by original bill.</i>
<u><del>Double underlining</del></u>	<i>Added by Amendment.</i>
<del>Double strikethrough</del>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

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## ARTICLE I. – GENERAL

### Sec. 8-1. Definitions.

For the purposes of this chapter the following words and phrases shall have the meaning respectively ascribed to them by this section:

*Administration.* The Maryland Department of the Environment (MDE).

*Adverse impact.* Any deleterious effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics, or usefulness for human or natural uses. Such deleterious effect is or may potentially be harmful or injurious to human health, welfare, safety, or property, to biological productivity, diversity or stability or which unreasonably interferes with the enjoyment of life or property, including outdoor recreation.

*Agricultural land management practices.* Those methods and procedures used in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources. Logging and timber removal operations are not to be considered a part of this definition.

*Approving agency.* The entity responsible for the review and approval of stormwater management plans and sediment and erosion control plans. For purposes of this ordinance, approving agencies may be: Army Corps of Engineers (ACE), Maryland Department of the Environment, Montgomery County, Environmental Protection Agency, or the City of Gaithersburg.

*Applicant.* Any person who executes the necessary forms to procure official approval of a project or a permit to carry out construction of a project.

*Aquifer.* A porous water-bearing geologic formation generally restricted to materials capable of yielding an appreciable supply of water.

*Architect.* An architect duly registered by the state to practice professional architecture, including landscape architecture, in accordance with the provisions of Title 3, Business Occupations and Professions Article, Annotated Code of Maryland.

*Best management practices (BMPs).* Any schedules of activities, prohibitions of practices, maintenance procedures, and other structural or nonstructural management techniques to prevent or reduce the pollution to waters of the state. BMPs may include, but are not limited to, treatment requirements, operating procedures, or practices to control site runoff, spillage, leaks, sludge or waste disposal, or drainage from material storage.

*Board of Appeals.* Established administrative body, as provided by Md. Code Ann., Land Use Section 4-301, as amended. Authorities and duties pursuant to MD. Code Ann., Land Use Section 4-305, as amended.

*Channel protection storage volume ( $C_{p_v}$ ).* The volume used to design structural management practices to control stream channel erosion. Methods for calculating the channel protection storage volume are specified in the Maryland Stormwater Design Manual.

*City.* The City of Gaithersburg, Maryland.

*City Attorney.* The City attorney or designee.

*City Manager.* The City manager or designee.

*Clear.* Any activity which removes the vegetative ground cover, shrubs, or trees, while leaving the root mat intact.

*Clearing.* The removal of trees and brush from the land, but shall not include the ordinary mowing of grass.

*Common Ownership Communities (COC).* A group of homes with their own government and binding rules. Common ownership communities in Maryland can be condominium associations, cooperative housing associations, or homeowner associations.

*County.* Montgomery County, Maryland.

*Design Details, County Storm Drain.* The latest design details published by Montgomery County Department of Transportation.

*Design Details, State Storm Drain.* The design details published in the latest edition of the "Book of Standards for Highway and Incidental Structures" published by Maryland Department of Transportation State Highway Administration.

*Design Details, Washington Suburban Sanitary Commission.* The design details published in the latest edition of the "Standard Details for Construction" published by Washington Suburban Sanitary Commission.

*Design Guidelines, County.* The latest standard details and stormwater management facility design specifications published by Montgomery County Department of Permitting Services Land Development Division.

Maryland Stormwater Design Manual. The 2000 Maryland Stormwater Maryland Stormwater Design Manual, and all subsequent revisions, that serves as the official guide for stormwater management principles, methods, and practices as required by the Stormwater Management Act of 2007, including 2009 Edition with Environmental Site Design.

Design Standards, County Drainage. The latest edition of the “Drainage Design Criteria” published by Montgomery County Department of Transportation.

Design Standards, State Drainage. The latest edition of the “State Highway Administration (SHA) Highway Drainage Manual (HDM)”.

Detention structure. A permanent structure for the temporary storage of runoff which is designed so as not to create a permanent pool of water.

Develop land. To change the runoff characteristics of a parcel of land in conjunction with residential, commercial, industrial, or institutional construction or alteration.

Developer. A person undertaking or for whose benefit any or all the activities covered by this article are commenced or carried on. General contractors or subcontractors, or both, without a proprietary interest in a project are not included within this definition.

Development. A project consisting of buildings, structures and other improvements, or components thereof, upon any lot, tract or parcel which is either subdivided or unsubdivided, including redevelopment projects.

District. The Montgomery Soil Conservation District.

Drainage area. The area contributing runoff to a single point measured in a horizontal plane, which is enclosed by a ridge line.

Easement. A grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, recorded in the land records of Montgomery County, and which must be included in the conveyance of land affected by such easement.

Environmental site design (ESD). Small-scale stormwater management practices, nonstructural techniques, and site planning designed to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources. Methods for designing ESD practices are specified in the Maryland Stormwater Maryland Stormwater Design Manual.

Environmental Standards Regulation. City regulation 01-01 titled “Environmental Standards for Development Regulation.”

*EPA Nine-Element Watershed Management Plan Guideline.* A set of components that are considered essential for creating effective watershed plans. The framework consists of nine key elements intended to ensure that the contributing causes and sources of nonpoint source pollution are identified that key stakeholders are involved in the planning process, and that restoration and protection strategies are identified that will address the water quality concerns. Reference the 2008 Handbook for Developing Watershed Plans to Restore and Protect Our Waters available at [www.epa.gov/nps/handbook-developing-watershed-plans-restore-and-protect-our-waters](http://www.epa.gov/nps/handbook-developing-watershed-plans-restore-and-protect-our-waters)

*Erosion.* The process by which sediment or soil particles are detached from the land surface and lifted and transported somewhere else.

*Erosion and sediment control plan.* A sediment and erosion control strategy or plan to minimize erosion and prevent off-site sedimentation by containing sediment on-site or by-passing sediment-laden runoff through a sediment control measure, prepared and approved in accordance with the specific requirements of this article, and designed in accordance with the currently adopted State of Maryland Standards and Specifications for Soil Erosion and Sediment Control.

*Excavation.* Any act, or the conditions resulting therefrom, by which soil, earth, sand, gravel, rock or similar material is cut into, dug, quarried, uncovered, removed, displaced or relocated, and shall include mining as defined in sections 15-801 through 15-834 of the Environment Article of the Annotated Code of Maryland, as amended.

*Exemption.* Those land development activities that are not subject to the control requirements contained in this chapter.

*Extended detention.* A stormwater design feature that provides gradual release of a volume of water in order to increase settling of pollutants and protect downstream channels from frequent storm events. Methods for designing extended detention BMPs are specified in the Maryland Stormwater Design Manual.

*Extreme flood volume ( $Q_f$ ).* The storage volume required to control those infrequent but large storm events in which overbank flows reach or exceed the boundaries of the 100-year floodplain.

*Fence, approved.* A permanent, semipermanent, or portable fence, not more than seventy-two (72) inches in height and not less than forty-two (42) inches in height, so constructed and so located as shall be approved in the permit application to surround sediment basins, steep excavations or ponding areas where it is necessary for the safety of members of the public.

*Fill.* Any act, or conditions resulting therefrom, by which soil, earth, sand, gravel, rock or any similar material is deposited, placed, pushed, pulled or transported.

*Flow attenuation.* Prolonging the flow time of runoff to reduce the peak discharge.

*Grade.* To cause disturbance of the earth. This shall include, but not be limited to, any excavating, stripping, filling, stockpiling of earth materials, grubbing, root mat or topsoil disturbance, or any combination of them.

*Grading.* Any act by which soil is cleared, stripped, stockpiled, excavated, scarified, filled, or any combinations thereof.

*Grading unit.* The maximum contiguous area allowed to be graded at a given time. For the purposes of this chapter, a grading unit is twenty (20) acres or less.

*Highly erodible soils.* Those soils with a slope greater than fifteen (15) percent or those soils with a soil erodibility factor, K, greater than 0.35 and with slopes greater than five (5) percent, or identified as such in the Montgomery County Soil Survey.

*Illicit connection.* Any unpermitted connection to a storm drain, conveyance, or other direct or indirect connection, whether on the surface or subsurface, which allows for an illicit discharge.

*Illicit discharge.* Any discharge to the City's engineered storm drain system that is not comprised entirely of stormwater, except allowable discharges pursuant by the Maryland Department of the Environment or the Environmental Protection Agency.

*Illicit Discharge, Detection, Connection, and Elimination Manual.* The 2025 IDDE Manual, and all subsequent revisions, that serves as the official guide for illicit discharge, detection, connection, and elimination principles, methods, practices, and standard operating procedures as governed by City of Gaithersburg Department of Public Works.

*Impervious area (or impervious surface).* A surface which has been covered with a layer of material or altered so that it is resistant to infiltration by water, including semi-pervious surfaces such as compacted clay, gravel in vehicular use areas, most conventionally surfaced streets, roofs, sidewalks, parking lots, other similar surfaces, and surfaces that may become resistant to infiltration without regular maintenance.

*Improved property.* Real property within the City that has 250 square feet or more of impervious area.

*Infiltration.* The passage or movement of water into the soil surface.

*Inspection agency.* The Administration or if delegated enforcement authority, the City.

*Land disturbing activity.* Any earth movement or land changes which may result in soil erosion or the movement of sediments into waters of the state or onto other lands.

including, but not limited to, tilling, clearing, grading, excavating, stripping, filling and related activities. Land disturbing activity also includes the covering of land surfaces with any structure or impermeable material, regardless of whether the land surface itself remains permeable or impermeable. The resurfacing of an existing impervious area shall not constitute a new land disturbing activity.

*Landscape architect.* A landscape architect duly registered by the state to practice professional landscape architecture, in accordance with the provisions of Title 9, Business Occupations and Professions Article, Annotated Code of Maryland.

*Maximum extent practicable (MEP).* Designing stormwater management systems so that all reasonable opportunities for using ESD planning techniques and treatment practices are exhausted and only where absolutely necessary, a structural BMP is implemented as determined by the City Manager.

*Municipal Separate Storm Sewer System (MS4).* A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned and operated by a state, City, town, or other public body. These systems are designed for collecting or conveying stormwater, are not a combined sewer, and are not part of a publicly owned treatment works (POTW) as defined in 40 CFR 122.2.

*National Pollutant Discharge Elimination System (NPDES) stormwater discharge permits.* General, group, and individual stormwater discharge permits which regulate facilities defined in federal NPDES regulations pursuant to the Clean Water Act.

*Nonpoint source.* A diffuse source of pollution that does not result from a pollutant discharge at a specific, single location (such as a single pipe) but generally results from human or human-induced activities which introduce pollutants into waters of the state in the City through land runoff, precipitation, atmospheric deposition, or percolation.

*Off-site stormwater management.* The design and construction of a facility necessary to control stormwater from more than one development or improved property.

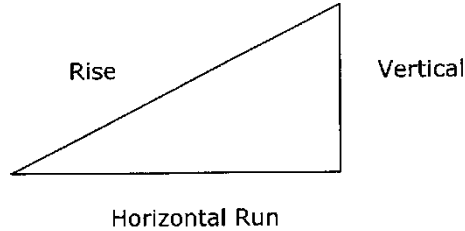
*On-site stormwater management.* The design and construction of systems necessary to control stormwater within an immediate development.

*Overbank flood protection volume ( $Q_p$ ).* The volume controlled by structural practices to prevent an increase in the frequency of out of bank flooding generated by development. Methods for calculating the overbank flood protection volume are specified in the Maryland Stormwater Design Manual.

*Owner.* The owner or owners of a site on which grading or other land disturbing activity is, will, or has been, done.

Percent slope. Defined as vertical rise in feet divided by horizontal run in the steepest one-hundred-foot segment multiplied by one hundred (100) percent.

**Percent Slope Illustration**



Permit, Building. A permit issued by the City Manager to erect, move, add to or structurally alter a building or other structure.

Permit, Site. A permit issued by the City Manager for grading, erosion and sediment control, forest conservation, onsite improvements, public improvements, stormwater management, or other land disturbing activities.

Permittee. Any person to whom an active permit has been issued by the City.

Person. Includes the federal government, the state, any county, municipal corporation, or other political subdivision of the state, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any of their affiliates, or any other entity.

Planning techniques. A combination of strategies employed early in project design to reduce the impact from development and to incorporate natural features into a stormwater management plan.

Point source. Any discernable confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which any pollutant is or may be discharged.

Pollutant. Any liquid, gaseous, solid, radioactive, hazardous, or other substance which, when discharged directly or indirectly into waters of the state in the City as a point source or nonpoint source, or when applied to or stored on natural or man-made land surfaces, subsurface, or connected in a manner other than as authorized by applicable permits or regulations, has potential to or does:

- (1) Interfere with state or county designated uses;
- (2) Obstruct or cause damage to waters of the state in the City;

- (3) Change in water color, odor, or usability as a drinking water source through causes not attributable to natural stream processes affecting surface water or subsurface processes affecting groundwater;
- (4) Add an unnatural surface film on the water;
- (5) Adversely change other chemical, biological, thermal, or physical conditions in any surface water or stream channel;
- (6) Degrade the quality of ground water; or
- (7) Harm human life, aquatic life, or terrestrial plant and wildlife.

Pollutant includes but is not limited to any dredged soil, solid waste, incinerator residue, sewage, garbage, wastewater, wastewater sludge, chemical waste, biological materials, radioactive materials, rock, sand, dust, industrial waste, medical waste, sediment, nutrient, toxic substance, pesticide, herbicide, trace metal, automotive fluid, petroleum-based substance, and oxygen demanding material.

Predevelopment state. Land that is undeveloped, often composed of woodland species or natural resources forbs and grasses.

Professional engineer. An engineer duly registered by the State of Maryland to practice professional engineering in accordance with the provisions of Title 14, Business Occupations and Professions Article, Annotated Code of Maryland.

Professional land surveyor. A land surveyor duly licensed by the Board for Professional Land Surveyors of the Department of Labor, Licensing and Regulation of the State of Maryland in accordance with the provisions of the Title 15, Business Occupations and Professions Article, Annotated Code of Maryland.

Stormwater Program Manual. Stormwater Program Manual for the City of Gaithersburg. Provides guidelines for stormwater fees, credits and appeals processes.

Recharge volume ( $Re_v$ ). That portion of the water quality volume used to maintain groundwater recharge rates at development, redevelopment, or retrofit sites. Methods for calculating the recharge volume are specified in the Maryland Stormwater Design Manual.

Redevelopment. Any construction, alteration, or improvement performed on sites where existing land use is commercial, industrial, institutional, or multifamily residential and the existing site impervious area exceeds 40 percent.

Responsible personnel. Any foreman, superintendent or project engineer who is in charge of on-site clearing and grading operations or sediment control associated with earth changes or disturbances and holds required certification necessary to qualify as responsible

Retention structure. A permanent structure that provides for the storage of runoff by means of a permanent pool of water.

*Retrofitting.* The implementation of ESD practices, the construction of a structural BMP in a previously developed area, or the modification of an existing structural BMP, in a previously developed area to improve stormwater management performance over current conditions.

*Rustle Equation. Revised Universal Soil Loss Equation for erosivity.* The equation is written as  $A = R \times K \times LS \times C \times P$  where: A = predicted soil loss R = rainfall and runoff K = soil erodibility LS = slope length and steepness C = cover management P = support practices.

*Sediment.* Soils or other surficial particles transported or deposited by the action of wind, water, ice, gravity or artificial means.

*Sediment control.* A system of structural, vegetative and land management measures designed to trap eroding soil particles on site. that minimize soil erosion and off-site sedimentation.

*Slope.* The inclined exposed surface of a fill, excavation, or natural terrain, or the steepness of that surface, expressed in terms of the ratio of horizontal distance to vertical rise, or in terms of percentage.

*Site:*

- (1) For "new development" any tract, lot, or parcel of land or combination of tracts, lots, or parcels of land, which are in one ownership, or are contiguous and in diverse ownership where development is to be performed as part of a unit, subdivision, or project.
- (2) For "redevelopment" land disturbance of an existing tract, lot, or parcel of land or combination of tracts, lots or parcels of land as shown on an approved site plan; or the original parcel. Final determination of the applicable area shall be made in accordance with section 8-22 of this chapter.

*Soil.* Any earth, sand, gravel, rock or other similar material.

*Stabilization.* The prevention of soil movement by any of various vegetative and/or structural means.

*Standards and Specifications.* The "2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control" or any subsequent revisions.

*Steep slope.* A slope in which the percent slope equals or exceeds fifteen (15) percent.

Storm drain system. Any facilities that collect, store, convey or treat stormwater, including but not limited to any roads, both public or private, with drainage systems or ditches, streets, gutters, flumes, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, stormwater management facilities, environmental site design practices, natural and human-made or altered drainage channels, reservoirs, and other drainage structures which are within the City and are not part of publicly owned treatment works.

Stormwater. Water that originates from a precipitation event.

Stormwater billing unit. 500 square feet of impervious area.

Stormwater fee rate. The rate per Stormwater billing unit to be used for calculating the stormwater program fee and set by the City council with the adoption of the budget or by separate resolution.

Stormwater management and/or erosion and sediment control concept plan. The first of three (3) required plan approvals that includes the information necessary to allow an initial evaluation of a proposed project in accordance with COMAR 26.17.01 and/or 26.17.02.

Stormwater management and/or erosion and sediment control final plan. The last of three (3) required plan approvals that includes the information necessary to allow all approvals and permits to be issued by the approving agency.

Stormwater management and/or erosion and sediment control preliminary plan. The second of three (3) required plan approvals that includes the information necessary to allow a detailed evaluation of a proposed project. This plan is the same as the Maryland Stormwater Design Manual's "site development plan."

Stormwater management plan. A set of drawings or other documents submitted by a person as a prerequisite to obtaining a stormwater management approval, which contain all of the information and specifications pertaining to stormwater management.

Stormwater management system. Natural areas, ESD practices, stormwater management measures, and any other structure through which stormwater flows, infiltrates, or discharges from a site.

Stormwater program fee. The fee assessed to a real property determined as the Stormwater fee rate multiplied by the number of Stormwater billing units assigned to said real property.

Stormwater program manual. A document describing the regulations and procedures for stormwater functions.

Stormwater standards. Any City technical guidance document that serves in addition to the Maryland Stormwater Design Manual and specifies design, inspection, maintenance, and other stormwater management requirements that are unique to the City of Gaithersburg and are not enumerated in the Maryland Stormwater Design Manual.

Stripping. Any activity which removes the vegetative surface cover including tree removal, clearing, grubbing and storage or removal of topsoil.

Take-over. A legally binding process for a property owner with a stormwater facility to transfer structural maintenance responsibilities to the City, which the City accepts.

Variance. The modification of minimum stormwater management or erosion and sediment control requirements for exceptional circumstances when strict adherence to the requirements would result in unnecessary hardship and not achieve the purposes of the article.

Waiver. The reduction of stormwater management requirements by the City for a specific project or development on a case-by-case review basis.

Watercourse. Any natural or man-made streams, rivers, creeks, ponds, lakes, ditches, channels, canals, conduits, culverts, drains, waterways, gullies, ravines, or washes, in which water flows in a definite direction or course, either continuously or intermittently; and including any area adjacent thereto which is subject to inundation by reason of overflow or flood waters and their associated wetlands.

Waters of the United States. Waters under jurisdiction of the United States and/or Maryland Department of the Environment.

Watershed. The total drainage area in which rainfall, snowmelt and stormwater drains to creeks, streams, and rivers, and ultimately to larger water bodies such as the Chesapeake Bay.

Watershed Management Plan. A City-approved plan for watershed restoration, developed in accordance with section 8-21(g) of the City Code.

Water quality volume ( $WQ_v$ ). The volume needed to capture and treat the runoff from ninety (90) percent of the average annual rainfall at a development site. Methods for calculating the water quality volume are specified in the Maryland Stormwater Design Manual.

Wetlands. Land that meets the ACE standards for hydric qualification, namely containing hydric soils, hydrophytic vegetation, and hydrologic indicators.

## **Sec. 8-2. Severability**

The provisions of this chapter and each article herein are hereby declared to be severable. If any portion, section, subsection, sentence, clause, or phrase of this chapter or any article herein, or the application thereof to any person, establishment or circumstances is for any reason held invalid or unconstitutional by any authority or court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the other

provisions or application of this chapter or each article herein, as such portion shall be deemed a separate, distinct, and independent provision and such order or holding shall not affect the validity of the remaining portions of this chapter or article, it being the intent of the City that this chapter and each article herein shall stand, notwithstanding the invalidity of any portion, section, subsection, sentence, clause, or phrase, hereof.

## **ARTICLE II. – SEDIMENT CONTROL**

### **Sec. 8-3. Purpose and Authority**

The purpose of this article is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with land disturbances. The goal is to minimize soil erosion and prevent off-site sedimentation by using erosion and sediment control practices designed in accordance with the Code of Maryland Regulations Title 4, Subtitle 1 for ESC, Subtitle 2 for SWM defined in Comar (COMAR) 26.17.01 and 26.17.02, the 2011 Maryland Standards and Specifications (standards and specifications) and the Stormwater Management Act of 2007 (Act) and those standards established by Section 402 of the Environmental Protection Agency (EPA) Clean Water Act (CWA). Implementing this article will help reduce the negative impacts of land development on water resources, maintain the chemical, physical, and biological integrity of streams, and minimize damage to public and private property.

The provisions of this article, pursuant to Title 4, Environment Article, Subtitle 1, Annotated Code of Maryland, are adopted under the authority of the City of Gaithersburg Code and shall apply to all land grading occurring within the City. The application of this article and the provisions expressed herein shall be the minimum erosion and sediment control requirements and shall not be deemed a limitation or repeal of any other powers granted by state or federal statute.

### **Sec. 8-4. Scope.**

No person shall clear or grade land without implementing approved erosion and sediment controls in accordance with the requirements of this article except as provided within section 8-5. The City, at its sole discretion, may require other land disturbing activities, regardless of the amount of land disturbance or grading, to follow the

requirements of this article when it determines that the impacts to the environment warrant special protection.

**Sec. 8-5. Exemptions from plan approval.**

Exemptions from plan approval may be granted for the following activities.

- (a) Agricultural land management practices and agricultural BMPs;
- (b) Clearing or grading activities that disturb less than five thousand (5,000) square feet of land area and disturb less than one hundred (100) cubic yards of earth;
- (c) Clearing or grading activities that are subject exclusively to state approval and enforcement under state law and regulations.

**Sec. 8-6. Variances.**

The City may only grant a variance from the requirements of the Standards and Specifications when strict adherence will result in exceptional hardship and not fulfill the intent of this article. The owner/developer shall submit a written request for a variance to the City. The request must state the specific variance sought and the reasons for the request. The City shall not grant a variance unless and until sufficient information is provided describing the unique circumstances of the site to justify the variance.

**Sec. 8-7. Erosion and Sediment Control Plans.**

- (a) Review and approval of Erosion and Sediment Control Plans.
  - (1) A person may not clear or grade land without first obtaining an erosion and sediment control plan approved by the City.
  - (2) Clearing and grading of sites greater than five (5) acres of land must be phased to minimize the total amount of disturbed land on the site at any one time.
  - (3) The applicant shall submit Erosion and sediment control plans and any supporting computations to the City for review and approval. The erosion and sediment control plans shall contain sufficient information, drawings, and notes to describe how soil erosion and off-site sedimentation will be minimized. The City shall review the plans to determine compliance with this article and the standards and specifications prior to approval. The plans shall serve as a basis for all subsequent grading and stabilizing, and clearing and grading contrary to the plan is prohibited.

- (4) The review and approval process shall be in accordance with the comprehensive and integrated plan approval process described in this chapter, the Standards and Specifications and the Maryland Stormwater Design Manual
- (5) At a minimum, a Concept Erosion and Sediment Control Plan must include the mapping of natural resources and sensitive areas including highly erodible soils and slopes greater than fifteen (15) percent, wetlands and wetland buffers and floodplain boundaries, and forest stands, as well as information required under Chapter 8 of the Code. These areas are to remain undisturbed, or an explanation must be included with either the concept or preliminary plan describing enhanced protection strategies for these areas during construction.
- (6) A Preliminary Sediment and Erosion Control Plan submittal must include all concept plan information and indicate how proposed erosion and sediment control practices will be integrated with proposed stormwater management practices. The latter is to be done through a narrative and an overlay plan showing both ESD and erosion and sediment control practices. An initial sequence of construction and proposed project phasing to achieve the grading unit restriction should be submitted with the site development plan.
- (7) An applicant shall submit a Final erosion and sediment control plan to the City for review and approval. The plan must include all of the information required by the concept and preliminary plans as well as any information in section 8-6(b) of this chapter not already submitted.
- (8) The City shall notify the applicant of approval or reasons for the disapproval or modification within forty-five (45) days after submission of the erosion and sediment control plan. If a decision is not made within forty-five (45) days, the City shall inform the applicant of the status of the review process and the anticipated completion date.
- (9) A final erosion and sediment control plan shall not be considered approved without the inclusion of the signature and date of signature of the City on the plan.
- (10) Approved plans remain valid for three (3) years from the date of approval unless extended or renewed by the City. Approved plans shall expire on the same date of the expiration of the associated final site plan or amendment to final site plan. A new approval

stamp, signature, and date from the Director of Public Works or designee will be required for any extended or renewed plan.

(b) The applicant is responsible for submitting an erosion and sediment control plan which meets the requirements of this article, the Maryland Stormwater Design Manual and the Standards and Specifications. The plan shall include sufficient information to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed grading on water resources and the effectiveness and acceptability of measures proposed to minimize soil erosion and off-site sedimentation. The applicant shall certify on the drawings that all clearing, grading, drainage, construction and development shall be conducted in strict accordance with the approved plan. Applicants shall submit the following information:

(1) A letter of transmittal;

(2) A vicinity sketch indicating north arrow, scale and other information necessary to easily locate the property;

(3) A plan at an appropriate scale approved by the City indicating at least:

a. Name, address and telephone number of:

1. The owner of the property where the grading is proposed;

2. The developer; and

3. The applicant.

b. Drainage area map(s) at a 1" = 200' minimum scale showing existing, interim, and proposed topography, proposed improvements, standard symbols for proposed sediment control features, and pertinent drainage information including provisions to protect downstream areas from erosion for a minimum of two hundred (200) feet downstream or to the next conveyance system;

c. The location of natural resources, wetlands, floodplains, highly erodible soils, slopes fifteen (15) percent and steeper, and any other sensitive areas;

- d. A general description of the predominant soil types on the site, as described by the appropriate soil survey information available through the local soil conservation district or the USDA Natural Resources Soil Conservation Service;
- e. Proposed stormwater management practices;
- f. Erosion and Sediment control plans including:
  - 1. The existing topography and improvements as well as proposed topography and improvements at a scale between 1" = 10' and 1" = 50' with two-foot contours or other approved contour interval. For projects with more than minor grading, interim contours may also be required;
  - 2. Scale, project and sheet title, and north arrow on each plan sheet;
  - 3. The limit of disturbance (LOD) including:
    - i. Limit of grading (grading units, if applicable); and
    - ii. Initial, interim, and final phases;
  - 4. The proposed grading and earth disturbance including:
    - i. Total disturbed area;
    - ii. Volume of cut and fill quantities; and
    - iii. Volume of borrow and spoil quantities;
  - 5. Storm drainage features, including:
    - i. Existing and proposed bridges, storm drains, culverts, outfalls, etc.;
    - ii. Velocities and peak quantities of flow rates at outfalls for the two-year and ten-year frequency storm events; and

- iii. Site conditions around points of all surface water discharge from the site;
  - 6. Public safety features as required by the approving agency during design review;
  - 7. Any other items as required by the approving agency.
- g. Erosion and Sediment control provisions to minimize on-site erosion and prevent off-site sedimentation including:
  - 1. Provisions to preserve topsoil and limit disturbance;
  - 2. Phased construction and implementation of grading unit(s) to minimize disturbances, both in extent and duration;
  - 3. Location and type of all proposed sediment control practices;
  - 4. Design details and data for all erosion and sediment control practices; and
  - 5. Specifications for temporary and permanent stabilization measures including, at a minimum:
    - i. The "Standard Stabilization Note" on the plan stating:

Following initial soil disturbance or re-disturbance, permanent or temporary stabilization shall be completed within:

      - a) Three (3) calendar days as to the surface of all perimeter dikes, swales, ditches, perimeter slopes, and all slopes greater than three horizontal to one vertical (3:1); and

- b) Seven (7) days as to all other disturbed or graded areas on the project site not under active grading.
  - ii. Details for areas requiring accelerated stabilization.
- h. Maintenance shall be performed as necessary to ensure that the stabilized areas continuously meet the appropriate requirements of the standards and specifications.
- i. Sequence of construction describing the relationship between the implementation and maintenance of controls, including permanent and temporary stabilization and the various stages or phases of earth disturbance and construction. Any changes or revisions to the sequence of construction must be approved by the City prior to proceeding with construction. The sequence of construction must, at a minimum, include the following:
  - 1. Request for a pre-construction meeting with the appropriate enforcement authority;
  - 2. Clearing and grubbing for those areas necessary for installation of perimeter controls;
  - 3. Construction and stabilization of perimeter controls;
  - 4. Remaining clearing and grubbing within installed perimeter controls;
  - 5. Road grading;
  - 6. Grading for the remainder of the site;
  - 7. Utility installation, connections to existing structures, and a determination as to whether storm drains will be used or blocked after construction;
  - 8. Installation of impervious areas;

9. Final grading, landscaping and stabilization;
  10. Installation of stormwater management measures;
  11. Approval of the appropriate enforcement authority prior to removal of sediment controls; and
  12. Removal of controls and stabilization of areas that are disturbed by removal of sediment controls.
  13. Submittal of stormwater management as-built plan to the City.
- j. A statement placed on the plan indicating that the developer shall request that the City approve work completed in accordance with the approved erosion and sediment control plan, the site or building permit, and this article:
1. Prior to the start of earth disturbance;
  2. Upon completion of installation of perimeter erosion and sediment controls, but before proceeding with any other earth disturbance, excavation or grading. Other building or grading inspection approvals may not be authorized until this initial approval by the inspection agency is made; and
  3. Prior to the removal of sediment control practices.
- k. Certification by the owner or developer that any clearing, grading, excavation, construction, or development, or all of these, will be done pursuant to this plan and that responsible personnel involved in the construction project will have a certification of training at an Administration approved training program for the control of sediment and erosion before beginning the project. Additionally, the owner or developer shall allow right of entry for periodic on-site evaluation by the City and/or the Administration.

l. Certification by a professional engineer, land surveyor, landscape architect, architect, or forester (for forest harvest operations only) registered in the state of Maryland that the plans have been designed in accordance with erosion and sediment control laws, regulations, and standards, if required by the City or the Administration; and

m. Any additional information or data deemed appropriate by the City.

(c) Modifications to erosion and sediment control plans. The City may revise approved plans as necessary. Modifications may be requested by a permittee, the City manager or the director of public works in accordance with COMAR 26.17.01.09(H), Plan Modifications.

The City may develop a list of minor modifications that may be approved as field revisions by the inspection agency. The Administration must approve any list of minor modifications prior to its implementation.

(d) Standard erosion and sediment control plan.

(1) The City may adopt a standard erosion and sediment control plan for activities with minor earth disturbances, such as single-family residences, small commercial and other similar building sites, minor maintenance grading, and minor utility construction.

(2) A standard erosion and sediment control plan must meet the requirements of this article and the standards and specifications.

(3) MDE shall review and approve the standard plan prior to its adoption.

### **Sec. 8-8. Permits.**

(a) Required. No person shall do any clearing, excavation or grading of land without first obtaining a site permit from the City and without implementing erosion and sediment controls in accordance with the requirements of this article or any standards, rules or regulations promulgated hereunder.

(b) Application.

(1) To obtain a permit required by this article, an applicant shall first file an application upon forms furnished by the City. The application shall be signed by the owner of the property, or an authorized

agent, where the work is to be performed. If the owner is a corporation, it shall be signed by the president or vice-president, attested by the secretary or assistant secretary and the corporate seal affixed. The application shall be accompanied by scale plans or drawings, including an erosion and sediment control plan, the permit fee and a bond or other security as required in Section 8-9. The plans accompanying the application shall be prepared and certified by a professional engineer, professional land surveyor, landscape architect, or other person qualified in the State of Maryland and approved by the City Manager.

- (2) Prior to the issuance of a site or building permit pursuant to this article, the provisions, if applicable, of Chapter 22, "trees and forest conservation," and any applicable City and State environmental standards regulation must be complied with.

**Sec. 8-9. Performance bond.**

- (a) The City Manager or designee, shall, prior to issuing a permit under this article, require from the developer a bond, letter of credit or other means of security acceptable to him/her and approved by the City attorney. The security required in this section shall be conditioned upon the faithful performance of the conditions specified in the permit, within the time specified by the City manager or designee, or within any extension thereof granted by the City manager or designee. The amount of the security shall not be less than the amount of the total estimated cost of all erosion, sediment control and stormwater management measures and safeguards for the adjoining property. The City manager or designee may grant a waiver of such bond, letter of credit or other security upon application, after receiving recommendations from the director of public works, where there is minimal impairment of existing surface drainage, minimal erosion hazard and minimal sedimentation hazard upon any adjacent land or watercourse and no hazard to human life or property. A corporate bond shall be maintained and renewed annually and shall be executed by a surety or guaranty company qualified to transact business in the state. A cash bond or letter of credit shall be deposited with the City reciting that the cash has been deposited in compliance with and subject to the provisions of this article. The bond, letter of credit or other security shall obligate the principal, his/her executors, administrators, successors and assigns, jointly and severally with the surety, and shall inure to the benefit of the City, its officers and employees and to any person aggrieved by the principal's failure to comply with the conditions thereof. The principal and the surety shall, under the bond, letter of credit or other security, continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses or liabilities which may be incurred or expended by the City to meet the minimum requirements of this article.

- (b) Whenever the City shall find that a default has occurred in the performance of any term or condition of the permit or bond, written notice thereof shall be given to the principal and to the surety of the bond. Such notices shall state the work to be done, the estimated cost thereof and the period of time deemed by the City to be reasonably necessary for the completion of such work.
- (c) If a cash bond, letter of credit or other security has been posted, notice of default as provided by the preceding paragraphs shall be given to the principal, and if compliance is not had within the time specified, the City shall proceed without delay and without further notice or proceedings whatsoever to forfeit and convert and use the cash deposited, or any portion of such deposit, or other security to cause the required work to be done, by contract or otherwise, in the discretion of the City manager.
- (d) In the event of any default in the performance of any term or condition of the permit or the bond, letter of credit or other security, the City, the surety or any person employed or engaged on his/her behalf shall have the right to go upon the site to complete the required work or make it safe. In the event the City undertakes the work or to make the site safe with the funds from the forfeited cash or corporate bond, such funds shall be used to pay the cost of contracting, including engineering and Administration, for restoration of the site to meet the requirements of the permit, bond or this article. If the cost of the work or making it safe exceeds the amount of the cash or corporate bond, letter of credit or other security, the permittee shall continue to be firmly bound under a continuing obligation for payment of all excess costs and expenses incurred by the City. The costs and expenses shall be a lien upon all property and all rights to property, real or personal, of any person liable to pay the same from and after the time such costs are due and payable. The costs shall be listed on the tax bill and shall be collected in the manner of ordinary taxes.
- (e) No person shall interfere with or obstruct the ingress or egress to or from any such site or premises by an authorized representative or agent of any surety, or of the City, engaged in completing the work required to be performed under the permit or in complying with the terms or conditions thereof.
- (f) A corporate bond or letter of credit shall remain in full force and effect, until completion of the work in accordance with Section 8-15 of this chapter. A cash bond or other security shall be returned upon depositor's request to the depositor or to his/her successors or assigns upon completion of the work approved by the City in accordance with section 8-15, except any portion thereof that may have been used. Subsequent to the completion of work, the City manager or designee is authorized to declare as

abandoned and forfeited, any cash bond posted pursuant to a requirement of this chapter, and relinquish proceeds thereof to the general treasury of the City, when after giving the depositor or permittee who posted the cash bond thirty (30) days' written notice first by registered mail, and if unclaimed by first-class mail, such depositor or permittee fails to request of the City the return of the cash bond. Upon failure to request of the City return of the cash bond, as provided herein, the depositor or permittee, its successors or assigns, heirs and assigns relinquish all claim to said cash bond.

**Sec. 8-10. Liability insurance.**

If, in the opinion of the City Manager or designee, the nature of the work is such that it may create a hazard to human health, life or safety or endanger adjoining property or property at a higher or lower elevation, or any street or street improvement, or any other public property, the City manager or designee, may, before issuing a permit under this article, require that the applicant file a certificate of insurance. The certificate of insurance shall show that the applicant is insured against claims for damages for personal injury and property damage in an amount determined by the City manager. Such damages may also include but are not limited to damages to the City by deposit or washing of material onto City streets or other public improvements; which may arise from or out of the performance of the work, whether such performance is by the applicant, its subcontractor or any person directly or indirectly employed by him/her. The amount of such insurance shall be prescribed by the City manager or designee, in accordance with the nature of the risks involved. Such insurance shall be written by a company licensed to do business in the state and approved by the City. Neither issuance of a permit nor compliance with the provisions hereto or any condition imposed by the City shall relieve any person from any responsibility for damage to persons or property otherwise imposed by law, nor impose any liability upon the City for damages to persons or property.

**Sec. 8-11. Inspections.**

The Administration, or the City, if delegated enforcement authority, is responsible for the inspection and enforcement of all land disturbing activities, including those sites requiring an erosion and a sediment control plan as specified by this article. This enforcement authority may be delegated to the City through a request by the City or required as a condition of the City's NPDES MS4 permit from the Administration.

(a) *Inspection frequency and reports.*

- (1) The owner/developer shall maintain a copy of the approved erosion and sediment control plan on site.
- 2) Every active site having a designed sediment control plan shall be inspected for compliance with the plan.

(3) A written report shall be prepared by the inspection agency after every inspection. The report shall describe:

- a. The date and location of the site inspection;
- b. Whether the approved plan has been properly implemented and maintained;
- c. Practice deficiencies or erosion and sediment control plan deficiencies;
- d. If a violation exists, the type of enforcement action taken; and
- e. If applicable, a description of any modifications to the plan.

(4) The City shall notify the on-site personnel or the owner/developer in writing when violations are observed, describing:

- a. The nature of the violation;
- b. The required corrective action; and
- c. The time period in which to have the violation corrected.

(b) *Right of entry.* It shall be a condition of every site or building permit that the City has the right to enter property periodically to inspect for compliance with the approved plan and this article.

(c) *Modifications to erosion and sediment control plans.* When inspection of the site indicates the approved erosion and sediment control plan needs modification, the modification shall be made in compliance with the erosion and sediment control criteria contained in the Standards and specifications and COMAR 26.17.01.09(H) as follows:

(1) The permittee shall submit requests for major modifications to approved erosion and sediment control plans, such as the addition or deletion of a sediment basin, to the plan approval agency to be processed appropriately. This processing includes modifications due to plan inadequacies at controlling erosion and sediment as revealed through inspection; and

(2) The inspector may approve minor modifications to approved erosion and sediment control plans in the field if documented on a field inspection report. The plan approval agency shall, in

conjunction with the inspection agency, develop a list of allowable field modifications for use by the inspector.

- (d) Complaints. The City shall accept and investigate complaints regarding erosion and sediment control concerns from any parties and at a minimum:
- (1) Conduct an initial investigation within 48 hours from receipt of the complaint;
  - (2) Notify the complainant of the initial investigation and findings within seven (7) days from receipt of the complaint; and
  - (3) Take appropriate action when violations are discovered during the course of the complaint investigation.

**Sec. 8-12. Enforcement procedures.**

- (a) When the City or an inspector determines that a violation of the approved erosion and sediment control plan has occurred, the inspector shall notify the on-site personnel or the permittee in writing of the violation, describe the required corrective action and the time period in which to have the violation corrected.
- (b) If the violation persists after the date specified for corrective action in the notice of violation, the City shall issue a stop work order on the site. The City shall determine the extent to which work is stopped, which may include all work on the site except that work necessary to correct the violation.
- (c) If reasonable efforts to correct the violation are not undertaken by the permittee, the City may refer the violation for legal action and may issue a penalty or fine as allowed.
- (d) The City may deny the issuance of any permits to an applicant when it determines that the applicant is not in compliance with the provisions of a building or site permit or approved erosion and sediment control plan.
- (e) Any step in the enforcement process may be taken at any time, depending upon the severity of the violation.
- (f) If a person is working without a permit, the City shall stop work on the site except activity necessary to provide erosion and sediment control.

- (g) Enforcement action may be taken against any person without a permit or any permittee, and/or any contractor, subcontractor, employee or agent of said person or permittee.

**Sec. 8-13. Protection of public and adjacent property during excavation.**

No person shall excavate on land sufficiently close to the property line to endanger any adjoining public street, sidewalk, alley or other public property without supporting and protecting such public street, sidewalk, alley or other public property from settling, cracking or other damage which might result from such excavation. If, in the opinion of the City manager or designee, the nature of the excavation is such as to create a hazard to health, life, safety or property unless adequately safeguarded, the applicant shall construct such walls, fences, guard rails or other structures, to safeguard the public street, sidewalk, alley or other public property and persons using such, as the City manager or designee may require.

**Sec. 8-14. Deposit of soil, rock, liquid, etc., on public or private property prohibited; removal of same from public property; costs of removal constitute lien on property.**

- (a) No person shall dump, move, place, grade, excavate, fill or by any action cause or permit any soil, earth, sand, gravel, rock, stone or other material or water or liquid to be deposited upon or to roll, flow or wash upon or over the premises of another in a manner to cause damage to such premises without the express consent of the owner of such premises so affected. Nor shall any person dump, move, place, grade, excavate, fill or by any action cause or permit any soil, earth, sand, gravel, rock, stone or other material or water or liquid to be deposited or to roll, flow or wash upon or over any public street, street improvement, road, sewer, storm drain, watercourse, right-of-way, parking lot or other public property in a manner to damage, obstruct or to interfere with the use of such public facility.
- (b) If any soil, earth, sand, gravel, rock, stone or other material or water or liquid is caused to be deposited upon or to roll, flow or wash upon any public property or right-of-way in violation of subsection (a) of this section, the person responsible shall be notified and shall cause the same to be removed from such public property or right-of-way immediately. In the event it is not so removed, the City shall cause such removal, and the cost of such removal by the City shall be paid to the City by the person who failed to so remove the material and shall be a debt due the City. The cost of such removal shall be a lien upon all property and all rights to property, real or personal, of any person liable to pay the same from and after the time such cost is due and payable. The cost of such removal shall be listed on the tax bill and shall be collected in the manner of such taxes.

**Sec. 8-15. Penalties.**

- (a) Any person who violates any provision of this article, at the discretion of the City is either:
- (1) Guilty of a misdemeanor, and upon conviction in a court of competent jurisdiction is subject to a fine not exceeding ten thousand dollars (\$10,000.00) or imprisonment not exceeding one (1) year or both for each violation with costs imposed in the discretion of the court. Each day upon which the violation occurs constitutes a separate offense; or
  - (2) Guilty of municipal infractions and enforceable pursuant to the provisions of section 1-9. The maximum penalty for each initial and repeat violation shall be established by the City council.
- (b) In addition, thereto, the City may institute injunctive, mandamus or any other appropriate action or proceedings at law or equity for enforcement of this article or to correct violations of this article, and any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions or mandamus or other appropriate form of remedy or relief.
- (c) Liability for and recovery of damages:
- (1) In addition to any other sanction under this article, a person who fails to install or to maintain erosion and sediment controls in accordance with an approved plan shall be liable to the City or the state in a civil action, for damages in an amount equal to double the cost of installing or maintaining the controls.
  - (2) Any governing authority that recovers damages in accordance with this subsection shall deposit them in a special fund, to be used solely for:
    - a. Correcting to the extent possible the failure to implement or maintain erosion and sediment controls; and
    - b. Administration of the sediment control program.
- (d) Any action instituted under subsections (b) and (c)(1) of this section shall include the recovery of all costs incident to said enforcement action, including attorneys, consultant and witness fees, discovery, and Administration costs. A court of competent jurisdiction shall have authority to award such fees and costs in any enforcement proceedings.

**Sec. 8-16. Exemptions for City, county or State agencies.**

The provisions of sections 8-9 and 8-10 and the municipal infractions provisions of section 8-15 shall not apply to City, county or State agencies within the State, or any combination thereof.

### **ARTICLE III. STORMWATER MANAGEMENT**

#### **Sec. 8-17. Purpose and authority.**

The purpose of this article is to protect, maintain and enhance the public health, safety and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated within increased stormwater runoff. The goal is to manage stormwater runoff by using environmental site design (ESD) to the maximum extent practicable (MEP) to maintain after development, as nearly as possible, the predevelopment runoff characteristics; to reduce stream channel erosion, pollution, siltation and sedimentation, and local flooding; and use appropriate structural best management practices (BMPs) only when necessary. This will restore, enhance, and maintain the chemical, physical, and biological integrity of streams, minimize damage to public and private property, and reduce the impacts of land development.

The provisions of this article, pursuant to the Environment Article, Title 4, Subtitle 2, Annotated Code of Maryland, are adopted under the authority of the Gaithersburg City Code and shall apply to all development occurring within the City limits. The application of this article and provisions expressed herein shall be the minimum stormwater management requirements and shall not be deemed a limitation on the City's power to impose more strict requirements for environmental preservation purposes or repeal or limitation of any other powers granted by state statute. This article applies to all new and redevelopment projects that have not received final approval for sediment and erosion control and stormwater management plans by May 4, 2010.

#### **Sec. 8-18. Incorporation by reference.**

For the purpose of this chapter, the following documents and their amendments, unless otherwise specified, are incorporated by reference in the Administration of this article, and in the event, documents are inconsistent and do not align, the most stringent requirement governs:

- (a) Design Details, County Storm Drain.
- (b) Design Details, State Storm Drain.
- (c) Design Details, Washington Suburban Sanitary Commission.
- (d) Design Guidelines, County.

- (e) Maryland Stormwater Design Manual, 2000 Edition with Environmental Site Design and any subsequent updates.
- (f) Design Standards, County Drainage.
- (g) Design Standards, Maryland State Highway Administration (SHA) Highway Drainage Manual (HDM).
- (h) City of Gaithersburg Environmental Standards For Development Regulation, as amended.

**Sec. 8-19. Scope.**

- (a) No person shall develop any land for residential, commercial, industrial or institutional uses without having provided for appropriate approved stormwater management measures that control or manage runoff from such developments, except as provided within this section. Stormwater management shall be provided when a site is developed or redeveloped.
- (b) The stormwater management measures must be designed consistent with the Maryland Stormwater Design Manual and constructed according to an approved plan for new development or the policies stated in Section 8-22 for redevelopment.
- (c) Stormwater management shall be provided in accordance with the above even if the development or redevelopment results in less impervious area than previously existed.

**Sec. 8-20. Exemptions.**

- (a) The following development activities are exempt from the provisions of this article and the requirements of providing stormwater management:
  - (1) Agricultural land management activities;
  - (2) Additions or modifications to existing single-family detached residential structures if they comply with [subsection] (3) of this section;
  - (3) Developments and/or redevelopments that do not have a land disturbance over five thousand (5,000) square feet of land area unless they are part of a phased or larger development;

- (4) Land development activities which the Administration determines will be regulated under specific state laws, which provide for managing stormwater runoff;
- (b) Stormwater management shall be required for the cumulative effects of previous exemptions provided:
  - (1) The cumulative effects of projects previously granted an extension as per Section 8-20A will be required to address SWM once the cumulative disturbed area exceeds 5,000 square feet.
  - (2) The improvements associated with the previous exemption(s) occurred within five (5) years of the new land disturbing activity.
  - (3) The same person responsible for the land disturbing activity was responsible for the previous exemptions.
  - (4) Any other reason considered by the City Manager or designee including but not limited to the similar purpose or character of the land disturbing activities, the commonality of the person responsible for the land disturbing activities and the cumulative impacts to the environment.

**Sec. 8-20A. Grandfathering.**

- (a) In this section, the following terms have the meanings indicated:
  - (1) Administrative waiver.
    - a. "Administrative waiver" means a decision by the City manager or designee, pursuant to this chapter to allow the construction of a development to be governed by the stormwater management ordinance in effect as of May 4, 2009 in the City.
    - b. "Administrative waiver" is distinct from a waiver granted pursuant to section 8-21 of this chapter.
  - (2) Approval.
    - a. "Approval" means a documented action by the City following a review to determine and acknowledge the sufficiency of submitted material to meet the requirements of a specified stage in a local development review process.

b. "Approval" does not mean an acknowledgement by the City that submitted material has been received for review.

(3) Final project approval.

a. "Final project approval" means approval of the final stormwater management plan and erosion and sediment control plan required to construct a project's stormwater management facilities.

b. "Final project approval" also includes securing bonding or financing for final development plans if either is required as a prerequisite for approval.

(4) "Preliminary project approval" means an approval as part of a preliminary subdivision, preliminary site plan or a schematic development plan that includes, at a minimum:

a. The number of planned dwelling units or lots;

b. The proposed project density;

c. The proposed size and location of all land uses for the project;

d. A plan that identifies:

1. The proposed drainage patterns;

2. The location of all points of discharge from the site; and

3. The type, location, and size of all stormwater management measures based on site-specific stormwater management requirement computations; and

e. Any other information required by the City including, but not limited to:

1. The proposed alignment, location, and construction type and standard for all roads, access ways, and areas of vehicular traffic;

2. A demonstration that the methods by which the development will be supplied with water and wastewater service are adequate; and
  3. The size, type, and general location of all proposed wastewater and water system infrastructure.
- (b) The City manager or designee may grant an administrative waiver to a development that received a preliminary project approval prior to May 4, 2010. Administrative waivers expire according to section 8-20A(c) of this chapter and may be extended according to section 8-20A(d) of this chapter.
- (c) Expiration of administrative waivers.
  - (1) Except as provided for in section 8-20A(d) of this chapter, an administrative waiver shall expire on:
    - a. May 4, 2013, if the development does not receive final project approval prior to that date; or
    - b. May 4, 2017, if the development receives final project approval prior to May 4, 2013.
  - (2) All construction authorized pursuant to an administrative waiver must be completed by May 4, 2017, or if the waiver is extended as provided in section 8-20A(d) of this chapter, by the expiration date of the waiver extension.
- (d) Extension of administrative waivers.
  - (1) Except as provided in section 8-20A(d)(2) of this chapter, an administrative waiver shall not be extended.
  - (2) An administrative waiver may only be extended if, by May 4, 2010, the development:
    - a. Has received a preliminary project approval; and
    - b. Was subject to a development rights and responsibilities agreement, settlement agreement, a tax increment financing approval, or an annexation agreement.
  - (3) Administrative waivers extended according to section 8-20A(d)(2) of this chapter shall expire when the development rights and

responsibilities agreement, the tax increment financing approval,  
or the annexation agreement expires.

**Sec. 8-21. Waivers.**

The City manager or designee may grant waivers to the strict compliance of this chapter based upon the following considerations:

- (a) Except as provided in sections 8-21(b) of this chapter, stormwater management quantitative control waivers shall be granted by the City manager or designee, only to those projects within areas where watershed management plans have been developed consistent with (f) of this section. Written requests for quantitative stormwater management waivers shall be submitted that contain sufficient descriptions, drawings, and any other information that is necessary to demonstrate that ESD has been implemented to the MEP. A separate written waiver request shall be required in accordance with the provisions of this section if there are subsequent additions, extensions, or modifications to a development receiving a waiver.
  
- (b) If watershed management plans consistent with (f) of this section have not been developed, then stormwater management quantitative control waivers may be granted to projects provided that it has been demonstrated that ESD has been implemented to the MEP:
  - (1) That are in-fill development located in a state-designated priority funding area where the economic feasibility of the project is tied to the planned density, and where implementation of stormwater management quantitative controls would result in a loss of the planned development density provided that:
    - a. Public water and sewer and stormwater conveyance exist;
    - b. The quantitative waiver is applied to the project for the impervious cover that previously existed on the site only;
    - c. ESD to the MEP is used to meet the full water quality treatment requirements for the entire development; and
    - d. ESD to the MEP is used to provide full quantity control for all new impervious surfaces; or
  - (2) When the approving agency determines that circumstances exist that prevent the reasonable implementation of quantity control practices.

- (c) Stormwater management qualitative control waivers apply only to:

  - (1) In-fill development projects where ESD has been implemented to the MEP and it has been demonstrated that other BMPs are not feasible;
  - (2) Redevelopment projects if the requirements of section 8-22 of this chapter are satisfied; or
  - (3) Sites where the City determines that circumstances exist that prevent the reasonable implementation of ESD to the MEP.
- (d) Waivers shall only be granted when it has been demonstrated that ESD has been implemented to the MEP and must:

  - (1) Be on a case-by-case basis;
  - (2) Consider the cumulative effects of the City's waiver policy; and
  - (3) Reasonably ensure the development will not adversely impact stream quality.
- (e) If the City has established an overall watershed management plan for a specific watershed, then the City may develop quantitative waiver and redevelopment provisions that differ from sections 8-21(b) and 8-22.
- (f) A watershed management plan developed for the purpose of implementing different stormwater management policies for waivers and redevelopment shall:

  - (1) Include detailed hydrologic and hydraulic analyses to determine hydrograph timing;
  - (2) Evaluate both quantity and quality management and opportunities for ESD implementation;
  - (3) Include cumulative impact assessment of current and proposed watershed development;
  - (4) Identify existing flooding and receiving stream channel conditions;
  - (5) Be conducted at a reasonable scale;

- (6) Specify types and location of on-site or off-site quantitative and qualitative stormwater management practices are to be implemented;
- (7) Be consistent with the general performance standards for stormwater management in Maryland found in the Maryland Stormwater Design Manual;
- (8) Be consistent with EPA's Nine-Element Watershed Management Plan Guidelines; and
- (9) Be approved by the Administration.
- (g) The City manager or designee may grant a waiver of quantitative stormwater management requirements for individual developments in areas where watershed management plans have been developed provided that a written request is submitted by the applicant containing descriptions, drawings, and any other information that is necessary to evaluate the proposed development. A separate written waiver request shall be required in accordance with the provisions of this section if there are subsequent additions, extensions, or modifications to a development receiving a waiver.
- (h) When an applicant obtains a waiver of the required on-site stormwater management from the City, the applicant's contribution can take one of the following forms, the choice of which shall be in the discretion of the City manager or designee:

  - (1) Monetary contribution. The monetary contribution shall be based on the fee schedule as established by the mayor and City council. The fee schedule shall be based on the volume of stormwater runoff requiring treatment after any and all other on-site treatment practices have been implemented and may be revised from time to time by resolution of the mayor and City council.

The monetary contribution shall not exceed the total cost of the on-site stormwater management.

Monetary contributions may be used by the City for land acquisition, including easements and rights-of-way, and the design, purchase, construction, expansion, repair, maintenance, stream restoration and inspection of stormwater management facilities, either existing or contained in an approved capital improvements program of the City or county. Any such contribution shall be credited by the City to the appropriate stormwater management capital improvement project.

- (2) Dedication and conveyance of land. Instead of making a monetary contribution, the applicant, upon receiving a waiver from the City, may enter into an agreement with the City for the granting of an easement or the conveyance or dedication of land by the applicant to be used for the construction of an off-site stormwater management facility. The agreement shall be entered into prior to the issuance of the building permit.
- (3) The applicant's contribution provided in (h)(1) and (2) above shall occur prior to the issuance of any site or building permit.

**Sec. 8-22. Redevelopment.**

- (a) Stormwater management plans are required by the City for all redevelopment, unless otherwise specified by watershed management plans developed according to section 8-21(g) of this article. Stormwater management measures must be consistent with the Maryland Stormwater Design Manual.
- (b) All redevelopment designs shall:
  - (1) Reduce impervious area within the limit of disturbance (LOD) by at least fifty (50) percent according to the Maryland Stormwater Design Manual; or
  - (2) Implement ESD to the MEP to provide water quality treatment for at least fifty (50) percent of the existing impervious area within the LOD; or
  - (3) Use a combination of section 8-22(b)(1) and (2) of this article for at least fifty (50) percent of the existing site impervious area.
- (c) Alternative stormwater management measures may be used to meet the requirements in section 8-22(b) of this article only if the owner/developer satisfactorily demonstrates to the City that impervious area reduction has been maximized and ESD has been implemented to the MEP. Alternatives may be utilized in lieu of on-site stormwater management measures and may include any measures or actions the City deems appropriate to meet the intent of this chapter and the regulations. Alternative stormwater management measures include, but are not limited to:
  - (1) An on-site structural BMP;

- (2) An off-site structural BMP to provide water quality treatment for an area equal to or greater than fifty (50) percent of the existing impervious area; or
- (3) A combination of impervious area reduction, ESD implementation, and an on-site or off-site structural BMP for an area equal to or greater than fifty (50) percent of the existing site impervious area within the LOD.
- (d) Redevelopment sites where such constraints as existing utilities, soils, site topography, depth to groundwater, and existing storm drain elevations restrict the effective implementation of onsite ESD or other stormwater practices required by section 8-22(b) and (c) of this chapter may utilize, and are not limited to the following practices. The owner/developer shall satisfactorily demonstrate to the City that the requirements of section 8-22(b) and (c) of this chapter cannot be met. This shall be established at the time of stormwater management preliminary plan of the proposed development:

  - (1) A combination of ESD and an on-site or off-site structural BMP;
  - (2) Retrofitting including existing BMP upgrades, filtering practices, and off-site ESD implementation;
  - (3) Participation in a stream restoration;
  - (4) Pollution trading with another entity;
  - (5) Design criteria based on watershed management plans developed according to section 8-21(g) of this chapter;
  - (6) Fees or contributions paid in accordance with section 8-21(i)(1); or
  - (7) A partial waiver of the treatment requirements if ESD is not practicable.
- (e) The determination of what alternatives will be available may be made by the City at the appropriate point in the development review process. The City shall consider the prioritization of alternatives in section 8-22(d) of this chapter after it has been determined that it is not practicable to meet the regulatory requirements using ESD to the MEP. In deciding what alternatives may be required, the City may consider factors including, but not limited to:

  - (1) Whether the project is in an area targeted for development incentives such as priority funding area, a designated transit-

oriented development area, or a designated base realignment and closure revitalization and incentive zone;

(2) Whether the project is necessary to accommodate growth consistent with comprehensive plans; or

(3) Whether bonding and financing have already been secured based on an approved development plan.

(f) Neither the cost of providing on-site stormwater management nor the loss of development density resulting from on-site stormwater management is sufficient justification for a request to be governed under this section.

(g) Use of alternatives will not relieve the applicant of the responsibility of providing safe conveyance of runoff and protection of other properties or City waterways as required under this chapter.

(h) Stormwater management shall be addressed according to the new development requirements in the Maryland Stormwater Design Manual for any net increase in impervious area.

### **Sec. 8-23. Variances.**

The City manager or designee may grant a written variance from any requirement of section 8-24, (Stormwater management criteria), of this article if there are unique circumstances applicable to the site such that strict adherence to the provisions of this article will result in unnecessary hardship and not fulfill the intent of the article. A written request for a variance, stating the specific variance sought, explaining the reasons for the request, and providing any evidence necessary to justify the request, shall be provided to the City. A variance will not be granted by the City unless and until sufficient justification, as deemed appropriate by the City manager or designee, is provided.

### **Sec. 8-24. - Stormwater management criteria.**

(a) *Minimum control requirements.*

(1) The minimum control requirements established in this section and the Maryland Stormwater Design Manual are as follows:

a. The City shall require that the planning techniques, nonstructural practices, and design methods specified in the Maryland Stormwater Design Manual be used to implement ESD to the MEP. The use of ESD planning techniques and

treatment practices must be exhausted before any structural BMP is implemented. Stormwater management plans for development projects subject to this article shall be designed using ESD sizing criteria, recharge volume, water quality volume, and channel protection storage volume criteria according to the Maryland Stormwater Design Manual. The MEP standard is met when channel stability is maintained, predevelopment groundwater recharge is replicated, nonpoint source pollution is minimized, and structural stormwater management practices are used only if determined to be absolutely necessary.

b. Control of the two-year frequency storm event, ten-year frequency storm event, or both is required according to the Maryland Stormwater Design Manual and all subsequent revisions if the City determines that additional stormwater management is necessary because historical flooding problems exist, and downstream floodplain development and conveyance system design cannot be controlled.

c. The City may require more than the minimum control requirements specified in this chapter if hydrologic or topographic conditions warrant or if flooding, stream channel erosion, or water quality problems exist downstream from a proposed project.

(2) Alternate minimum control requirements may be adopted subject to Administration approval. Any alternate control measure shall demonstrate implementation of ESD to the MEP and consider flood management, accelerated stream erosion, water quality, and sedimentation. Comprehensive watershed studies may also be required.

(3) Stormwater management and development plans where applicable, shall be consistent with adopted and approved watershed management plans or flood management plans as approved by the Department in accordance with the Flood control and Watershed Management Act of 1976.

(b) Stormwater management measures. The ESD planning techniques and structural stormwater management practices established in this chapter and the Maryland Stormwater Design Manual shall be used, either alone or in a combination, in developing a stormwater management plan. A developer shall demonstrate that ESD has been implemented to the MEP before the use of a structural BMP

is considered in developing the stormwater management plan.

(1) ESD techniques and practices.

a. The following planning techniques shall be applied according to the Maryland Stormwater Design Manual to satisfy the applicable minimum control requirements established in section 8-24(a) of this chapter:

1. Preserving and protecting natural resources;
2. Conserving natural drainage patterns;
3. Minimizing impervious area;
4. Reducing runoff volume;
5. Using ESD practices to maintain one hundred (100) percent of the annual predevelopment groundwater recharge volume;
6. Using green roofs, permeable pavement, reinforced turf, and other alternative surfaces;
7. Limiting soil disturbance, mass grading, and compaction;
8. Clustering development; and
9. Any practices approved by the Administration.

b. The following ESD treatment practices shall be designed according to the Maryland Stormwater Design Manual to satisfy the applicable minimum control requirements established in section 8-24(a) of this chapter:

1. Disconnection of rooftop runoff;
2. Disconnection of non-rooftop runoff;

3. Sheet flow to conservation areas;
4. Rainwater harvesting;
5. Submerged gravel wetlands;
6. Landscape infiltration;
7. Infiltration berms;
8. Dry wells;
9. Micro-bioretentation;
10. Rain gardens;
11. Swales;
12. Enhanced filters; and
13. Any practices approved by the Administration.

c. The use of ESD planning techniques and treatment practices specified in this section shall not conflict with existing state law or local ordinances, regulations, or policies.

(2) Structural stormwater management measures.

a. The following structural stormwater management practices shall be designed according to the Maryland Stormwater Design Manual to satisfy the applicable minimum control requirements established in section 8-24(a) of this section.

1. Stormwater management ponds;
2. Stormwater management wetlands;
3. Stormwater management infiltration;



b. Neither the cost of providing on-site stormwater management nor the loss of development density resulting from on-site stormwater management is sufficient justification for a request to be governed under this section.

c. Use of alternatives will not relieve the applicant of the responsibility to provide safe conveyance of runoff and protection of other properties or City waterways as required under this chapter.

(5) For the purposes of pursuing alternates to the minimum control requirements or design criteria, the owner/developer shall submit to the City an analysis of the impacts of stormwater flows downstream in the watershed. The analysis shall include hydrologic and hydraulic calculations necessary to determine the impact of hydrograph timing modifications of the proposed development upon a dam, highway, structure, or natural point of restricted streamflow. The point of investigation is to be established with the concurrence of the City, downstream of the first downstream tributary whose drainage area equals or exceeds the contributing area to the project or stormwater management facility.

(c) *Specific design criteria.* The basic design criteria, methodologies, and construction specifications, subject to the approval of the City and the Administration, shall be those of the Maryland Stormwater Design Manual or the County Design Guidelines.

**Sec. 8-25. Stormwater management plans.**

(a) *Review and approval of stormwater management plans.*

(1) For any proposed development, the owner/developer shall submit phased stormwater management plans and the City stormwater checklist, or an application for a waiver to the City for review and approval, unless otherwise exempted. At a minimum, plans shall be submitted for the stormwater management concept, stormwater management preliminary, and stormwater management final plan/construction phases of project design. Each plan submittal shall include the minimum content specified in section 8-25(b) of

this chapter and meet the requirements of the Maryland Stormwater Design Manual and section 8-24 of this chapter.

- (2) The City shall perform a comprehensive review of the stormwater management plans for each phase of site design. Coordinated comments will be provided for each plan phase that reflect input from all appropriate agencies including, but not limited to the District, the Planning and Code Administration, and the Department of Public Works and its Environmental Services Division. All comments from the City and other appropriate agencies shall be addressed and approval received at each phase of project design before subsequent submissions.
  - (3) Notification of approval or reasons for the disapproval or modification shall be given to the applicant within thirty (30) days; subsequent submissions shall be reviewed within fourteen (14) days, after submission of the completed stormwater plan along with acknowledgement in the checklist of applicability, or incompleteness. If a decision is not made within thirty (30) days, the applicant shall be informed of the status of the review process and the anticipated completion date. Each phase of the stormwater management plan shall not be considered approved without the inclusion of the signature and date of signature of the City on the plan.
  - (4) If a stormwater management plan involves direction of some or all runoff off from the site to an adjacent property, it is the responsibility of the developer to notify and obtain from adjacent property owners any easements or necessary property interests concerning flowage of water. Approval of a stormwater management plan does not create or affect any right to direct runoff onto adjacent property without that property owner's permission.
- (b) *Contents of the stormwater management plan.* The developer is responsible for submitting a phased stormwater management plan, which meets the design requirements provided by this chapter. The plan shall be accompanied by a report that includes sufficient information to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures proposed for managing stormwater runoff. The developer or builder shall certify on the drawings that all clearing, grading, drainage, construction and development shall be conducted in strict accordance with the plan.
- (1) *Stormwater management concept plan.* The owner/developer shall submit a stormwater management concept plan that provides

sufficient information for an initial assessment of the proposed project and whether stormwater management can be provided according to section 8-24(b) of this article and the Maryland Stormwater Design Manual. Plans submitted for concept approval shall include, but are not limited to:

- a. A brief narrative description of the overall development project;
- b. Descriptions of all water courses, impoundments, and wetlands, floodplains and forests, on or adjacent to the site or into which stormwater directly flows;
- c. A natural resources inventory/forest stand delineation (NRI/FSD) map at a scale specified by the City showing site location, existing natural and man-made features, perennial and intermittent streams, floodplains, twenty-five-foot floodplain building restriction line (BRL), required flood protection elevation, wetlands, wetland buffers, stream buffers, other sensitive resources, forest and specimen trees, topography, natural drainage patterns, drainage areas, existing storm drain system, slopes, soil type, soil erodibility, and soil permeability (per Montgomery County Soil Survey), above ground and underground utilities, and other information required by the approving agency;
- d. The anticipated location of proposed impervious areas, buildings, roadways, parking, sidewalks, utilities, and other site improvements;
- e. Anticipated development details and site data including site areas, existing impervious area, proposed disturbed area, proposed new impervious area, and proposed total site impervious area;
- f. The anticipated location of the proposed limits of disturbance and clearing in relation to the topography, erodible soils, steep slopes, forest conservation areas, stream valley buffers, and other areas to be protected during construction;
- g. Preliminary estimates of stormwater management requirements, the selection and location of ESD practices to be used, stormwater volume computations for ESD practices, and the delineated drainage areas and the locations of all points of discharge from the site;

h. A narrative that supports the concept design and describes how ESD will be implemented to the MEP;

i. A vicinity map;

j. Geotechnical investigations including soil maps, borings, site specific recommendations, infiltration rates and any additional information necessary for the concept stormwater management design; and

k. Any other information required by the Maryland Stormwater Design Manual or the City.

(1A) A Stormwater Management Sketch plan. The applicant shall submit in place of a concept plan above, for DPW review and approval, a stormwater management sketch plan in conjunction with a development sketch plan submission, in accordance with Section 24-12.4 (D) of the City Code, in the MXD Zone only, that provides sufficient information for an initial assessment of the proposed project and the strategies to be used to fulfill stormwater management requirements under Chapter 8 and reflected in subsequent concept and preliminary stormwater management plans submitted with a schematic development plan. Stormwater Management Sketch Plan shall include, but not be limited to:

a. A brief narrative description of the overall development project and what strategies/facilities are envisioned to fulfill the requirements of Chapter 8 and incorporate in the project environmental site design to the maximum extent practicable.

b. A description of all water courses, impoundments, and wetlands on or adjacent to the site or into which stormwater directly flows.

c. An approved natural resources inventory/forest stand delineation including topography at two-foot intervals and natural drainage patterns,

d. A graphic locational and narrative description of existing drainage areas, existing storm drain systems, known locations of all existing points of discharge from the site, and any existing stormwater management facilities with their functions.

e. A statement acknowledging that subsequent plan submissions will provide sufficient information demonstrating that stormwater management can be provided according to Chapter 8 of the City Code.

f. Any other information required by the City.

(2) Stormwater management preliminary plan. Following concept plan approval or sketch plan approval by the City, the owner/developer shall submit a stormwater management preliminary plan that reflects comments received during the previous review phase. Plans submitted for preliminary stormwater management approval shall be of sufficient detail to allow site development to be reviewed and include but not be limited to:

a. All information provided during the concept plan review phase and comments received by review agencies;

b. Final site layout, exact impervious area locations and acreages, proposed topography, proposed easements, delineated drainage areas at all points of discharge from the site, stormwater volume computations for ESD practices and quantity control structures, the location, type, and size of ESD practices used to the MEP and all nonstructural, alternative surfaces, and micro-scale practices used, proposed hydrology analysis for runoff rates, storage volumes, and discharge velocities, stormwater details and specifications, discharge calculations demonstrating stable conveyance of runoff from the site, and maintenance access for each ESD and structural practice;

c. When applicable, a Dam Hazard Classification Statement from the Administration.

d. An erosion and sediment control plan that depicts the limits of disturbance and clearing, the locations and sizes of preservation areas (for protection of forest and sensitive areas as well as to support future infiltration and recharge areas), stabilization strategies, and the phasing and construction sequence for each stage of development that is necessary to limit earth disturbances and impacts to natural resources;

e. An overlay plan depicting the types and locations of ESD and erosion and sediment controls;

- f. Drainage area maps depicting predevelopment and post development runoff flow path segmentation and land use;
  - g. Hydrologic computations in accordance with the Maryland Stormwater Design Manual of the applicable ESD and unified sizing criteria according to the Maryland Stormwater Design Manual for all points of discharge from the site;
  - h. Hydraulic and structural computations for all ESD practices and structural stormwater management practices to be used;
  - i. Existing and proposed topography and proposed drainage areas, including areas necessary to determine downstream analysis for proposed stormwater management facilities;
  - j. Analysis of stable conveyance to downstream discharge points in accordance with County Drainage Design Standards;
  - k. Representative cross sections and details including the existing and proposed structure elevations and water surface elevations;
  - l. A narrative that supports the site development design, describes how ESD will be used to meet the minimum control requirements, and justifies any proposed structural stormwater management practices;
  - m. Letter(s) of acknowledgement from off-site property owner(s) for any required off-site covenants, easements, and/or rights-of-way;
  - n. Public safety features including safety benches, as specified in the Maryland Stormwater Design Manual or the stormwater standards, for new stormwater management ponds or those retrofitted after July 1, 2020; and
  - o. Any other information required by the Maryland Stormwater Design Manual or approving agency.
- (3) Stormwater management final plan/construction drawings. Following preliminary stormwater management plan approval by the City, the owner/developer shall submit final erosion and sediment control and final stormwater management plans/construction drawings that reflect the comments received

during the previous review phase. Plans submitted for final approval shall be of sufficient detail to allow all approvals and permits to be issued according to the following:

- a. All information required during the preliminary stormwater management plan review phase, updated to reflect any changes to the site plan, and comments received by review agencies;
- b. Final erosion and sediment control plans shall be submitted according to COMAR 26.17.01 and Article I of this chapter;
- c. A narrative that supports the final stormwater management design; and
- d. Any other information required by the Maryland Stormwater Design Manual or approving agency;
- e. A vicinity map;
- f. Existing and proposed topography and proposed drainage areas, including areas necessary to determine downstream analysis for proposed stormwater management facilities;
- g. Any proposed improvements including location of buildings or other structures, impervious surfaces, storm drainage facilities, preservation areas, and all grading;
- h. The location of existing and proposed structures and utilities;
- i. Any covenants, easements and rights-of-way onsite or offsite;
- j. The delineation, if applicable, of the floodplain, twenty-five-foot floodplain BRL, flood protection elevation, wetlands, wetland buffers, perennial and intermittent streams, and stream valley buffers;
- k. Structural and construction details including representative cross sections for all components of the proposed drainage system or systems, and stormwater management facilities;
- l. All necessary construction specifications;

- m. Data for total site area, disturbed area, new impervious area, and total impervious area;
- n. A table showing the ESD, and unified sizing criteria volumes required in the Maryland Stormwater Design Manual;
- o. A planting plan showing stormwater management facility planting layout and details;
- p. A table of materials to be used for stormwater management facility planting;
- q. All soil boring logs and locations;
- r. A construction inspection checklist;
- s. A post construction inspection and maintenance schedule;
- t. A stormwater management infrastructure overview plan that includes the locations of inlets, storm drains, outfalls, manholes, headwalls, easements, all ESD and structural BMPs (identified by type and a unique identification (ID) number), drainage area per structure, and a full list of structure IDs and types;
- u. Certification by the owner/developer that all stormwater management construction and maintenance will be done according to this plan;
- v. Professional certification, seal and signature;
- w. An as-built certification signature block to be executed after project completion;
- x. A blank space for the City of Gaithersburg approval block;
- y. Scanned and digital versions of the final plan, in accordance with the City's digital submittal guidelines;
- z. Any other information required by the Stormwater Standards or approving agency.
- aa. Any other information required by the City

(c) Preparation of the stormwater management plan.

- (1) The design of stormwater management plans shall be prepared by any individual whose qualifications are acceptable to the City. The City may require that the design be prepared by either a professional engineer, professional land surveyor, or landscape architect licensed in the state, as necessary to protect the public or the environment.
- (2) If a stormwater BMP requires either a dam safety permit from the Administration or small pond approval from the District, the City shall require that the design be prepared by a professional engineer licensed in the state.
- (d) Approved plans remain valid for three (3) years from the date of approval unless extended or renewed by the City. Approved plans shall expire on the same date of the expiration of the associated final site plan or amendment to final site plan. A new approval stamp, signature, and date from the Director of Public Works or designee will be required for any extended or renewed plan.

**Sec. 8-26. Permits.**

- (a) Required. No person shall develop any land without first obtaining a permit from the City and without providing for appropriate stormwater management measures, except as provided by this article, and any standards, rules and regulations promulgated hereunder.
- (b) Application.
  - (1) To obtain a permit required by this article, an applicant shall first file an application. The application shall be accompanied by scale plans or drawings, including a grading, erosion and sediment control and final stormwater management plan, the permit fee and a bond or other security as required in section 8-27. The plans accompanying the application shall be prepared and certified by a professional engineer, professional land surveyor, landscape architect, or other person qualified in the State of Maryland and approved by the City manager or designee.
  - (2) Prior to the issuance of a permit pursuant to this article, a copy of the application and plan shall be referred to the Administration or district for review and approval if a stormwater BMP requires either a dam safety permit or small pond approval for the proposed stormwater management measures.

(3) A site development or building permit may not be issued for any parcel or lot unless final erosion and sediment control and final stormwater management plans have been approved or waived by the City as meeting all the requirements of the Maryland Stormwater Design Manual and this article. Where appropriate, a building permit may not be issued without:

a. Easements and/or covenants for the stormwater management facility and easements to provide adequate access for inspection and maintenance from a public right-of-way that are recorded in the land records of Montgomery County;

b. Stormwater management maintenance agreement that has been executed and recorded in the land records of Montgomery County;

c. Performance bond as described in section 8-27;

d. Permission and/or easements from adjacent property owners as necessary; and

e. A scanned or digital version of the final erosion and sediment control and final stormwater management plans.

(c) *Expiration and renewal.* Every permit issued under this article shall expire at the end of the period of time set out in the permit. The permittee shall fully perform and complete all of the work required to be done within the time specified in the permit. If the permittee shall be unable to complete the work within the specified time, he/she shall, within thirty (30) days prior to expiration of the permit, present in writing to the City manager or designee a request for an extension of time, setting forth therein the reasons for the required extension. If, in the discretion of the City manager or designee such an extension is warranted, additional time may be granted for an additional fee. Where the City manager or designee determines the extension of time will require a substantial modification of the stormwater management plan, any extension of a permit shall be subject to approval of a revised stormwater management plan by the permitting authority. Stormwater management plan approvals issued prior to May 4, 2010, shall not be extended beyond May 4, 2012, unless the plan has received an administrative waiver in section 8-20A.

(d) *Permit fee.* A nonrefundable permit fee will be collected at each phase of stormwater management plan submittal and an application for waiver submittal. The permit fee will provide for the cost of plan review,

Administration and management of the permitting process, and inspection of all projects subject to this article. A permit fee schedule shall be established by resolution of the mayor and City council.

(e) *Suspension and revocation.* Any site development or building permit issued by the City manager or designee may be suspended or revoked after written notice is given to the permittee for any of the following reasons:

(1) Any violation(s) of the conditions of the stormwater management plan approval.

(2) Changes in site runoff characteristics upon which an approval or waiver was granted.

(3) Construction is not in accordance with the approved plans.

(4) Noncompliance with correction notice(s) or stop work order(s) issued for the construction of the stormwater management system.

(5) An immediate danger exists in a downstream area in the opinion of the City.

(6) Any material misrepresentation in the application for permit or the undertaking of work pursuant to the permit.

(f) *Conditions.* In granting any permit pursuant to this article, the City manager or designee may attach such conditions thereto as may be reasonably necessary to prevent danger to persons or to public or private property or any sewer, storm drain or watercourse, or to prevent the operation from being conducted in a manner likely to create a nuisance. Such conditions may include, but are not limited to, the erection or installation of walls, fences, drains, dams and structures, plantings and vegetation, erosion and sediment control and stormwater management measures or devices, furnishing necessary easements and a specified method of performing work. No permit shall be issued, and no clearing, grading, grubbing or excavation undertaken except for testing purposes until final erosion and sediment control and final stormwater management plan are approved by the City. The stormwater management plan shall be a condition of the permit. No person shall violate any such conditions so imposed. In granting an approval for any phase of site development, the City may impose such conditions that may be deemed necessary to ensure compliance with the provisions of this article and the preservation of public health and safety.

**Sec. 8-27. Performance bond.**

- (a) The City shall require from the developer a surety or cash bond, irrevocable letter of credit, or other means of security acceptable to the City manager or designee and approved by the City attorney, prior to the issuance of any building and/or site development permit for construction of a development requiring a stormwater management system, and safeguards for the adjoining property. The amount of the security shall not be less than the total estimated construction cost of the stormwater management system. The bond required in this section shall include provisions relative to forfeiture for failure to complete work specified in the approved stormwater management plan, compliance with all the provisions of this article and other applicable laws and regulations, and any time limitations. The City manager or designee may grant a waiver of such bond, letter of credit or other security upon application, after receiving recommendations from the director of public works, where there is minimal impairment of existing surface drainage, minimal erosion hazard and minimal sedimentation hazard upon any adjacent land or watercourse and no hazard to human life or property. A corporate bond shall be maintained and renewed annually and shall be executed by a surety or guaranty company qualified to transact business in the state. A cash bond or letter of credit shall be deposited with the City reciting that the cash has been deposited in compliance with and subject to the provisions of this article. The bond, letter or credit or other security shall obligate the principal, his executors, administrators, successors and assigns, jointly and severally with the surety, and shall inure to the benefit of the City, its officers and employees and to any person aggrieved by the principal's failure to comply with the conditions thereof. The principal and the surety shall, under the bond, letter of credit or other security, continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses or liabilities which may be incurred or expended by the City to meet the minimum requirements of this article.
- (b) When the City shall find that a default has occurred in the performance of any term or condition of the permit or bond, written notice thereof shall be given to the principal and to the surety of the bond. Such notices shall state the work to be done, the estimated cost thereof and the period of time deemed by the City to reasonably necessary for the completion of such work.
- (c) If a cash bond, letter of credit or other security has been posted, notice of default as provided by the preceding paragraphs shall be given to the principal, and if compliance is not had within the time specified, the City shall proceed without delay and without further notice or proceedings whatsoever to forfeit and convert and use the cash deposited, or any portion of such deposit, or other security to cause the required work to be

done, by contract or otherwise, in the discretion of the City manager or designee.

- (d) In the event of any default in the performance of any term or condition of the permit or the bond, letter of credit or other security, the City, the surety or any person employed or engaged on his behalf shall have the right to go upon the site to complete the required work or make it safe. In the event the City undertakes the work or to make the site safe with the funds from the forfeited cash or corporate bond, such funds shall be used to pay the cost of contracting, including engineering and Administration, for restoration of the site to meet the requirements of the permit, bond or this article. If the cost of the work or making it safe exceeds the amount of the cash or corporate bond, letter of credit or other security, the permittee shall continue to be firmly bound under a continuing obligation for payment of all excess costs and expenses incurred by the City. The costs and expenses shall be a lien upon all property and all rights to property, real or personal, of any person liable to pay the same from and after the time such costs are due and payable. The costs shall be listed on the tax bill and shall be collected in the manner of ordinary taxes.
- (e) No person shall interfere with or obstruct the ingress or egress to or from any such site or premises by an authorized representative or agent of any surety, or of the City, engaged in completing the work required to be performed under the permit or in complying with the terms or conditions thereof.
- (f) The bond shall not be fully released without a final inspection of completed work and approval by the City, submission of "as-built" drawings and certification of completion by the City that the stormwater management system complies with the approved plan and the provisions of this article. Partial bond release shall be at the discretion of the City manager or designee.
- (g) Subsequent to the completion of work, the City manager or designee is authorized to declare as abandoned and forfeited, any cash bond posted pursuant to a requirement of this chapter, and relinquish proceeds thereof to the general treasury of the City, when after giving the depositor or permittee who posted the cash bond thirty (30) days written notice first by registered mail, and if unclaimed by first-class mail, such depositor or permittee fails to request of the City the return of the cash bond. Upon failure to request of the City return of the cash bond, as provided herein, the depositor or permittee, its successors, heirs and assigns relinquish all claim to said cash bond.

**Sec. 8-28. Liability insurance.**

If, in the opinion of the City manager or designee the nature of the work is such that it may create a hazard to human health, life or safety or endanger adjoining property or property at a higher or lower elevation, or any street or street improvement, or any other public property, the City manager or designee may, before issuing a permit under this article, require that the applicant file a certificate of insurance. The certificate of insurance shall show that the applicant is insured against claims for damages for personal injury and property damage in an amount not less than two million dollars (\$2,000,000.00). Such damages may also include but are not limited to include damages to the City by deposit or washing of material onto City streets or other public improvements, which may arise from or out of the performance of the work, whether such performance is by the applicant, subcontractor or any person directly or indirectly employed by the applicant. The amount of such insurance shall be prescribed by the City manager or designee, in accordance with the nature of the risks involved. Such insurance shall be written by a company licensed to do business in the state and approved by the City. Neither issuance of a permit nor compliance with the provisions hereto or any condition imposed by the City shall relieve any person from any responsibility for damage to persons or property otherwise imposed by law, nor impose any liability upon the City for damages to persons or property.

**Sec. 8-29. Inspections.**

(a) Inspection schedule and reports.

- (1) Prior to approval of a stormwater management plan, the developer will submit to the City a proposed inspection and construction control schedule.
- (2) The developer shall notify the City at least forty-eight (48) hours before commencing any work in conjunction with the approved stormwater management plan and upon completion of the project when a final inspection will be conducted.
- (3) Written inspection reports shall be made of the periodic inspections necessary during construction of stormwater management systems to ensure compliance with the approved plans. As a condition to any approval of said plan, the City has the right of entry on the property to inspect compliance with this article.
- (4) Regular inspections shall be made and documented for each ESD planning technique and practice at the stages of construction specified in the Maryland Stormwater Design Manual by the City, its authorized representative, or certified by a professional engineer licensed in the State of Maryland. At a minimum, all ESD and other nonstructural practices shall be inspected according to the inspection schedule shown on the approved Stormwater Management Final Plan and upon completion of final grading, the

establishment of permanent stabilization, and before issuance of use and occupancy approval.

(5) Written inspection reports shall include:

a. The date, time, location of the inspection and weather conditions;

b. Whether construction was in compliance with the approved stormwater management plan;

c. Any variations from the approved construction specifications; and

d. Any violations that exist.

(6) The owner/developer and on-site personnel shall be notified in writing when violations are observed. Written notification shall describe the nature of the violation and the required corrective action. The developer will promptly correct any portion of the work that does not comply, after written notice from the City. The notice shall set forth the nature of corrections required and the time within which corrections will be made.

(7) No work shall proceed until the City inspects and approves the work previously completed and furnishes the developer with the results of the inspection reports as soon as possible after completion of each required inspection.

(b) *Inspection requirements during construction.* After commencing initial site operations, regular inspections as specified in the Maryland Stormwater Design Manual shall be made, at a minimum, at the following specified stages of construction. In the event, a more stringent subsequent inspection form is created, the more stringent form governs:

(1) For ponds subject to USDA-NRCS-MD CODE. 378 regarding Dam safety:

a. Upon completion of excavation to sub-foundation and when required, installation of structural supports or reinforcement for structures, including but not limited to:

1. Core trenches for structural embankments;

- 2. Inlet and outlet structures, anti-seep collars or diaphragms, and watertight connectors on pipes; and
  - 3. Trenches for enclosed storm drainage facilities.
  - b. During placement of structural fill, concrete, and installation of piping and catch basins;
  - c. During backfill of foundations and trenches;
  - d. During embankment construction; and
  - e. Upon completion of final grading and establishment of permanent stabilization.
- (2) Wetlands—At the stages specified for pond construction in 8-29(b)(1) of this section, during and after wetland reservoir area planting, and during the second growing season to verify a vegetation survival rate of at least fifty (50) percent.
- (3) For infiltration trenches:
- a. During excavation to subgrade;
  - b. During placement and backfill of underdrain systems and observation wells;
  - c. During placement of geotextiles and all filter media;
  - d. During construction of appurtenant conveyance systems such as diversion structures, pre-filters and filters, inlets, outlets, and flow distribution structures; and
  - e. Upon completion of final grading and establishment of permanent stabilization.
- (4) For infiltration basins—At the stages specified for pond construction in 8-29(b)(1) of this section and during placement and backfill of underdrain systems.
- (5) For filtering systems:
- a. During excavation to subgrade;
  - b. During placement and backfill of underdrain systems;

- c. During placement of geotextiles and all filter media;
- d. During construction of appurtenant conveyance systems such as flow diversion structures, pre-filters and filters, inlets, outlets, orifices, and flow distribution structures; and
- e. Upon completion of final grading and establishment of permanent stabilization.

(6) For open channel systems:

- a. During excavation to subgrade;
- b. During placement and backfill of underdrain systems for dry swales;
- c. During installation of diaphragms, check dams, or weirs; and
- d. Upon completion of final grading and establishment of permanent stabilization.

(7) For ESD and nonstructural practices, inspection shall be completed in accordance with the Maryland Stormwater Design Manual.

(8) Construction phase photograph.

(c) *Final inspection reports.* A final inspection shall be conducted by the City upon completion of the stormwater management system to determine if the completed work is constructed in accordance with the approved plan and this article. If, after an inspection by the City, the condition of a stormwater management facility presents an immediate danger to the public health or safety, because of an unsafe condition or improper maintenance, the City shall take action as may be necessary to protect the public and make the facility safe. Any cost incurred by the City shall be assessed against the owner(s), as provided in section 8-30(b)(3).

(d) The City may, for enforcement purposes, use any one or a combination of the following actions:

- (1) A notice of violation and or a municipal infraction citation shall be issued specifying the need for a violation to be corrected if stormwater management plan noncompliance is identified;
- (2) A stop-work order shall be issued for the site by the City if a violation persists;

- (3) Bonds, securities, and/or project permits may be withheld, or the case may be referred for legal action if reasonable efforts to correct the violation have not been undertaken.
- (e) Any step in the enforcement process may be taken at any time, depending on the severity of the violation.
- (f) Once construction is complete, an as-built drawing certification request shall be submitted by either a professional engineer or professional land surveyor licensed in the state to ensure that ESD planning techniques, treatment practices, and structural stormwater management practices and conveyance systems comply with the specifications contained in the approved plans. At a minimum, an as-built certification request shall include the following:

  - (1) A set of redlined, certified as-built drawings comparing the approved stormwater management plan with what was constructed including but not limited to dimensions, elevations, locations, materials, and plantings. The as-built drawings shall be signed and sealed by a professional engineer or professional land surveyor registered in the State of Maryland. When approved plans include landscaping specific to stormwater management said plan shall also be signed and sealed by a professional landscape architect registered in the State of Maryland. Certified as-built drawings shall be submitted as electronic files, in accordance with the City's digital submittal guidelines.
  - (2) Copies of material certifications for materials used in the construction of any stormwater facility verifying fundamental properties of the materials.
  - (3) Receipts, delivery tickets, or other record confirmation that certified materials were used at the project location.
  - (4) A list of plant species or label from plant material installed on sites.
  - (5) A recommended maintenance plan and schedule for the system.
  - (6) Third party inspection reports of construction activity
  - (7) As-built stormwater report comparing as-built conditions to design computations signed and sealed by a professional engineer or professional land surveyor registered in the State of Maryland.

- (g) The City shall submit notice of construction to the Administration on a form supplied by the Administration for each structural stormwater management practice within forty-five (45) days of construction completion. The type, number, total drainage area, and total impervious area treated by all ESD techniques and practices shall be reported to the Administration on a site-by-site basis. The City shall submit a notice of construction completion for any BMPs approved by either the District or MDE to the respective agency.
- (h) If the stormwater management system is to be owned and/or maintained by the City, ownership and responsibility for maintenance shall not convey until formal acceptance of the work by the City manager.
- (i) All inspections mentioned in section 8-29 must be performed by a City certified inspector in erosion and sediment control. A City certified inspector must meet the training requirements by successfully completing the responsible personnel certification in erosion and sediment control pursuant to Environmental Article Section 4-104 from the State of Maryland.

**Sec. 8-30. - Maintenance.**

(a) Maintenance inspection.

- (1) The City shall ensure that preventive maintenance is performed by inspecting all ESD treatment systems and structural stormwater management practices. These inspections shall occur during the first year of operation and at least once every three (3) years thereafter. In addition, a maintenance agreement shall be executed between the City and owner for privately owned ESD treatment systems and structural stormwater management practices as described in 8-30(b) of this section.
- (2) Inspection reports shall be maintained by the City for all ESD treatment systems and structural stormwater management practices.
- (3) Triennial Inspection reports for ESD treatment systems and structural stormwater management practices shall include the following:
  - a. The date of inspection, time of day and weather conditions;
  - b. Name of inspector;

c. An assessment of the quality of the stormwater management system related to ESD treatment practice efficiency and the control of runoff to the MEP;

d. The condition of:

1. Vegetation or filter media;

2. Fences or other safety devices;

3. Spillways, valves, or other control structures;

4. Embankments, slopes, and safety benches;

5. Reservoir or treatment areas;

6. Inlet and outlet channels or structures;

7. Underground drainage;

8. Sediment and debris accumulation in storage and forebay areas;

9. Any nonstructural practices to the extent practicable; and

10. Any other item that could affect the proper function of the stormwater management system.

e. Description of needed maintenance;

f. Photographs of the inspection; and

g. Any additional information or forms as required by the Stormwater Standards or the City.

(4) If deficiencies are discovered from an inspection of an ESD treatment system or a structural stormwater management practice, the property owner shall submit, along with the inspection report, a timetable for the completion of corrective actions. If said corrective actions will take more than thirty (30) days or involve structural repairs, the City must approve the timetable and proposed work. The City shall then conduct an inspection to ensure completion of the repairs.

- (5) If repairs are not undertaken or are not found to be done properly, then enforcement procedures following [subsection] 8-30(b)(3) of this section shall be followed by City.
- (6) If, after an inspection by the property owner, or agent, the condition of a stormwater management facility presents an immediate danger to the public health or safety, the City must be immediately notified. The City may take such action as may be necessary to protect the public and make the facility safe. Any cost incurred by the City shall be assessed against the owner(s), as provided in section 8-30(b)(3).

(b) Maintenance agreement.

- (1) Prior to the issuance of any site development permit or building permit for which stormwater management is required, the City shall require the applicant or owner to execute an inspection and maintenance agreement binding on the owner and all subsequent owners of land served by the private ESD treatment system or stormwater management practice. Such an agreement shall, at a minimum:

  - a. Require the owner to inspect all ESD treatment systems and structural stormwater management practices and maintain such reports to be made available to the City upon request in accordance with section 8-30(a) above;
  - b. Require the owner, or any other person or agent in control of such stormwater management system, to (i) maintain the facility in such condition that it functions as designed, and (ii) promptly repair and restore all aboveground and underground stormwater management system components, including landscaping. Such maintenance, repair, and restoration must be in accordance with approved plans and applicable laws, standards, guidelines, policies, and regulations;
  - c. Provide for access to the facility at reasonable times for inspections by the City or its authorized representative and for regular or special assessments against property owners upon the City's providing maintenance upon the failure of property owners to maintain the facility, to ensure that the facility is maintained in proper working condition to meet design standards and any provisions established;

- d. Prohibit the removal, replacement, or alteration of the ESD treatment system or structural stormwater management practice without prior written approval from the approving agency; and
  - e. Contain any other provisions as may be required by the approving agency, Stormwater Standards, or the City.
- (2) The agreement shall be recorded by the applicant and/or owner in the land records of the county at the owner's expense.
  - (3) The agreement shall also provide that, if after notice by the City to correct a violation requiring maintenance work and satisfactory corrections are not made by the owner(s) within a required period of time, the City may perform all necessary work to place the facility in proper working condition. The owner(s) of the facility shall be assessed the cost of the work and any penalties and there shall be a lien on the property, which may be placed on the tax bill and collected as ordinary taxes by the City. The agreement may also provide for the posting of a bond or other security to cover maintenance work should the owners fail to provide the required maintenance.
  - (4) No City permits related to any property with an existing stormwater management system that does not have a maintenance agreement may be granted until the owner executes a maintenance agreement in accordance with section 8-30(b).

(c) *Maintenance responsibility.*

- (1) The owner of the property, unless otherwise specified by recorded easements and covenants, on which work has been done pursuant to this article for private stormwater management facilities, or any other person or agent in control of such property, shall maintain in good condition and promptly repair and restore all ESD practices, grade surfaces, wells, drains, dams and structures, vegetation, sediment and erosion control measures, and other protective devices in perpetuity. Such repairs or restorations, and maintenance shall be in accordance with previously approved or newly submitted plans.
- (2) A maintenance schedule shall be developed for the life of any structural stormwater management practice or system of ESD practices and shall state the maintenance to be completed, the time period for completion and the responsible party who shall perform

the maintenance. This maintenance schedule shall be printed on the approved stormwater management plan.

(d) *Common Ownership Community Take-over Program.*

(1) If the owner of a stormwater management facility grants a stormwater management easement to the City for structural maintenance take-over, the owner must apply for eligibility by submitting required documentation to the City, before the City in its discretion considers entering into an inspection and maintenance agreement with the owner that makes the City responsible for structural maintenance of the facility. The City may, at its own discretion, assume such responsibilities and enter into an agreement for take-over, but shall not be required to do so. After the owner and the City have agreed that the City will be responsible for structural maintenance of the facility, the owner must record in the County land records the easement and any other agreement executed in conjunction with the easement that binds any later owner of the land. The owner must deliver a certified copy of each recorded document to the Department of Public Works, Stormwater Program. Additional guidance, eligibility requirements, and process workflow can be found in the City's Stormwater Fee Manual.

(e) *Additional responsibilities for private stormwater management systems not governed by an approved site and/or stormwater management plan.*

(1) The owner of such a private stormwater management system must:

- a. At the owner's expense, obtain approval from the City prior to the removal of a stormwater management system.
- b. Inspect and maintain in good condition and promptly repair and restore any storm drain system to remain after the stormwater management system is abandoned.

**Sec. 8-31. Penalties.**

(a) Violations of this article are declared to be municipal infractions and enforceable pursuant to the provisions of section 1-9 of this Code. The penalty for each initial and repeat violation shall be established by the City council.

(b) In addition, thereto, the City may institute injunctive, mandamus or any other appropriate action or proceedings at law or equity for enforcement of this article or to correct violations of this article, and any court of competent jurisdiction shall have the right to issue restraining orders.

temporary or permanent injunctions or mandamus or other appropriate form of remedy or relief.

- (c) In addition to any other sanction under this article any person who fails to install or maintain stormwater management controls and facilities in accordance with a plan approved by the City shall be liable to the City or state in a civil action for damages. Any action instituted under subsections (b) and (c) of this section shall include the recovery of all costs incident to such enforcement action, including attorneys, consultants and witness fees, discovery and Administration costs and any court of competent jurisdiction shall have the authority to award such fees and costs in any enforcement related proceeding.

#### **ARTICLE IV. SUPPLEMENTARY ZONE REGULATIONS**

##### **Sec. 8-32. Purpose and authority.**

The purpose and intent of this article is to ensure the health, safety, and general welfare of citizens, and to protect and enhance the water quality of watercourses and water bodies in a manner pursuant to and consistent with the Federal Clean Water Act (33 U.S.C. § 1251 et seq.) by reducing pollutants in stormwater discharges to the maximum extent practicable and by prohibiting non-stormwater discharges to the storm drain system.

The federal National Pollutant Discharge Elimination System (NPDES) and state water quality standards require that the City establish a regulation governing discharges into protected waters of the state. To accomplish the purposes of this article, the City must work in conjunction with municipalities, counties, agencies of the state, and the federal government to establish interagency agreements and to take other steps necessary to accomplish the purposes of this article.

**Sec. 8-33. - Applicability.**

This article shall apply to all water entering the storm drain system generated on any developed or undeveloped lands lying within the City of Gaithersburg including any amendments or revisions thereto.

**Sec. 8-34. Limitation on coverage.**

- (a) This article authorizes the following non-stormwater discharges when properly managed: landscape irrigation, diverted stream flows, rising groundwater, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, foundation drains, air conditioning condensate, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering runoff, flows from riparian habitats and wetlands, residual street wash water, and discharges or flows from firefighting activities.
- (b) Stormwater discharges that are mixed with non-stormwater or stormwater associated with industrial activity are not authorized to discharge under this general permit unless such discharges are:
  - (1) In compliance with a separate NPDES permit; or
  - (2) Identified by and in compliance with the general permit.
- (c) Stormwater discharges from municipal separate storm sewer systems located on state or federal property are not covered under this chapter.

**Sec. 8-35. Responsibility for Administration.**

The City manager or designee shall administer, implement, and enforce the provisions of this article. Any powers granted or duties imposed upon the City manager or designee may be delegated in writing by the City manager or designee to persons or entities acting in the beneficial interest of or employed by the City.

**Sec. 8-36. - Prohibition of water pollution.**

- (a) A person must not discharge, or cause to flow from a storage system or other container, any pollutant into waters of the US in the City except in concentration or quantities explicitly authorized by an approved National Pollutant Discharge Elimination System discharge permit or by a plan for compliance, or that are consistent with the utilization of approved best management practices.
- (b) A person must not connect any apparatus discharging any pollutant, in any quantity, to any part of the waters of the state in the City except as explicitly authorized by an approved National Pollutant Discharge

Elimination System discharge permit or by a plan for compliance, or as results from approved best management practices.

- (c) A person must not improperly store, handle, or apply any pollutant in a manner that will cause its exposure to rainfall or runoff and discharge as point source or nonpoint source pollution into waters of the state in the City except in concentrations or quantities authorized by an approved National Pollutant Discharge Elimination System discharge permit or by a plan for compliance, or as results from approved best management practices.
- (d) A person must not throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking areas, street, alley, sidewalk, component of the storm drain system, or water of the U.S., any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. Wastes deposited in streets in proper waste receptacles for the purposes of collection, as identified in Chapter 18 of the City Code, are exempted from this prohibition.

**Sec. 8-37. Enforcement.**

- (a) The City may enter a site at any time during normal business hours, and at other reasonable times, to inspect, investigate, or monitor activities subject to this article. If the person in charge of the site does not consent to any entry by the City, the City manager or designee may obtain an administrative search warrant from a court with jurisdiction by showing that reasonable administrative standards for inspecting the site have been met.
- (b) If a discharge is observed which represents an immediate hazard to public health or safety, or aquatic life, the City manager or designee may enter any property or structure, except a dwelling, as necessary to prevent or stop the hazard.
- (c) A person must not hinder, prevent, or unreasonably refuse to permit any inspection, investigation, or monitoring under this article.
- (d) Upon finding a violation of this article, the City may issue a notice of violation, stop work order, or corrective order to any person causing or permitting the violation.
- (e) Any person who causes or permits a violation of this article to occur must submit a plan for compliance when required by the City. A plan for

compliance and any amendment to it must be approved by the City manager or designee.

- (f) A person who has submitted a plan for compliance that has been approved by the City manager or designee is not in violation of this article as long as the person acts in accordance with the plan for compliance.
- (g) The City may issue a stop work order to any person who violated this article when performing activities authorized by any permit issued by the City.

**Sec. 8-38. Penalties.**

- (a) Violations of this article are declared to be municipal infractions, enforceable as provided in Chapter 1; Section 1-9 of the Gaithersburg City Code. The maximum penalty for each initial and repeat violation shall be established by the City council.
- (b) In addition, thereto, the City may institute injunctive, mandamus or any other appropriate action or proceedings at law or equity for enforcement of this article or to correct violations of this article, and any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions or mandamus or other appropriate form of remedy or relief.
- (c) Liability for expense caused by a violation:
  - (1) In an immediate danger to the public health or safety, the City must notify the responsible party by the most expeditious means, and the responsible party must remove the illicit discharge or pollutant by the time stated in the notice. If it is not so removed, the City may remove, mitigate, and clean up any illicit discharge or pollutant. The cost of that removal, mitigation, and clean-up must be paid to the City by the person who did not remove, mitigate, and clean up the illicit discharge and pollutant, and is a debt due to the City. The cost of removal, mitigation, and clean-up is a lien upon all real property. The cost of removal, mitigation, and clean-up may be listed on the tax bill and may be collected in the manner of ordinary taxes. This section does not restrict the City from proceeding directly with alternative enforcement procedures.
  - (2) If, after an inspection by the City, the City finds that a pollutant discharge poses an immediate hazard to the public health or safety or to the waters of the state in the City, the City may take action necessary to abate the pollutant discharge, protect the public, and mitigate any damage that the pollutant discharge has caused to the

affected waters. Any cost incurred in carrying out actions under this subsection must be paid by the owner as outlined in subsection (1).

(3) The City may establish fees and charges necessary to administer and enforce this article.

(d) Any action instituted under subsections (b) and (c) of this section shall include the recovery of all costs incident to said enforcement action, including attorneys, consultant and witness fees, discovery, and Administration costs. A court of competent jurisdiction shall have authority to award such fees and costs in any enforcement proceedings.

**Sec. 8-39. Appeals.**

Any person aggrieved by the order or decision of any official charged with the enforcement of Articles I, II, III, or IV of this chapter to disapprove a properly filed application for a permit, issue a written notice of violation, stop work order, corrective order or based on an alleged failure to properly enforce the articles in regard to a specified application, shall have the right to appeal the action to the City board of appeals in accordance with the requirements of Section 24-12.9 of the City Code.

**Sec. 8-40. Records, reports, sampling, and analysis.**

(a) If the City requires the owner or operators of any property to prepare and implement a site control plan to mitigate and eliminate pollution caused by activities at the site, the City may require the owner or operator, in compliance with the plan, to:

(1) Maintain records to demonstrate compliance.

(2) Prepare and file reports necessary to demonstrate compliance; and

(3) Sample and provide physical, biological, or chemical analysis of discharges by using;

i. A state certified laboratory; and

ii. Sampling methods where, when and how the City requires.

(b) Upon request of the City manager or designee, the owner or operator must provide any records, manifests, and invoices for review. If the documents are not available at the time of the request, the owner or operator must produce the records within the time designated by the City.

## **ARTICLE V. STORMWATER PROGRAM FEE**

### **Sec. 8-41. Authority.**

The City is authorized by section 4-204(d) of the Environment Article of the Annotated Code of Maryland, as amended, to adopt a system of charges to fund the implementation of a stormwater program.

### **Sec. 8-42. Purpose and organization.**

The City council finds that an adequate, sustainable source of revenue for the implementation of a stormwater program is necessary to protect the general public health, safety, and welfare. Further, the City council finds that higher amounts of impervious area contribute greater amounts of stormwater and pollutants to the stormwater management system. Therefore, the City council determines that it is in the best interest of the public to enact a stormwater program fee that allocates stormwater program costs to all owners of improved property based on impervious area.

The stormwater program shall be operated under the direction of the City manager or designee. The City manager or designee shall develop a Stormwater Program Manual for adoption by City council resolution. The Manual shall contain the necessary policies and procedures to carry out this article as well as any credit policy pursuant to section 8-45 and any hardship policy pursuant to section 8-46 of this chapter.

### **Sec. 8-43. Stormwater program fund.**

- (a) The stormwater program fund is hereby established as a dedicated, separate fund for the sole purpose of recovering stormwater costs, including the following:
- (1) Reviewing stormwater management plans;
  - (2) Inspection and enforcement activities;
  - (3) Watershed planning;
  - (4) Planning, design, land acquisition, and construction of stormwater management systems and structures;
  - (5) Retrofitting developed areas for pollution control;
  - (6) Water quality monitoring and water quality programs;
  - (7) Water quality outreach, education and any other program required to comply with State stormwater permits and requirements.

- (8) Operation and maintenance of facilities;
- (9) Program development of these activities; and,
- (10) Any other activities consistent with 4-204(d)(1) of the Environment Article of the Annotated Code of Maryland, as amended, and/or applicable regulations.

(b) The fund shall consist of revenue generated from the imposition of the stormwater program fee pursuant to section 8-44 of this chapter, any deposits that may be directed by the City council for the purpose of implementing a hardship policy in accordance with section 8-47 of this chapter, any other deposits that may be directed by the City council, including but not limited to grants and special appropriations, and all interest or other income earned on the investment of money in the fund.

**Sec. 8-44. Stormwater program fee.**

- (a) A stormwater program fee is hereby imposed on all improved property in the City that exists on January 1 of each year, including government owned real property and regardless of whether the property is subject to taxation under Title 7, Tax Property Article, Annotated Code of Maryland, as amended, unless said government-owned property is subject to a separate regulated MS4 entity.
- (b) All revenue from the stormwater program fee and income derived from the fee shall be deposited into the stormwater program fund described in section 8-43 of this chapter.
- (c) The rate per stormwater fee billing unit to be used for calculating the stormwater program fee shall be set by the City council with the adoption of the budget or by separate resolution.
- (d) Except as otherwise provided in this article, the impervious area for a property will be determined by the City using aerial photography, as-built drawings, final approved site plans, field surveys, or other appropriate engineering and mapping analysis tools as determined by the City manager or designee.
- (e) Except as otherwise provided in this article, the Stormwater Program Manual, or as determined by the City manager or designee, the stormwater program fee for a property will be calculated in the following manner:
  - (1) Determine the impervious area of the property in square feet;

- (2) Divide the impervious area of the property by the stormwater fee billing unit;
  - (3) Round the resulting calculation to the nearest whole number to determine the number of stormwater fee billing units;
  - (4) Multiply the number of stormwater fee billing units by the rate established in subsection (c) to obtain the stormwater program fee for the property.
- (f) The stormwater program fee for any common area owned by a community association will be charged based on the impervious area of the common area in the manner described in subsection (e) and billed directly to the community association.
- (g) The stormwater program fee for a condominium will be charged as follows:
- (1) The stormwater program fee for the condominium will be calculated in accordance with the methodology in subsection (e).
  - (2) The entire stormwater program fee for the condominium will be divided equally among the property tax accounts for all units assigned to the condominium by the Maryland Department of Assessments and Taxation.
  - (3) The City manager or designee, at their sole discretion, may utilize alternative methodologies for billing stormwater program fees associated with condominiums or other multiple-account properties, provided the ultimate fee charged for each account is equitable in comparison to other accounts and achieves the purposes of this section.

#### **Sec. 8-45. Credits.**

The City council may adopt by resolution as part of the Stormwater Program Manual a system of credits against the stormwater program fee for a property owner who operates and maintains a stormwater best management practice. No credit will be provided if the City manager determines that the stormwater management practice is not functioning as designed and the property owner fails to take corrective action within the time period provided by the City manager or designee. Nothing shall prevent the City council from modifying or eliminating the adopted system of credits. Any such modification or elimination may apply to holders of existing credits at the discretion of the City council.

**Sec. 8-46. Hardship policy.**

The City council may adopt by resolution as part of the Stormwater Program Manual a hardship policy that reduces or eliminates the stormwater program fee for a property owner who demonstrates substantial financial hardship as a result of the imposition of the stormwater program fee. The revenue source for implementation of the hardship policy shall be separate and distinct from the stormwater management fee and shall be deposited by the City council into the stormwater management fund. Nothing shall prevent the City council from modifying or eliminating the adopted hardship policy. Any such modification or elimination may apply to beneficiaries of an existing hardship policy at the discretion of the City council.

**Sec. 8-47. Method of collection, interest, and penalties.**

- (a) The stormwater program fee shall be billed to the owner of record of each property subject to the fee in the same manner as real property tax. A combined payment of the stormwater program fee and the real property tax will be applied first to the stormwater program fee and then to the real property tax.
- (b) The stormwater program fee will be considered delinquent if not paid on or before the due date shown on the bill. If a petition for adjustment has been filed in accordance with section 8-48 of this chapter, the stormwater program fee must be paid by the due date shown on the bill and will be reimbursed to the property owner if the petition is successful.
- (c) Interest on a delinquent stormwater program fee shall accrue according to the same schedule and the same rate charged for delinquent real property taxes until the property owner has remitted the outstanding payment and interest in full.
- (d) Unpaid fees and interest are subject to all penalties and remedies that apply to unpaid real property taxes. If unpaid fees and interest become a lien against the property, the lien shall have the same priority as a lien imposed for nonpayment of real property taxes.

**Sec. 8-48. Petitions for adjustment.**

- (a) Any property owner subject to the stormwater program fee may petition for an adjustment to the fee by submitting a request in writing to the City prior to the due date shown on the bill. Grounds for adjustment of the stormwater program fee are limited to the following:
  - (1) An error was made regarding the square footage of the impervious area attributed to the property;

- (2) A mathematical error in calculating the stormwater program fee;
  - (3) An error in the identification of the property owner billed;
  - (4) An approved credit was incorrectly applied; or,
  - (5) The property should have been eligible for a hardship exemption.
- (b) The property owner shall complete a stormwater fee appeals form in a format approved by the City manager or designee. In the event the City manager or designee finds that the form is incomplete, the City manager or designee shall offer the property owner 30 additional calendar days from his or her decision to supply the missing or incomplete information. If the missing or incomplete information is not provided to the City manager or designee within the 30 additional calendar day period, the petition for adjustment shall be considered withdrawn.
- (c) If the property owner alleges an error in the amount of the impervious area, a plan view of the property's impervious area will be provided by the City with labeled dimensions of all impervious area within the property boundaries. If, based on the plan view or other materials provided by the property owner, the City manager or designee, finds that the impervious area calculation is in error, the City will recalculate the impervious area of the property. If the City manager or designee finds that the impervious area calculation is not in error and the property owner continues to believe that the amount of impervious area is in error, the property owner may, within 30 calendar days after the City manager's or designees decision, submit a plan signed and sealed by a professional engineer or professional land surveyor licensed in the State of Maryland attesting to the accuracy of the impervious area measurements. The City manager or designee will then have 15 calendar days to review the plan submitted by the property owner and to make a final determination.
- (d) A decision by the City manager or designee, on a petition for an adjustment shall be the final decision from which an aggrieved party may appeal to the Circuit Court for Montgomery County in accordance with the Maryland Rules as set forth in Title 7, Chapter 200.

**Sec. 8-49. Effective date.**

The provisions, and any future revisions, of this article shall be effective January 1, 2015. Billing is based on impervious area in existence as of January 1 of the previous year and in accordance with the Stormwater Program Manual stormwater fee calculation.

## **ARTICLE VI. ILLICIT DISCHARGE DETECTION, CONNECTION AND ELIMINATION POLICY**

### **Sec. 8-50. Purpose and Authority.**

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Gaithersburg through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user;
- (2) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system; and
- (3) To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this ordinance

### **SECTION 8-51. Applicability.**

This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City.

### **SECTION 8-52. Responsibility for Administration.**

The City of Gaithersburg shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the City may be delegated in writing by the Director of the City to persons or entities acting in the beneficial interest of or in the employ of the agency.

### **SECTION 8-53. Ultimate responsibility.**

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore, this ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

## **SECTION 8-54. Discharge prohibitions.**

Prohibition of Illicit Discharges. No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water. The commencement, conduct or continuance of any illicit discharge to the storm drain system is prohibited except as described as follows:

- (a) The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), firefighting activities, and any other water source not containing Pollutants.
- (b) Discharges specified in writing by the City as being necessary to protect public health and safety.
- (c) Dye testing is an allowable discharge but requires a verbal notification to the City prior to the time of the test.
- (d) The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

### Prohibition of Illicit Connections.

- (a) The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited.
- (b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (c) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4 or allows such a connection to continue.

**SECTION 8-55. Suspension of MS4 access.**

Suspension due to Illicit Discharges in Emergency Situations. The City of Gaithersburg may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the City may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

Suspension due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City of Gaithersburg will notify a violator of the proposed termination of its MS4 access. The violator may petition the City for a reconsideration and hearing. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City.

**SECTION 8-56. Industrial or construction activity discharges.**

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City prior to the allowing of discharges to the MS4.

**SECTION 8-57. Monitoring of discharges.**

- A. Applicability. This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.
- B. Access to Facilities.
  - (a) The City shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the City.
  - (b) Facility operators shall allow the City ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of

an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

- (c) The City shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City to conduct monitoring and/or sampling of the facility's storm water discharge.
- (d) The City has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- (e) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (f) Unreasonable delays in allowing the City access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the City reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
- (g) If the City has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City may seek issuance of a search warrant from any court of competent jurisdiction.

**SECTION 8-58. Requirement to prevent, control, and reduce stormwater pollution by the use of best management practices.**

City will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes

into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

#### **SECTION 8-59. Watercourse protection.**

Every person owning property through which a watercourse passes shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

#### **SECTION 8-60. Notification of spills.**

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the City in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

**SECTION 8-61. Enforcement.**

**SECTION 8-61A – Violations and Penalties**

- (a) Generally. Failure to comply with any provision of this Chapter by the owner or occupant of any building, structure, premises, lot or parcel of land or any part thereof, and any violation of this Chapter by any architect, builder, contractor, agent or any other person who commits, participates in, assists in, directs or maintains any such violation shall be declared to be municipal infractions and enforceable pursuant to Chapter 1; Section 1-9 of the Gaithersburg City Code.
- (1) Complaints regarding violations. Whenever a violation of this Article occurs, or is alleged to have occurred, any person may file a written complaint. Such a complaint stating fully the causes and basis thereof shall be filed with the Department of Public Works, which shall record such complaint properly, diligently investigate, and act thereon as provided by this Chapter.
- (2) Notification of Violations. If violations of this Article are found, the violator shall be notified in writing.
- (3) Action to Abate Violations. The City manager or designee shall order discontinuance of any illegal use of land, buildings, structures, or appurtenances; removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; and shall take any other action authorized by this Article to ensure compliance with or to prevent violation of its provisions.
- (4) Maximum Penalty. The maximum penalty for each initial and repeat violation shall be established by resolution of the City council.
- (b) Violations and penalties of the illicit discharge, detection, connection, and elimination policy article. Any person, firm, or entity that violates a provision of Article VI – Illicit Discharge, Detection, Connection, and Elimination Policy is subject to the remedies and penalties provided within this Section 8-61 – Enforcement, or as specified in other section of this Code.
- (1) Enforcement. The City manager or designee is hereby authorized and directed to enforce all provisions of Article VI – Illicit Discharge, Detection, Connection, and Elimination Policy.
- i. Upon presentation of proper credentials, the City manager or designee may enter, at reasonable times, any building,

structure, property, or premises in the City to perform any duty imposed upon the City manager or designee by Article VI or Section 8-61.

- ii. The City manager or designee is authorized to promulgate rules, regulations, and interpretations with respect to the location, maintenance, practices, and operations of illicit discharges, detections, connection, and elimination, which are not inconsistent with the provisions of Article VI – Illicit Discharge, Detection, Connection, and Elimination Policy.
- iii. The City manager or designee is authorized to order the remediation and restoration of any illicit discharge not conforming to the provisions of Article VI – Illicit Discharge, Detection, Connection, and Elimination Policy.
- iv. Where there is noncompliance with an order to perform remediation and restoration of an illicit discharge, the City manager or designee is authorized to hire a third-party vendor to remediate the illicit discharge.

(2) Illicit discharge remediation and restoration.

- i. The City manager or designee is authorized to order the remediation and restoration of any illicit discharge not conforming to the provisions of Article VI – Illicit Discharge, Detection, Connection, and Elimination Policy.
- ii. The City manager or designee may declare illicit discharges unsafe and order their remediation and restoration if, due to hazardous or unsafe conditions, location, or operation, they constitute a danger to the health, safety, and welfare of the public or nearby residents or visitors to the property upon which said illicit discharge is located.
- iii. Where the City manager or designee is authorized to remediate and restore an illicit discharge due to noncompliance with this Article, or noncompliance with an order to remediate and restore, the owner of the said property where the illicit discharge originated is liable to the City for all costs of remediation and restoration.

(3) Appeals. Any person may appeal any order of the City manager or designee issued to Article VI – Illicit Discharge, Detection, Connection, and Elimination Policy to the board of appeals pursuant to Section 24-12.9 – Administrative Review.

(c) Violations and penalties of the illicit discharge, detection, connection, and elimination policy. Any owner, agent, or person who violates a provision of Article VI – Illicit Discharge, Detection, Connection, and Elimination Policy, or fails to comply with any of the requirements thereof, or disobeys or disregards a decision of the City manager or designee, or fails to abide by the conditions of this provision, shall be guilty of a municipal infraction, enforceable as provided in Chapter 1; Section 1-9 of the Gaithersburg City Code.

(d) Notice of Violation.

Whenever the City of Gaithersburg finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the City may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit connections or discharges;
3. That violating discharges, practices, or operations shall cease and desist;
4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
5. Payment of a fine to cover administrative and remediation costs; and
6. The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency, or a contractor and the expense thereof shall be charged to the violator.

### **SECTION 8-61B – Remediation of Violations**

(a) Authority of the City to prevent or remedy violations. In addition to other provisions of this Article, the City may institute injunctive, mandamus or any other appropriate action or proceedings at law or equity for enforcement of this Chapter or to correct violations of this Chapter, and any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions or other appropriate form of remedy or relief.

**SECTION 8-62. Appeal of notice of violation.**

Any person receiving a Notice of Violation may appeal the determination to the Public Works Director or their designee. The notice of appeal must be received within seven (7) days from the date of the Notice of Violation. In the event, the Public Works Directors' decision is appealed, a person must submit a final notice of appeal in accordance with Section 24-11.2 – Board of Appeals and The decision of the Board of Appeals shall be final.

**SECTION 8-63. Enforcement measures after appeal.**

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or , in the event of an appeal, within seven (7) days of the decision of the Board of Appeals upholding the decision of the City, then representatives of the City may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

**SECTION 8-64. Cost of abatement of the violation.**

Within thirty (30) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within seven (7) days. If the amount due is not paid within a timely manner after the decision of the Board of Appeals or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the City by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the legal rate for Maryland shall be assessed on the balance beginning on the 1st day following discovery of the violation.

**SECTION 8-65. Injunctive relief.**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this ordinance, the City may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

**SECTION 8-66. Compensatory action.**

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the City may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

**SECTION 8-67. Violations deemed a public nuisance.**

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

**SECTION 8-68. Criminal prosecution.**

Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution for a misdemeanor, subject to a fine of up to five thousand dollars (\$5,000.00) for any violation of this chapter, with each day upon which the violation occurs constituting a separate offense, and/or imprisonment of up to one (1) year. . The City may recover all attorney's fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

**SECTION 8-69. Remedies not exclusive.**

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City to seek cumulative remedies.

**SECTION 8-71. Adoption of ordinance.**


This ordinance shall be in full force and effect 20 days after its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

ADOPTED by the City Council this 21st day of April, 2025.

Signed by:  
  
52E570A5749C472...


Jud Ashman, MAYOR and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg this 21st day of April, 2025.  
APPROVED by the Mayor of the City of Gaithersburg this 21st day of April, 2025.

Signed by:  
  
52E570A5749C472...

JUD ASHMAN, MAYOR

THIS IS TO CERTIFY, that the foregoing Ordinance was adopted by the City Council of the City of Gaithersburg, in public meeting assembled on the 21st day of April, 2025; and that the same was APPROVED by the Mayor of the City of Gaithersburg on the 21st day of April, 2025. This Ordinance will become effective on the 11th day of May, 2025.

DocuSigned by:  
  
90095A05FBE94E0...

Tanisha Briley, City Manager