

Ordinance No. O-4-10

AN ORDINANCE TO REPEAL AND REENACT WITH AMENDMENTS  
CHAPTER 8 OF THE CITY CODE, ENTITLED, "EROSION AND  
SEDIMENT CONTROL AND STORMWATER MANAGEMENT,"  
ARTICLE I, ENTITLED, "GENERAL," § 8-1, ENTITLED, "DEFINITIONS,"  
ARTICLE II, ENTITLED, "SEDIMENT CONTROL," ENTITLED,  
"EROSION AND SEDIMENT CONTROL PLANS," AND ARTICLE III, ENTITLED,  
"STORMWATER MANAGEMENT," TO ENACT REQUIREMENTS,  
ENFORCEMENT, PENALTY AND  
APPEAL PROCEDURES WITH RESPECT THERETO

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, in public meeting assembled, that Chapter 8 of the City Code, Articles I, II and III are hereby amended to read as follows:

Chapter 8

**EROSION AND SEDIMENT CONTROL AND STORMWATER MANAGEMENT**

**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.* Administration means the Maryland Department of the Environment (MDE) Water Management Administration (WMA).

*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 may not be considered a part of this definition.~~

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Approving Agency. The entity responsible for the review and approval of stormwater management plans.

*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 Article 56 of the Annotated Code of Maryland, 1957 (1979 Replacement Volume), as amended.

*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.

*Channel protection storage volume (Cp<sub>v</sub>).* 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 ~~2000 Maryland Stormwater Design Manual, Volumes I and II.~~

*City.* The City of Gaithersburg, Maryland.

*City manager.* The city manager or his or her designee.

*Clear.* Any activity which removes the vegetative ground cover, shrubs, or trees.

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

*County.* Montgomery County, Maryland.

*Department.* The State of Maryland Department of the Environment.

*Design manual.* The 2000 Maryland Stormwater Design Manual, ~~Volumes I and II~~ and all subsequent revisions, that serves as the official guide for stormwater management principles, methods, and practices.

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*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, 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 better site planning 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 Design Manual.

*Erosion.* The process by which the land surface is worn away by the action of wind, water, ice or gravity.

*Erosion and sediment control.* A system of structural, vegetative and land management measures that minimize soil erosion and off-site sedimentation.

*Erosion and sediment control plan.* An erosion and sediment 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 the district and this article, and designed in accordance with the 1994 State of Maryland Standards and Specifications for Soil Erosion and Sediment Control.

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*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 section 15-801 through 15-834 of the Environment Article of the Annotated Code of Maryland.

*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 ~~Design~~ Manual.

*Extreme flood volume (Q<sub>f</sub>).* 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, 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.

*Illicit connection.* Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the ~~public~~ stormwater system without a permit; including but not limited to any conveyances which allow sewage, process wastewater, and wash water to enter the ~~public~~ stormwater system and any connections to the public stormwater system from indoor drains and sinks with potential to introduce pollutants to the public stormwater system.

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*Illicit discharge.* Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Article IV, Section 36 of this chapter.

*Impervious area (or impervious surface).* A surface which has been covered with a layer of material so that it is resistant to infiltration by water, including semi-pervious surfaces such as compacted clay, gravel used as travelways, most conventionally surfaced streets, roofs, sidewalks, parking lots, and other similar surfaces.

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

*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, or his or her designee.

*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

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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.

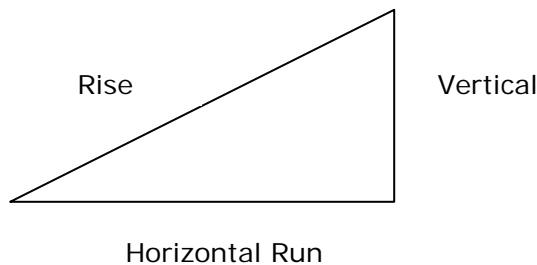
*On-site stormwater management.* The design and construction of systems necessary to control stormwater within an immediate development.

*Overbank flood protection volume ( $Q_p$ ).* The volume controlled by structural practices or earth movement 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 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 100-foot segment multiplied by one hundred (100) percent.

### Percent Slope Illustration



*Permit.* A sediment control, grading, building permit or other permit, as may be appropriate within the context of the specific provision of this chapter.

*Permittee.* Any person to whom a building or grading permit has been issued.

*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.

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*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, subsurfaces, or other surfaces connected to these surfaces 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 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.* ~~Pristine or meadow in good hydrologic~~ — Woods in good condition

*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.

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*Professional land surveyor.* A land surveyor duly registered in the State of Maryland to practice professional surveying in accordance with the provisions of Title 15, Business Occupations and Professions Article, Annotated Code of Maryland. 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 Annotated Code of Maryland, Business Occupations and Professions Article, Title 15, Professional Land Surveyors.

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

~~*Redevelopment.* Any construction, alteration, or improvement exceeding five thousand (5,000) square feet of land disturbance performed on sites where existing land use is commercial, industrial, institutional or multifamily residential.~~

*Redevelopment.* Any construction, alteration, or improvement performed on sites where existing land use is commercial, industrial, institutional, or multifamily residential and 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.

*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, ~~or~~ the construction of a structural BMP in a previously developed area, or the modification of an existing structural BMP, ~~or the implementation of a nonstructural practice in a previously developed area~~ to improve water quality over current conditions.

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

*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:*

- (a) 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

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contiguous and in diverse ownership where development is to be performed as part of a unit, subdivision, or project.

- (b) For "redevelopment" ~~the area~~ land disturbance of an existing tract, lot, or parcel of land or combination of tracts, lots or parcels of land of new construction 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 1994 State of Maryland Standards and Specifications for relating to Soil Erosion and Sediment Control and all subsequent revisions that may now or hereafter be established and/or adopted by the Department.

*Steep slope.* A slope in which the percent slope equals or exceeds twenty-five (25) percent.

*Storm drain system.* ~~Publicly-owned~~ Any facilities operated by the city by which that collect, store, convey or treat stormwater, is collected and/or conveyed, including but not limited to any roads, both public or private, with drainage systems or ditches, municipal 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.* ~~Any surface flow, runoff, and drainage consisting entirely of w~~Water that originates from a precipitation event ~~rain storm events.~~

*Stormwater management concept plan.* The first of three required plan approvals that includes the information necessary to allow an initial evaluation of a proposed project.

*Stormwater management final plan.* The last of three required plan approvals that includes the information necessary to allow all approvals and permits to be issued by the approving agency.

*Stormwater management preliminary plan.* The second of three required plan approvals that includes the information necessary to allow a detailed evaluation of a

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proposed project. This plan is the same as the Design Manual’s “stormwater management 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.

~~(a) For quantitative control, a system of vegetative, earthen and structural measures that control the increased volume and rate of surface runoff caused by manmade changes to the land; and~~

~~(b) For qualitative control, a system of vegetative, earthen, structural and other measures that reduce or eliminate pollutants that might otherwise be carried by surface runoff.~~

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

*Variance.* The modification of the requirements of the ordinance for specific circumstances such that strict adherence would result in unnecessary hardship and not fulfill the intent of the ordinance.

*Waiver.* The reduction of stormwater management requirements by the city for a specific development on a case-by-case review basis.

~~The relinquishment from stormwater management requirements by the city for a specific development on a case by case review basis.~~

~~(a) Qualitative stormwater management waiver includes water quality volume and recharge volume design parameters.~~

~~(b) Quantitative stormwater management waiver includes channel protection storage volume, overbank flood protection volume, and extreme flood volume design parameters.~~

*Watercourse.* Any natural or man-made watercourse including but not limited to 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

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adjacent thereto which is subject to inundation by reason of overflow or flood waters and their associated wetlands.

*Watershed.* The total drainage area contributing runoff to a single point.

*Water quality volume (WQ<sub>v</sub>).* 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 Design Manual.

*Wetlands.* Any area that has saturated soils or periodic high groundwater levels and vegetation adapted to wet conditions and periodic flooding.

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**ARTICLE II. SEDIMENT CONTROL**

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**Sec. 8-6. Erosion and sediment control plans.**

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(6) ~~Approved plans may remain valid for two (2) years from the date of approval unless renewed by the city shall expire on the same date of the expiration of the associated final site plan or amendment to final site plan. Plans approved prior to May 4, 2010 shall not be extended beyond May 4, 2012.~~

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**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. ~~Proper management of stormwater runoff will minimize damage to public and private property, reduce the effects of development on land, control stream channel erosion, assist in the attainment and maintenance of water quality standards, reduce local flooding, and maintain after development, as nearly as possible, the predevelopment runoff characteristics.~~ The goal is to manage stormwater management by using environmental site design (ESD) to the maximum extent practicable (MEP) to maintain after development as nearly as possible, the predevelopment runoff characteristics, and to reduce stream channel erosion, pollution, siltation and sedimentation, and local flooding, and use appropriate

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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, ~~1996~~ 2009 replacement volume, 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. The planning and code administration of the city shall be responsible for the coordination and enforcement of the provisions of this article. This Ordinance applies to all new and redevelopment projects that have not received final approval for erosion and sediment control and stormwater management plans by May 4, 2010.

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

For the purpose of this chapter, the following documents unless otherwise specified are incorporated by reference in the administration of this article:

- (a) The 2000 Maryland Stormwater Design Manual, Volumes I and II (Maryland Department of the Environment, April 2000) and all subsequent revisions is incorporated by reference by the city and shall serve as the official guide for stormwater principles, methods, and practices.
- (b) USDA Natural Resources Conservation Service Maryland Conservation Practice Standard Pond Code 378 (January 2000).

#### **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 Design Manual and constructed according to an approved plan for new development or the policies stated in section 8-22 for redevelopment.

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(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 (3) of this section;
- (3) Developments and/or redevelopments that do not have a land disturbance disturb over five thousand (5,000) square feet of land area;
- (4) Land development activities which the administration determines will be regulated under specific state laws, which provide for managing stormwater runoff;

(b) Nothing in this section shall prohibit the city manager or the director of public works from requiring stormwater management controls upon the evaluation of the cumulative effects of previous exemptions.

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

The city may grant waivers to the strict compliance of this chapter based upon the following considerations:

- (a) Stormwater management quantitative control waivers shall be granted by the city manager, or his or her 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

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waivers may be granted to projects when the city engineer determines that unusual site situations exist that prevent the reasonable implementation of quantity control BMPs provided that it has been demonstrated that ESD has been implemented to the MEP and 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 stormwater management implementation is 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 ~~quality control practices~~ ESD to the MEP.
- (d) Waivers shall only be granted must 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;

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- (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 ~~where~~ 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 ~~section 1.2 of the~~ Design Manual; and
  - (8) Be approved by the administration.
- (g) The city 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 his or her 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 square feet of imperviousness required for on-site management of the development in question 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.

~~Where the applicant can provide evidence, acceptable to the director of public works that on-site stormwater management can be~~

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~~provided at a lower cost (including the cost of the land and a maintenance escrow fund equaling the cost of construction) than the required contribution, the director of public works shall adjust the contribution to be no greater than the applicant's estimated cost of providing on-site stormwater management. None of the foregoing, however, prevents the mayor and city council from accepting a voluntary contribution that exceeds the cost of an on-site facility. Moreover, nothing shall require the mayor and city council to accept a contribution in lieu of an on-site facility if it would not be in the best interests of the city.~~

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 ~~public~~ 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 (b)(1) and (2) above shall occur prior to the issuance of any clearing, grading, excavation or building permit.

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

~~(a) If the land disturbing redevelopment activity involves less than one-third ( 1/3) of the site, stormwater management shall be provided for a minimum of twenty (20) percent of the site's existing impervious area and the impervious area resulting from the land disturbing activity.~~

~~(b) If the land disturbing redevelopment activity involves two-thirds ( 2/3) or more of the site, stormwater management shall be provided for the entire impervious area on the site, including impervious area previously existing and left untouched by the development or redevelopment. For purposes of this requirement, construction of new structures over existing structures or existing impervious areas shall be included~~

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~~in the computation of the percentage of site involvement. This computation shall not include resurfacing of existing impervious area unless such resurfacing involves the removing or replacing of an existing impervious area.~~

~~(c) If the land disturbing redevelopment activity involves more than one-third ( 1/3) and less than two-thirds ( 2/3) of the site area, stormwater management may be required for the total imperviousness of the site as determined by the city's department of public works.~~

~~(d) Stormwater management plans for redevelopment shall be consistent with the design manual, except for the recharge, channel protection storage volume, and overbank flood protection volume requirements, which may be waived if the city's department of public works determines it is infeasible to meet these requirements.~~

~~(e) Where conditions prevent on-site stormwater management, practical alternatives may be considered, including but not limited to:~~

~~(1) Fees;~~

~~(2) Off-site BMP implementation for a drainage area comparable in size and percent imperviousness to that of the project;~~

~~(3) Watershed or stream restoration;~~

~~(4) Retrofitting; or~~

~~(5) Other practices approved by the city.~~

(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(f). of this Ordinance. Stormwater management measures must be consistent with the Design Manual.

(b) All redevelopment designs shall:

(1) Reduce impervious area within the limit of disturbance (LOD) by at least 50 percent according to the Design Manual; or

(2) Implement ESD to the MEP to provide water quality treatment for at least 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 Ordinance for at least 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 Ordinance if the owner/developer satisfactorily demonstrates to the city that impervious area reduction has been maximized and ESD has been implemented to the MEP. Alternative stormwater management measures include, but are not limited to:

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- (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 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 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 Ordinance may utilize the following practices. The owner/developer shall satisfactorily demonstrate to the City that the requirements of section 8-22 (b) and (c) of this Ordinance cannot be met. This shall be established at the time of Stormwater Management Preliminary Plan of the proposed development:

- (1) Retrofitting;
- (2) Stream restoration;
- (3) Pollution trading;
- (4) Design criteria based on watershed management plans developed according to section 8-21(f). of this Ordinance; or
- (5) Fees or contributions paid in accordance with section 8-21(h)(1).

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

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

The city manager or his or her designee may grant a written variance from any requirement of section 8-24, (Stormwater management criteria), of this article if there are exceptional 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 variance shall be provided to the city and shall state the specific variances sought and reasons for their granting. The city manager or his

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or her designee shall not grant a variance unless and until sufficient specific reasons justifying the variance are provided by the person developing land justification is provided by the person developing the land that the implementation of ESD to the MEP has been investigated thoroughly.

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

- (a) *Minimum control requirements.*
- (1) The minimum control requirements established in this section and the Design Manual are as follows:
  - a. ~~The city requires that the recharge volume, water quality volume, and channel protection storage volume sizing criteria be used to design BMP's according to the Design Manual. Control of the ten-year frequency storm event may be required by the city according to the Design Manual if the city determines that historical flooding problems exist and downstream floodplain development and conveyance system design cannot be controlled.~~
  - b.
    - a. The city shall require that the planning techniques, nonstructural practices, and design methods specified in the 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 Ordinance shall be designed using ESD sizing criteria, recharge volume, water quality volume, and channel protection storage volume criteria according to the 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 2-year frequency storm event, 10-year frequency storm event, or both is required according to the 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.

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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. The Administration shall require a demonstration that alternative requirements will implement ESD to the MEP and control flood damages, accelerated stream erosion, water quality, and sedimentation. Comprehensive watershed studies may also be required.

~~(2)~~ (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 Hazard Management Act of 1976.

(b) *Stormwater management measures.* The ESD planning techniques and structural and nonstructural stormwater management measures established in this chapter and the 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 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 100 percent of the annual predevelopment groundwater recharge volume;

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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 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. Sheetflow to conservation areas;
  4. Rainwater harvesting;
  5. Submerged gravel wetlands;
  6. Landscape infiltration;
  7. Infiltration berms;
  8. Dry wells;
  9. Micro-bioretenion;
  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

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existing State law or local ordinances, regulations, or policies.

(4) (2) Structural stormwater management measures.

- a. The following structural stormwater management practices shall be designed according to the 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;
  - 4. Stormwater management filtering systems; and
  - 5. Stormwater management open channel systems.
- b. The performance criteria specified in the Design Manual with regard to general feasibility, conveyance, pretreatment, treatment and geometry, environment and landscaping, and maintenance shall be considered when selecting structural stormwater management practices.
- c. Structural stormwater management practices shall be selected to accommodate the unique hydrologic or geologic regions of the city.

~~(2) Nonstructural stormwater management measures.~~

- ~~a. The following nonstructural stormwater management practices shall be applied according to the Design Manual to minimize increases in new development runoff:~~
  - ~~1. Natural area conservation;~~
  - ~~2. Disconnection of rooftop runoff;~~
  - ~~3. Disconnection of non-rooftop runoff;~~
  - ~~4. Sheet flow to buffers;~~

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5. ~~Grass channels; and~~

6. ~~Environmentally sensitive development.~~

b. ~~The use of nonstructural stormwater management practices shall be encouraged to minimize the reliance on structural BMP's.~~

c. ~~The minimum control requirements listed in (a) of this article may be reduced when nonstructural stormwater management practices are incorporated into site designs according to the design manual.~~

d. ~~The use of nonstructural stormwater management practices may not conflict with existing state or local laws, ordinances, regulations, or policies.~~

e. ~~Nonstructural stormwater management practices used to reduce the minimum control requirements must be recorded in the land records of Montgomery County and remain unaltered by subsequent property owners. Prior approval from the city shall be obtained before nonstructural stormwater practices are altered.~~

(3) Covenants and/or easements for ESD planning techniques and treatment practices and structural stormwater management measures used to satisfy the minimum requirements in section 8-24(a) of this chapter must be recorded in the land records of Montgomery County and on file with the city and remain unaltered by subsequent property owners. Prior approval from the city shall be obtained before any stormwater management practice is altered.

~~(3)~~ (4) Alternative ESD planning techniques and treatment practices and structural and nonstructural stormwater management practices measures may be used for new development water quality runoff control if they meet the performance criteria established in the Design Manual and are approved by the Administration. The city shall approve practices used for redevelopment projects.

~~(4)~~ (5) For the purposes of modifying the minimum control requirements or design criteria, the owner/developer shall submit to the city an

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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 Maryland Department of the Environment, Water Management Administration, shall be those of the Design Manual.

(d) *Other considerations in design preparation.* Computations for stormwater management storage shall at a minimum include one-half (1/2) of contiguous right-of-way up to thirty (30) feet maximum of existing and planned non-state roads, and of State owned rights-of-way where no stormwater management facility is or will be provided unless stormwater management is provided by another stormwater management system.

~~(1) Computations for stormwater management storage shall include one-half ( 1/2) of contiguous right-of-way up to thirty (30) feet maximum of existing and planned non-state roads, and of State owned rights-of-way where no stormwater management facility is or will be provided.~~

~~(2) The predevelopment peak discharge rate shall be computed assuming that all land uses in the tributary area are meadow in good hydrologic condition or more pervious existing conditions.~~

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

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

~~(1) A stormwater management plan or an application for a waiver shall be submitted to the city, or the district for ponds, by the developer for review and approval for any proposed development, unless otherwise exempted. The stormwater management plan shall contain supporting computations, drawings and sufficient information describing the manner,~~

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~~location and type of measures in which stormwater runoff will be managed from the entire development. The city, or the district for ponds, shall review the plan to determine compliance with the requirements of this chapter prior to approval. The plan shall serve as the basis for all subsequent construction, and any construction contrary to the plan is prohibited. If a stormwater management plan involves direction of some or all runoff off of the site, it is the responsibility of the developer to 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.~~

- (1) For any proposed development, the owner/developer shall submit phased stormwater management plans 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 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 soil conservation district (SCD) and the departments of planning and code administration and public works and the division of Environmental Services. All comments from the city and other appropriate agencies shall be addressed and approval received at each phase of project design before subsequent submissions.
  
- ~~(2)~~ (3) Notification of approval or reasons for the disapproval or modification shall be given to the applicant within forty-five (45) days after submission of the completed stormwater plan. If a decision is not made within forty-five (45) days, the applicant shall be informed of the status of the review process and the anticipated completion date. Each phase of tThe stormwater management plan shall not be considered approved without the

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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 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) ~~The minimum information submitted for support of a stormwater management plan or application for a waiver shall be as follows~~ *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 Ordinance and the 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. ~~Geotechnical investigations including soil maps, borings, site specific recommendations, and any additional information necessary for the proposed stormwater management design;~~
- c. ~~Descriptions of all water courses, impoundments, and wetlands on or adjacent to the site or into which stormwater directly flows;~~

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- ~~d. Hydrologic computations, including drainage area maps depicting pre development and post development runoff flow path segmentation and land use;~~
- ~~e. Hydraulic computations;~~
- ~~f. Structural computations;~~
- ~~g. Unified sizing criteria volume computations according to the design manual; and~~
- b. Descriptions of all water courses, impoundments, and wetlands 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 (25) 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, topography, erodible soils, steep slopes, forest conservation areas, stream valley buffers, and other areas to be protected during construction;

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- 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; and
- h. k. Any other information required by the Design Manual or the city.

Construction Drawings. ~~Construction drawings submitted for stormwater management plan approval shall include the following:~~

- a. ~~A vicinity map;~~
- b. ~~Topography survey showing existing and proposed contours, including the area necessary to determine downstream analysis for proposed stormwater management facilities;~~
- c. ~~Any proposed improvements including location of buildings or other structures, impervious surfaces, storm drainage facilities, and all grading;~~
- d. ~~The location of existing and proposed structures and utilities;~~
- e. ~~Any easements and rights-of-way;~~
- f. ~~The delineation, if applicable, of the floodplain for any watercourse with a drainage area of thirty (30) acres or greater, any on-site wetlands, and stream buffers;~~
- g. ~~Structural and construction details for all components of the proposed drainage system or systems, and stormwater management facilities.~~
- h. ~~All necessary construction specifications;~~

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- i. ~~A sequence of construction;~~
- j. ~~Data for total site area, disturbed area, new impervious area, and total impervious area;~~
- k. ~~A table showing the unified sizing criteria volumes required in the Design Manual;~~
- l. ~~A table of materials to be used for stormwater management facility planting;~~
- m. ~~All soil boring logs and locations;~~
- n. ~~A maintenance schedule;~~
- o. ~~Certification by the owner/developer that all stormwater management construction will be done according to this plan;~~
- p. ~~An as-built certification signature block to be executed after project completion;~~
- q. ~~A scanned or digital version of the final plan; and~~
- r. ~~Any other information required by the city.~~

(2) Stormwater Management Preliminary Plan. Following concept 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. Geotechnical investigations including soil maps, borings, site specific recommendations, and any additional information necessary for the preliminary stormwater management design;
- c. Final site layout, exact impervious area locations and acreages, proposed topography, proposed easements,

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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;

- d. A proposed erosion and sediment control plan that contains 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 showing 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 Design Manual of the applicable ESD and unified sizing criteria according to the Design Manual for all points of discharge from the site;
- h. Hydraulic and structural computations for all ESD practices and structural stormwater management measures 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;

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- k. Representative cross sections and details (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 measure;
- m. Letter of acknowledgement from off-site property owner for any required off-site covenants, easements, and/or rights of way; and
- n. Any other information required by the 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 26.17.01.05 and Article II of this chapter;
- c. A narrative that supports the final stormwater management design; and
- d. Any other information required by the Design Manual or approving agency;
- e. A vicinity map;
- f. Existing and proposed topography and proposed drainage areas, including areas necessary to determine

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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 (25) 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. A sequence of construction;

n. Data for total site area, disturbed area, new impervious area, and total impervious area;

o. A table showing the ESD and unified sizing criteria volumes required in the Design Manual;

p. A table of materials to be used for stormwater management facility planting;

q. All soil boring logs and locations;

r. An inspection and maintenance schedule;

s. 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 an unique identification (ID))

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number), drainage area per structure, and a full list of structure IDs and types;

t. Certification by the owner/developer that all stormwater management construction and maintenance will be done according to this plan;

u. Professional certification, seal and signature;

v. An as-built certification signature block to be executed after project completion;

w. City of Gaithersburg Approval stamp;

x. A scanned or digital version of the final plan; and

y. 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) Expiration and renewal of approved final stormwater management plan/construction drawings. Approved stormwater management final plan/construction drawings shall expire on the same date of the expiration of the associated final site plan or amended final site 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.

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(b) *Application.*

- (1) To obtain a permit required by this article, an applicant shall first file an application therefore in writing 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 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 his or her 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 ~~best management practice~~ BMP requires either a dam safety permit or small pond approval for the proposed stormwater management measures.
- (3) A grading or building permit may not be issued for any parcel or lot unless final erosion and sediment control and final stormwater management plans has been approved or waived by the city as meeting all the requirements of the Design Manual and this article. Where appropriate, a building permit may not be issued without:
  - a. Recorded easements for the stormwater management facility and easements to provide adequate access for inspection and maintenance from a public right-of-way;
  - b. A recorded stormwater management maintenance agreement;
  - c. Performance bond as described in section 8-27;
  - d. Permission and/or easements from adjacent property owners as necessary; and

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- 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 shall, within thirty (30) days prior to expiration of the permit, present in writing to the city manager, or his or her 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 his or her designee, such an extension is warranted, ~~he may grant additional time~~ may be granted for an additional fee of ~~ten (10) percent of the original fee~~. Where the city manager, or his or her 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.

(d) *Permit fee.* A nonrefundable permit fee will be collected at ~~the time the~~ each phase of stormwater management plan submittal ~~or~~ and an application for waiver is submitted. 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 grading or building permit issued by the city 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 facility system.
- (5) An immediate danger exists in a downstream area in the opinion of the city.

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(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 his or her 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 a final erosion and sediment control and final stormwater management plan ~~is~~ 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 his or her designee, and approved by the city attorney, prior to the issuance of any building and/or grading permit for construction of a development requiring a stormwater management facility 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 facility system. The bond ~~se~~ 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 his or her 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

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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 his or her 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" plans and certification of completion by the city that the stormwater management facility system complies with the approved plan and the provisions of this article. ~~A provision may be~~

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~~made for partial release of the amount of the bond prorata upon completion and acceptance by the city of the various stages of development as specifically delineated, described and scheduled on the required plans and specifications. The developer shall notify the city upon completion of each stage that is ready for inspection. Partial bond release shall be at the discretion of the city manager, or his or her designee.~~

(g) Subsequent to the completion of work, the city manager, or his or her 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 his or her 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 his or her 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 ~~he~~ the applicant is insured against claims for damages for personal injury and property damage in an amount not less than ~~five hundred thousand dollars (\$500,000.00)~~ 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 himself, his subcontractor or any person directly or indirectly employed by the applicant ~~him~~. 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.

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- (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) ~~Inspections shall be conducted by the city, its authorized representative or, if approved by the city, a certified by a professional engineer licensed by the state.~~ 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 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 upon completion of final grading, the establishment of permanent stabilization, and before issuance of use and occupancy approval.
- ~~(4)~~(5) Written inspection reports shall include:
  - (5) a. The date, time, and location of the inspection and weather conditions;
    - ~~(a)~~b. Whether construction was in compliance with the approved stormwater management plan;
    - ~~(b)~~c. Any variations from the approved construction specifications; and
    - ~~(c)~~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

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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 Design Manual shall be made, at a minimum, at the following specified stages of construction:

(1) For ponds:

- 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)~~a. During excavation to subgrade;

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- ~~(b)~~b. During placement and backfill of underdrain systems and observation wells;
  - ~~(e)~~c. During placement of geotextiles and all filter media;
  - ~~(d)~~d. During construction of appurtenant conveyance systems such as diversion structures, pre-filters and filters, inlets, outlets, and flow distribution structures; and
  - ~~(e)~~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)~~a. During excavation to subgrade;
  - ~~(b)~~b. During placement and backfill of underdrain systems;
  - ~~(e)~~c. During placement of geotextiles and all filter media;
  - ~~(d)~~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)~~e. Upon completion of final grading and establishment of permanent stabilization.
- (6) For open channel systems:
- ~~(a)~~a. During excavation to subgrade;
  - ~~(b)~~b. During placement and backfill of underdrain systems for dry swales;
  - ~~(e)~~c. During installation of diaphragms, check dams, or weirs; and
  - ~~(d)~~d. Upon completion of final grading and establishment of permanent stabilization.

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(7) For nonstructural practices--~~Upon completion of final grading, the establishment of permanent stabilization, and before issuance of use and occupancy approval.~~ Inspection shall be completed in accordance with the Design Manual.

(c) Final inspection reports. A final inspection shall be conducted by the city upon completion of the stormwater management ~~facility~~ 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; ~~or~~ .

(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, as-built plan certification shall be submitted by either a professional engineer or professional land surveyor licensed in the state to ensure that ~~constructed stormwater management practices~~ ESD planning techniques, treatment practices, and structural stormwater management measures and conveyance systems comply with the specifications contained in the approved plans. At a minimum, as-built certification shall include a set of drawings comparing the approved stormwater management plan with what was constructed. The city may require additional information.

(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

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shall be reported to the Administration on a site by site basis. If BMP's requiring approval from the soil conservation district or MDE are constructed, notice of construction completion shall also be submitted to the soil conservation district or MDE.

(h) ~~Inspection.~~

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

(a) *Maintenance inspection.*

- (1) The city shall ensure that preventative maintenance is performed by inspecting all ESD treatment systems and structural stormwater management systems. Inspection shall occur during the first year of operation and at least once every three (3) years thereafter. In addition, a maintenance agreement between the owner and the city shall be executed for privately owned ESD treatment systems and structural stormwater management systems 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 systems.
- (3) Inspection reports for ESD treatment systems and structural stormwater management systems shall include the following:
  - a. The date of inspection;
  - 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;
  - ~~e.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;

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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.

~~d.e.~~ Description of needed maintenance.

- (4) After notification is provided to the owner of any deficiencies discovered from an inspection of a stormwater management system, the owner shall have thirty (30) days or other time frame mutually agreed to between the city and the owner to correct the deficiencies. The city shall then conduct a subsequent 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 8-30(b)(3) of this section shall be followed by city.
  - (6) 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 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 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 stormwater management facility system. Such agreement shall provide for access to the facility at reasonable times for regular inspections by the city or its authorized

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representative and for regular or special assessments of property owners to ensure that the facility is maintained in proper working condition to meet design standards and any provisions established.

- (2) The agreement shall be recorded by the applicant and/or owner in the land records of the county.
- (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 reasonable period of time (thirty (30) days maximum), 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.

(c) *Maintenance responsibility.*

- (1) The owner of the property, unless other wise 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, erosion and sediment 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 facility 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.

**Sec. 8-31. Appeals.**

Any person aggrieved by the action of any official charged with the enforcement of articles I, II or III of this chapter as the result of the disapproval of a

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properly filed application for a permit, issuance of a written notice of violation or 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. The appeal shall be filed in writing within thirty (30) days of the date of official transmittal of the final decision or determination to the applicant, shall state clearly the grounds on which the appeal is based and shall be processed in the manner prescribed for hearing administrative appeals contained in chapter 24 of the City Code.

(Ord. No. O-15-01, 9-4-01; Ord. No. O-1-03, 4-7-03)

### **Sec. 8-32. Severability.**

If any portion of this article is held invalid or unconstitutional by a court of competent jurisdiction, such portion shall not affect the validity of the remaining portions of this chapter. It is the intent of the city that this chapter shall stand, even if a section, subsection, sentence, clause, phrase, or portion may be found invalid.

### **Sec. 8-33. 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 ~~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) 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.

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ADOPTED, this 5<sup>th</sup> day of April, 2010, by the City Council of Gaithersburg, Maryland.

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SIDNEY A. KATZ, MAYOR and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this 5<sup>th</sup> day of April, 2010. Approved by the Mayor of the City of Gaithersburg this 5<sup>th</sup> day of April, 2010.

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SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the 5<sup>th</sup> day of April, 2010, and that the same was approved by the Mayor of the City of Gaithersburg on the 5<sup>th</sup> day of April, 2010. This Ordinance will become effective on the 4th day of May, 2010.

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Angel L. Jones, City Manager

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