

## ORDINANCE NO. O-12-11

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE, ENTITLED, "ZONING," ARTICLE I, ENTITLED, "IN GENERAL," §§ 24-1, 24-3 THROUGH 24-6 AND 24-10, ARTICLE VI, ENTITLED, "ADMINISTRATION AND ENFORCEMENT OF CHAPTER," §§ 24-177 AND 24-178A, ARTICLE VII, ENTITLED, "BOARD OF APPEALS," § 24-188, ENTITLED, "GENERAL REQUIREMENTS AND PROCEDURES," ARTICLE X, ENTITLED, "HOME BASED BUSINESSES," § 24-215, ARTICLE XII, ENTITLED, "PRESERVATION OF HISTORIC RESOURCES," §§ 24-227.4 AND 24-233, SO AS TO PROVIDE NEW STANDARDS AND CLARIFICATIONS FOR ALLOWANCE OF ELECTRONIC SUBMISSION OF PLANS

### Text Amendment T-403

BE IT ORDAINED, by the Mayor and Council of the City of Gaithersburg, in public meeting assembled, that Chapter 24 of the City Code, entitled, "Zoning," is hereby amended to read as follows:

#### Chapter 24

#### ZONING

\* \* \* \*

#### ARTICLE I. IN GENERAL

##### Sec. 24-1. Definitions.

*Amusement center.* A commercially operated indoor facility containing more than ~~three (3)~~ ten (10) coin-operated or fee paid amusement devices suitable for participation for a fee by people of all ages, including but not limited to television games, electronic or mechanical novelty games, electromechanical and electronic target games, pinball machines, small kiddie rides and other similar devices, whether operated as a primary or accessory use. Internet cafes and similar establishments where the primary use is to permit patrons to pay a fee to play games on a computer shall be deemed to be an amusement center subject to the standards contained in section 24-118(7) of this chapter. Pool tables and billiard tables are not amusement devices and copy centers or business equipment sales

**Boldface**

Underlining

~~Single strikethrough~~

Double underlining

~~Double boldface strikethrough~~

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*Heading or defined term.*

*Added to existing law by original bill.*

*Deleted from existing law by original bill.*

*Added by Amendment.*

*Deleted from existing law or the bill by amendment.*

*Existing law unaffected by bill.*

establishments or facilities which provide internet connection for use with a customer's personal computer are not amusement centers.

\* \* \* \*

### **Sec. 24-3. Zoning map—Adoption; identification**

The incorporated area of the city is hereby divided into zones, as shown on the official zoning map and sections thereof, which together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this chapter.

The official zoning map shall consist of the digital representation of the zoning lines and designations as stored within a geographic information system or other electronic format. Copies of the official zoning map shall be identified by the signature of the mayor and the members of the city council, attested by the city manager and bearing the seal of the city under the following words: "This is to certify that this is a copy of the Official Zoning Map referred to in Article 1, section 4 of Ordinance Number O-2-65 24-3 of the City of Gaithersburg, Maryland, zoning ordinance" together with the effective date of adoption of this chapter the map.

*Editor's note—*

*The zoning map of the city is not set out in this volume. It is on file in the office of the city manager planning & code administration.*

### **Sec. 24-4. Same—Amendments.**

If, in accordance with the provisions of this chapter and Article 66B, Title 2, Annotated Code of Maryland, 1957, changes are made in district boundaries or other matter portrayed on the official zoning map, such changes shall be made on the official zoning map promptly after the amendment has been approved by the city council ~~together with an entry on the official zoning map as follows: "On (date), by official action of the city council, the following change was made in the official zoning map: (brief description of nature of change)," which entry shall be signed by the mayor and the members of the city council and attested by the city manager.~~ The amending ordinance shall provide that such changes or amendments shall not become effective until they have been duly entered upon the official zoning map. No amendment to this chapter which involves matter portrayed on the official zoning map shall become effective until after such change and entry has been made on such map.

No changes of any nature shall be made in the official zoning map or matter shown thereon except in conformity with the procedure set forth in this chapter. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this chapter.

#### **Sec. 24-5. Same—Official copy.**

Regardless of the existence of purported copies of the official zoning map which may from time to time be made or published, the official zoning map which shall be located in the ~~city manager's~~ planning and code administration office shall be the final authority as to the current zoning status of land and water areas, buildings and other structures in the city. A copy of the map, in accordance with Section 24-3, shall be located in the office of the planning department.

#### **Sec. 24-6. - Same—Replacement.**

In the event that the official zoning map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the city council may by resolution adopt a new official map which shall supersede the prior official zoning map. The new official zoning map may correct ~~drafting or other~~ errors or omissions in the prior official zoning map, but no such correction shall have the effect of amending the original zoning ordinance or any subsequent amendment thereof. The planning commission shall certify as to the accuracy of the new official zoning map prior to its adoption by the city council. ~~The new official zoning map shall be identified by the signature of the mayor and the members of the city council, attested by the city manager and bear seal of the city under the following words: "This is to certify that this official zoning map supersedes and replaces the official zoning map adopted (date of adoption of map being replaced) as part of Ordinance No. O-2-65 of the City of Gaithersburg, Maryland."~~ Certification and adoption of a copy of the official zoning map, as defined in Section 24-3, shall be deemed equivalent to certification and adoption of the official zoning map itself.

\* \* \* \*

#### **Sec. 24-10. Conditional use permits.**

\* \* \* \*

##### **(d) *Issuance, term, appeals, etc.***

- (1) A use permit shall be issued if the city council finds, based upon the evidence of record, that the use and/or plan of development for such use will not:
  - a. Be incompatible or inharmonious with the general character of the neighborhood, considering the location, design, scale and bulk of any proposed new buildings or structures, or additions to existing buildings or structures, or conversion of existing buildings, intensity and character of activity, traffic, access and parking conditions, and number of similar uses.

- b. Be detrimental to the use, peaceful enjoyment, economic value and development of surrounding properties.
  - c. Cause objectionable noise, vibrations, fumes, odors, dust, glare, chemical contamination, or physical activity.
  - d. Affect adversely the health or safety of persons residing, working or traveling in the neighborhood of the proposed use.
  - e. Constitute a violation of any provision of this Code or other applicable law or regulation.
- (2) The city council may attach such conditions to the approval of the use permit as may be reasonable and necessary to assure that the proposed use will be consistent with the purpose, intent and requirements of this chapter.
- (3) No deviation from the plans so approved shall be permitted without approval as provided in this section:
- a. No substantial deviation from plans approved shall be permitted without the approval of a new use permit following the same procedure as in the case of an original application.
  - b. Any deviation not deemed substantial by the city manager or his designee may be considered and acted upon by the city manager or his designee, following submission of an application to amend the use permit.
  - c. Construction or operation shall commence within ~~one~~ two (2) years of date of issuance or the use permit shall become void. For good cause shown, no more than ~~two (2)~~ a one year extensions, ~~not exceeding six (6) months each~~, may be granted by the city manager or his designee.
  - d. Whenever the city council finds that any permit previously approved has not been complied with, the city council is authorized, after written notice by ~~first class mail~~ to the applicant, and any persons who appeared before the city council, or entered their appearance in writing prior to the approval of the use permit, and after granting the applicant an opportunity to be heard, to suspend or revoke the use permit or take such other action as deemed necessary.

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## ARTICLE VI. ADMINISTRATION AND ENFORCEMENT OF CHAPTER

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### Sec. 24-177. Building permits.

(a) No building or other structure shall be erected, moved, added to or structurally altered without a permit therefore, issued by the city manager or his or her designee. No building permit shall be issued except in conformity with the provisions of this chapter, chapter 5 of the city code and all other chapters, as required, except after written order from the board of appeals. Each application for a building permit shall be accompanied by:

- (1) The approved site plan or a house location plat of an existing individual single-family dwelling, as defined in section 24-168A, showing the proposed addition drawn to scale..
- (2) Construction plans and documents needed to show compliance with Chapters 5, 7, and 11 of the City Code and any required codes of Montgomery County or the State of Maryland.
- (3) Such other additional information as may be reasonably required to show compliance with the City Code.

(b) The permit shall be issued in conformity with the provisions of this chapter upon completion of the foregoing requirements.

(c) Before any foundation wall of a building or structure is placed upon the footing thereof, the owner of such building or structure shall provide ~~two (2) copies~~ one (1) copy of a location plat, certified by a land surveyor entitled by law to practice land surveying in the state. This plat shall show the actual location of the building or structure walls on the lot, parcel or tract and relation to other structures on the same lot, parcel or tract. If the building or structure is not located in accordance with the original plat and or approved site plan, or is for a use other than that which the building permit was issued, all work thereon, except to correct the noncompliance, shall cease and the building permit shall be withdrawn. A withdrawn building permit may be reinstated upon compliance with the requirements governing its issuance.

(d) No building permit shall be issued for any new building, structure, or addition to a building or structure without a site development permit for grading and sediment control (in conformance with Chapter 8 of the City Code), public works development, and/or on-site development and bonds per City Code, Chapter 24, section 24-171(k), unless waived by the city manager or his or her designee due to minimal disturbance.

(e) Upon completion of any new building, structure, or addition to a building or structure, except additions for single family dwellings, and prior to final inspection

and approval of said new building, structure, or addition to a building or structure, the owner of such building or structure shall provide two (2) copies one (1) copy of a final location survey certified by a professional land surveyor duly licensed by the State of Maryland to practice land surveying in the state.

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#### **Sec. 24-178A. Special regulations for Olde Towne District.**

Notwithstanding any other provisions contained within this chapter, all building or structural construction or modifications, the erection and placement of signs and canopies visible to a public street or thoroughfare, and the use and occupancy of buildings and premises within the Old Towne District, as defined in section 24-161, shall comply with the following additional requirements:

- (a) No building permit or sign or canopy permit shall be issued within the Olde Towne District in connection with the construction, modification or alteration of any existing building or structure or in connection with the erection of any sign or canopy unless in compliance with the regulations, requirements and standards set forth by resolution of the city council and any amendments thereto
- (b) New construction upon unimproved property ~~need not~~ shall also conform to the requirements and standards set forth in the resolution of the city council referred to in subsection (a) of this section, ~~but all building permit applications in connection therewith shall be referred to the downtown review committee for advice and recommendation to the city manager.~~
- (c) No use and occupancy permit shall be issued for other than the initial use and occupancy of any building or premises or both, or part thereof, within the Olde Towne District unless the building and/or premises to be used and occupied conforms to the regulations, requirements and standards set forth by resolution of the city council and any amendments thereto. This provision shall apply to any reuse of any building or premises. The city manager is authorized to issue a conditional or temporary use and occupancy permit upon the agreement of the property owner to conform to the requirements and standards set forth by resolution of the city council and any amendments thereto.
- ~~(d) All applications for permits referred to in subsections (a), (b) and (c) of this section shall be referred to the downtown review committee for advice and recommendation to the city manager; provided, further, that the downtown review committee shall provide advice and recommendations to the city planning commission on change of use applications and site plan applications for approval of the construction of new buildings prior to final site plan approval. The committee shall~~

~~provide such advice and recommendations within thirty days from the date of the filing of an application for a permit referred to herein; otherwise, the committee shall be deemed to have waived the opportunity to advise and make recommendations. Applications for permits for a temporary sign within the Olde Towne District shall be referred to the city manager or his designee or the downtown review committee for advice and recommendation.~~

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## ARTICLE VII. - BOARD OF APPEALS

### **Sec. 24-188. - General requirements and procedures.**

(a) Petitions filed for administrative review may be initiated by any person aggrieved by a final order, requirement, decision or determination as set forth in subsection (a) of section 24-187 of this Code. Such petition shall be filed within seventeen (17) days of the date of the action from which the appeal is filed, unless extended by law or by order of the board upon good cause shown not more than twenty-one (21) days after the date of the action appealed from. The filing of a petition for administrative review shall stay all proceedings in furtherance of the action appealed from unless such stay would cause immediate peril to life or property.

Petitions for a special exception or a variance may be filed by any person, entity or government agency with any financial, contractual or proprietary interest in the affected property. Should petitions be filed by one other than the owner of the property, those petitions must be filed with the owner's written consent.

(b) A petition for special exception, variance or administrative review shall be submitted to the board of appeals in writing on forms provided for this purpose and accompanied by a filing fee which shall be established from time to time by the city council. A petition shall not be accepted for filing which does not contain an appropriate application form, filing fee and supporting material set forth in subsection (c) below.

(c) An application for special exception or petition for variance or administrative review shall be accompanied by the following materials and/or information:

(1) *Special exceptions.*

\* \* \* \*

- c. ~~Copy of the city zoning map pertinent to the petition showing a one thousand foot radius surrounding the subject property and other information to indicate the general conditions of use and existing improvements on adjoining and confronting properties, along with a list of such adjoining and confronting property owners, occupants, and all addresses within two hundred (200) feet of the subject parcel additional interested parties.~~

\* \* \* \*

- h. A listing of the names and addresses of all persons required to receive notice pursuant to section 24-188(e) of this Code. If an abutting or confronting property is a condominium, cooperative or is owned by a homeowner's association then notice shall be given to the governing body and resident agent of the condominium cooperative or homeowner's association.
- (2) *Variances.* Items a., c., f., g. and h. of paragraph (1) above applicable to special exceptions.

(3) *Administrative review.*

- a. The action, document and all records upon which the appeal was filed or based.
- b. List of specific section or sections of the City Code relied upon or authorizing the review.
- c. ~~Certified copy of official zoning vicinity map of one thousand foot radius surrounding the subject property and other information to indicate the general conditions of use and existing improvements on adjoining and confronting properties, along with a list of such adjoining and confronting properties, within two hundred (200) feet of the subject parcel additional interested parties.~~
- d. Copies of additional exhibits or documents upon which the petitioner relies.

\* \* \* \*

(f) The board shall hold a public hearing on all petitions for special exceptions, variance or administrative review with the exception of appeals alleging error by the planning commission or the historic district commission wherein administrative review shall be by oral argument or written statement based solely on the evidence submitted and received in the ~~planning~~ commission proceedings. The board's hearings shall be public and any party may appear in person or by agent or



attorney. The conduct of the hearing shall be conducted pursuant to the board's rules of procedure. Hearings may be adjourned or continued from time to time at the board's discretion; provided, that any such adjournment or continuance shall be to a time and date certain and all parties shall be given notice thereof who were required to be notified of the original hearing. The board shall have authority to adopt, and amend from time to time, rules of procedure to govern the conduct of its proceedings.

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## **ARTICLE X – HOME BASED BUSINESSES**

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### **Sec. 24-215. - Standards and requirements applicable to home based businesses.**

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- (k) A home based business shall not commence operation until ~~an approval certificate shall have~~ a license has been issued by the city.

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## **ARTICLE XII. PRESERVATION OF HISTORIC RESOURCES**

### **Sec. 24-227.4. Courtesy reviews.**

(a) The historic district commission may review and make recommendations to the planning commission on applications for site development plan approvals, including amendments and modifications thereto, involving the construction, reconstruction of, or additions to existing buildings or structures or demolition thereof on a site located within courtesy review areas as stated in the historic preservation master plan element. The courtesy review areas include, but are not limited to, Olde Towne as defined by section 24-161, and the subdivisions of Observatory Heights and Realty Park.

\* \* \* \*

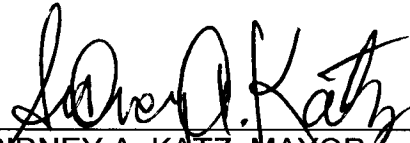
### **Sec. 24-233. Appeals**

In the event that any party is aggrieved by a decision of the historic district commission within ~~thirty (30)~~ seventeen (17) days from the date on which the decision is made public, such party aggrieved may appeal the same to the city board of appeals within the time provided by, and the requirements of, Article VII of this Chapter 24, and thereafter, to the circuit court of the county, which will review the decision based on the record of the proceedings before the historic district

commission. Appeals shall be governed by the Maryland Rules of Procedure applicable to administrative appeals.

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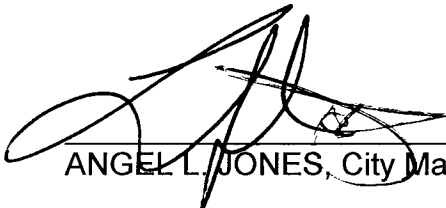
ADOPTED this 3<sup>rd</sup> day of October, 2011, by the City Council of Gaithersburg, Maryland.

  
\_\_\_\_\_  
SIDNEY A. KATZ, MAYOR and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this 3<sup>rd</sup> day of October, 2011. APPROVED by the Mayor of the City of Gaithersburg, Maryland, this 3<sup>rd</sup> day of October, 2011.

  
\_\_\_\_\_  
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 3<sup>rd</sup> day of October, 2011, and the same was APPROVED by the Mayor of the City of Gaithersburg on the 3<sup>rd</sup> day of October, 2011. This Ordinance will become effective on the 24<sup>th</sup> day of October, 2011.

  
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ANGEL L. JONES, City Manager