

Ordinance No. O-12-10

AN EMERGENCY ORDINANCE TO REPEAL AND REENACT WITH
AMENDMENTS CHAPTER 8 OF THE CITY CODE, ENTITLED,
“EROSION AND SEDIMENT CONTROL AND STORMWATER MANAGEMENT,”
ARTICLE II, ENTITLED, “SEDIMENT CONTROL,” § 8-6, ENTITLED,
“EROSION AND SEDIMENT CONTROL PLANS,” AND ARTICLE III, ENTITLED,
“STORMWATER MANAGEMENT,” § 8-20A, ENTITLED “GRANDFATHERING,”
§ 8-21, ENTITLED “WAIVERS,” § 8-22, ENTITLED “REDEVELOPMENT,”
§ 8-26, ENTITLED “PERMITS” TO ENACT REQUIREMENTS FOR
GRANDFATHERING

The Mayor and City Council hereby declares an emergency to exist with respect to the regulation of storm water management for existing approved developments and also for redevelopment in the City; THEREFORE,

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the City of Gaithersburg, in public meeting assembled, that Chapter 8 of the City Code, Articles II and III are hereby repealed and reenacted to read as follows:

Chapter 8

EROSION AND SEDIMENT CONTROL AND STORMWATER MANAGEMENT

ARTICLE I. GENERAL

Sec. 8-1. Definitions.

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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 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, unless the plan has received an administrative waiver as allowed by section 8-20A of this chapter.

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ARTICLE III. STORMWATER MANAGEMENT

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Sec. 8-20A. Grandfathering

(a) In this section, the following terms have the meanings indicated:

(1) Administrative waiver.

- a. "Administrative waiver" means a decision by the City Manager, or designee, pursuant to this chapter to allow the construction of a development to be governed by the stormwater management ordinance in effect as of May 4, 2009 in the City.
- b. "Administrative waiver" is distinct from a waiver granted pursuant to section 8-21 of this chapter.

(2) Approval.

- a. "Approval" means a documented action by the City following a review to determine and acknowledge the sufficiency of submitted material to meet the requirements of a specified stage in a local development review process.
- b. "Approval" does not mean an acknowledgement by the City that submitted material has been received for review.

(3) Final project approval.

- a. "Final project approval" means approval of the final stormwater management plan and erosion and sediment control plan required to construct a project's stormwater management facilities.
- b. "Final project approval" also includes securing bonding or financing for final development plans if either is required as a prerequisite for approval.

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

- a. The number of planned dwelling units or lots;
- b. The proposed project density;
- c. The proposed size and location of all land uses for the project;
- d. A plan that identifies:
 - i. The proposed drainage patterns;
 - ii. The location of all points of discharge from the site; and
 - iii. The type, location, and size of all stormwater management measures based on site-specific stormwater management requirement computations; and
- e. Any other information required by the City including, but not limited to:
 - i. The proposed alignment, location, and construction type and standard for all roads, access ways, and areas of vehicular traffic;
 - ii. A demonstration that the methods by which the development will be supplied with water and wastewater service are adequate; and
 - iii. The size, type, and general location of all proposed wastewater and water system infrastructure.

(b) The City Manager, or designee, may grant an administrative waiver to a development that received a preliminary project approval prior to May 4, 2010. Administrative waivers expire according to section 8-20A(c) of this chapter and may be extended according to section 8-20A(d) of this chapter.

(c) Expiration of Administrative Waivers.

(1) Except as provided for in section 8-20A(d) of this chapter, an administrative waiver shall expire on:

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- a. May 4, 2013, if the development does not receive final project approval prior to that date; or
 - b. May 4, 2017, if the development receives final project approval prior to May 4, 2013.
- (2) All construction authorized pursuant to an administrative waiver must be completed by May 4, 2017 or, if the waiver is extended as provided in section 8-20A(d) of this chapter, by the expiration date of the waiver extension.
- (d) Extension of Administrative Waivers.
 - (1) Except as provided in section 8-20A(d)(2) of this chapter, an administrative waiver shall not be extended.
 - (2) An administrative waiver may only be extended if, by May 4, 2010 the development:
 - a. Has received a preliminary project approval; and
 - b. Was subject to a Development Rights and Responsibilities Agreement, Settlement Agreement, a Tax Increment Financing approval, or an Annexation Agreement
 - (3) Administrative waivers extended according to 8-20A(d)(2) of this chapter shall expire when the Development Rights and Responsibilities Agreement, the Tax Increment Financing approval, or the Annexation Agreement expires.

Sec. 8-21. Waivers.

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

- (a) Except as provided in sections 8-21(b) and 8-21(d) of this chapter, Sstormwater 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) (g) 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

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the provisions of this section if there are subsequent additions, extensions, or modifications to a development receiving a waiver.

- (b) Except as provided in section 8-21(d) of this chapter, ~~if~~ watershed management plans consistent with ~~(f)~~ (g) of this section have not been developed, then stormwater management quantitative control waivers may be granted to projects provided that it has been demonstrated that ESD has been implemented to the MEP ~~and when the approving agency determines that circumstances exist that prevent the reasonable implementation of quantity control practices:~~
- (1) That are in-fill development located in a Priority Funding Area where the economic feasibility of the project is tied to the planned density, and where implementation of the 2009 regulatory requirements would result in a loss of the planned development density provided that:
- a. Public water and sewer and stormwater conveyance exist;
- b. The quantitative waiver is applied to the project for the impervious cover that previously existed on the site only;
- c. ESD to the MEP is used to meet the full water quality treatment requirements for the entire development; and
- d. ESD to the MEP is used to provide full quantity control for all new impervious surfaces; or
- (2) When the approving agency determines that circumstances exist that prevent the reasonable implementation of quantity control practices.
- (c) Except as provided in section 8-21(d) of this chapter, ~~S~~stormwater management qualitative control waivers apply only to:
- (1) In-fill development projects where ESD has been implemented to the MEP and it has been demonstrated that other BMPs are not feasible;
- (2) Redevelopment projects if the requirements of section 8-22 of this chapter are satisfied; or
- (3) Sites where the city determines that circumstances exist that prevent the reasonable implementation of ESD to the MEP.

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- (d) Stormwater management quantitative and qualitative control waivers may be granted for phased development projects if a system designed to meet the 2000 regulatory requirements and the City approvals and has been constructed by May 4, 2010. If the 2009 regulatory requirements cannot be met for future phases constructed after May 4, 2010, all reasonable efforts to incorporate ESD in future phases must be demonstrated.
- (e) Waivers shall only be granted when it has been demonstrated that ESD has been implemented to the MEP and must:
- (1) Be on a case-by-case basis;
 - (2) Consider the cumulative effects of the city's waiver policy; and
 - (3) Reasonably ensure the development will not adversely impact stream quality.
- ~~(e)~~(f) 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)~~(g) A watershed management plan developed for the purpose of implementing different stormwater management policies for waivers and redevelopment shall:
- (1) Include detailed hydrologic and hydraulic analyses to determine hydrograph timing;
 - (2) Evaluate both quantity and quality management and opportunities for ESD implementation;
 - (3) Include cumulative impact assessment of current and proposed watershed development;
 - (4) Identify existing flooding and receiving stream channel conditions;
 - (5) Be conducted at a reasonable scale;
 - (6) Specify types and location of on-site or off-site quantitative and qualitative stormwater management practices are to be implemented;

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(7) Be consistent with the general performance standards for stormwater management in Maryland found in the Design Manual; and

(8) Be approved by the administration.

~~(g)~~(h)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)~~(i) 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.

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

(2) Dedication and conveyance of land. Instead of making a monetary contribution, the applicant, upon receiving a waiver from the city, may enter into an agreement with the city for the granting of an easement or the conveyance or dedication of land by the applicant

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

Sec. 8-22. Redevelopment.

(a) Stormwater management plans are required by the city for all redevelopment, unless otherwise specified by watershed management plans developed according to section 8-21~~(f)~~(g) 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:

- (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.

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

- (1) A combination of ESD and an on-site or off-site structural BMP;
- (2) Retrofitting including existing BMP upgrades, filtering practices, and off-site ESD implementation;
- ~~(2)~~(3) Participation in a S stream restoration;
- ~~(3)~~(4) Pollution trading with another entity;
- ~~(4)~~(5) Design criteria based on watershed management plans developed according to section 8-21(f)(g). of this Ordinance chapter; or
- ~~(5)~~(6) Fees or contributions paid in accordance with section 8-21(h)(i)(1); or
- (7) A partial waiver of the treatment requirements if ESD is not practicable.

(e) The determination of what alternatives will be available may be made by the City at the appropriate point in the development review process. The City shall consider the prioritization of alternatives in section 8-22(d). of this chapter after it has been determined that it is not practicable to meet the 2009 regulatory requirements using ESD. In deciding what alternatives may be required, the City may consider factors including, but not limited to:

- (1) Whether the project is in an area targeted for development incentives such as a Priority Funding Area, a designated Transit Oriented Development area, or a designated Base Realignment and Closure Revitalization and Incentive Zone;
- (2) Whether the project is necessary to accommodate growth consistent with comprehensive plans; or

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

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

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Sec. 8-26. Permits.

(a) *Required.* No person shall develop any land without first obtaining a permit from the city and without providing for appropriate stormwater management measures, except as provided by this article, and any standards, rules and regulations promulgated hereunder.

(b) *Application.*

- (1) To obtain a permit required by this article, an applicant shall first file an application 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 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

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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
- 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, additional time may be granted for an additional 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, unless the plan has received an administrative waiver in section 8-20A.

(d) *Permit fee.* A nonrefundable permit fee will be collected at each phase of stormwater management plan submittal and an application for waiver submittal. The permit fee will provide for the cost of plan review, administration and management of the permitting process, and inspection of all projects subject to this article. A permit fee schedule shall be established by resolution of the mayor and city council.

(e) *Suspension and revocation.* Any 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:

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- (1) Any violation(s) of the conditions of the stormwater management plan approval.
- (2) Changes in site runoff characteristics upon which an approval or waiver was granted.
- (3) Construction is not in accordance with the approved plans.
- (4) Noncompliance with correction notice(s) or stop work order(s) Issued for the construction of the stormwater management system.
- (5) An immediate danger exists in a downstream area in the opinion of the city.
- (6) Any material misrepresentation in the application for permit or the undertaking of work pursuant to the permit.

(f) *Conditions.* In granting any permit pursuant to this article, the city manager, or 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 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.

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ADOPTED, this 21st day of June, 2010, by the City Council of Gaithersburg, Maryland.

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this 21st day of June, 2010. Approved by the Mayor of the City of Gaithersburg this 21st day of June, 2010.

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 21st day of June, 2010, and that the same was approved by the Mayor of the City of Gaithersburg on the 21st day of June, 2010. This Ordinance will become effective IMMEDIATELY.

ANGEL L. JONES, City Manager

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