

Ordinance No. O-8-12

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," 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 and II, are
hereby amended to read as follows:

Chapter 8

EROSION AND SEDIMENT CONTROL AND STORMWATER MANAGEMENT

ARTICLE I. GENERAL

Sec. 8-1. Definitions.

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

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

* * * *

Architect. An architect duly registered by the State to practice professional
architecture, including landscape architecture, in accordance with the provisions of
Title 3, Business Occupations and Professions Article, 56 of the Annotated Code of
Maryland, 1957 (1979 Replacement Volume), as amended.

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

* * * *

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 currently adopted State of Maryland Standards and Specifications for Soil Erosion and Sediment Control.

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

* * * *

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

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

* * * *

Illicit discharge. Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in ~~Article IV, Section 8-36~~ of this chapter.

* * * *

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

* * * *

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

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~~*Standards and specifications.* The 1994 State of Maryland Standards and Specifications for Soil Erosion and Sediment Control and all subsequent revisions that may now or hereafter be established and/or adopted by the Department.~~

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

* * * *

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

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

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

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ARTICLE II. SEDIMENT CONTROL

Sec. 8-2. Purpose and authority.

~~The purpose of this article is to protect, maintain and enhance the public health, safety and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with accelerated soil erosion and resultant sedimentation. Minimizing soil erosion and off-site sedimentation will minimize damage to public and private property, and assist in the attainment and maintenance of water quality standards. The provisions of this chapter are pursuant to Title 4, Environment Article, Subtitle 1, Annotated Code of Maryland, and are duly authorized by the city, and shall apply to all grading and similar activity occurring within the city, except as otherwise excepted in this chapter. The application of this chapter and the relevant provisions expressed herein shall be the minimum erosion and sediment control requirements, and shall not be deemed a limitation or repeal of any other powers granted by State law or regulation.~~

The purpose of this article is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with land disturbances. The goal is to minimize soil erosion and prevent off-site sedimentation by using soil erosion and sediment control practices designed in accordance with the Code of Maryland Regulations (COMAR) 26.17.01, the 2011 Maryland Standards and Specifications (Standards and Specifications) and the Stormwater Management Act of 2007 (Act). Implementing this article will help reduce the negative impacts of land development on water resources, maintain the chemical, physical, and biological integrity of streams, and minimize damage to public and private property.

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

Sec. 8-3. Scope.

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Sec. 8-4. Exemptions for plan approval.

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

- ~~(a) Agricultural land management practices and construction of agricultural structures.~~
- ~~(b) Single-family residences, their accessory buildings, and paved surfaces with areas of disturbance less than five thousand (5,000) square feet. A standard sediment control agreement as set forth on such form as the city manager designates within the State Department of Environment, Article 4 is required.~~
- ~~(c) Clearing or grading activities that disturb less than five thousand (5,000) square feet of land area and disturb less than one hundred (100) cubic yards of earth.~~
- ~~(d) Clearing or grading activities that are subject exclusively to State approval and enforcement under State law regulations.~~
- (a) Agricultural land management practices and agricultural BMPs;
- (b) Clearing or grading activities that disturb less than 5,000 square feet of land area and disturb less than 100 cubic yards of earth; and
- (c) Clearing or grading activities that are subject exclusively to State approval and enforcement under State law and regulations.

Sec. 8-5. Variances.

~~The city may grant a written variance from the requirements of the standards and specifications if strict adherence to the specifications will result in unnecessary hardship and not fulfill the intent of this article. The developer shall submit a written request for a variance to the city. The request shall state the specific variances sought and reasons for requesting the variance. The city shall not grant a variance unless and until sufficient specific reasons justifying the variance are provided by the developer.~~

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

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information is provided describing the unique circumstances of the site to justify the variance.

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

(a) *Review and approval of erosion and sediment control plans.*

(1) * * * *

(2) * * * *

(3) The applicant shall submit an erosion and sediment control plans and any supporting computations to the city for review and approval. The erosion and sediment control plans shall contain sufficient information, drawings, and notes to describe how soil erosion and off-site sedimentation will be minimized. The city shall review the plans to determine compliance with this article and the standards and specifications prior to approval. The plans shall serve as a basis for all subsequent grading and stabilizing, and clearing and grading contrary to the plan is prohibited.

~~(4) In approving the plan, the city may impose such conditions thereto as may be deemed necessary to ensure compliance with the provisions of this article, the State sediment control regulations, Code of Maryland Regulations (COMAR) 26.17.01, the standards and specifications, or the preservation of public health and safety.~~

(4) The review and approval process shall be in accordance with the comprehensive and integrated plan approval process described in the Standards and Specifications, Chapter 8 of the city code, and the Act.

(5) At a minimum, a concept plan must include the mapping of natural resources and sensitive areas including highly erodible soils and slopes greater than 15 percent as well as information required under Chapter 8 of the city code. These areas are to remain undisturbed or an explanation must be included with either the concept or site development plan describing enhanced protection strategies for these areas during construction.

(6) A site development plan submittal must include all concept plan information and indicate how proposed erosion and sediment control practices will be integrated with proposed stormwater

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management practices. The latter is to be done through a narrative and an overlay plan showing both ESD and erosion and sediment control practices. An initial sequence of construction and proposed project phasing to achieve the grading unit restriction should be submitted with the site development plan.

(7) An applicant shall submit a final erosion and sediment control plan to the city for review and approval. The plan must include all of the information required by the concept and site development plans as well as any information in section 8-6(b) of this chapter not already submitted.

(5 8) The city shall notify the applicant of approval or reasons for the disapproval or modification within forty-five (45) days after submission of the erosion and sediment control plan. If a decision is not made within forty-five (45) days, the city shall inform the applicant of the status of the review process and the anticipated completion date. The erosion and sediment control plan shall not be considered approved without the inclusion of the signature and date of signature of the director of public works, or designee, on the plan.

(9) A final erosion and sediment control plan shall not be considered approved without the inclusion of the signature and date of signature of the city on the plan.

(6 10) Approved plans remain valid for two (2) years from the date of approval unless extended or renewed by the city. Approved plans shall expire on the same date of the expiration of the associated final site plan or amendment to final site plan. 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.

(11) Grandfathering of Approved Plans:

a. Any plans that receive final approval after January 9, 2013 must be in compliance with the requirements of this article and the Standards and Specifications.

b. A plan that receives final approval by January 9, 2013 may be reapproved under its existing conditions if grading

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activities have begun on the site by January 9, 2015, with the exception of stabilization requirements.

c. Stabilization practices on all sites must be in compliance with the requirements of this article and the Standards and Specifications by January 9, 2013, regardless of when an approved erosion and sediment control plan was approved.

(b) *Contents of the erosion and sediment control plan.* The applicant is responsible for submitting an erosion and sediment control plan which meets the requirements of this article, the ~~State sediment control regulations COMAR 26.17.01 Act~~ and the Standards and Specifications. The plan shall include sufficient information to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed grading on water resources and the effectiveness and acceptability of measures proposed to minimize soil erosion and off-site sedimentation. The applicant shall certify on the drawings that all clearing, grading, drainage, construction and development shall be conducted in strict accordance with the plan. Applicants shall submit the following information:

(1) * * * *

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(3) * * * *

a. * * * *

1. * * * *

2. * * * *

3. * * * *

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

e. ~~The proposed grading and earth disturbance including:~~

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1. ~~Surface area involved;~~
 2. ~~Volume of spoil material;~~
 3. ~~Volume of borrow material; and~~
 4. ~~Limits of grading, including limitation of mass clearing and grading.~~
- c. The location of natural resources, wetlands, floodplains, highly erodible soils, slopes 15 percent and steeper, and any other sensitive areas;
- d. ~~Storm drainage provisions, including:~~
1. ~~Velocities and quantities of flow at outfalls; and~~
 2. ~~Site conditions around points of all surface water discharge from the site.~~
- d. A general description of the predominant soil types on the site, as described by the appropriate soil survey information available through the local soil conservation district or the USDA Natural Resources Soil Conservation Service;
- e. ~~Erosion and sediment control provisions to minimize on-site erosion and prevent off-site sedimentation including:~~
1. ~~Provisions to preserve topsoil and limit disturbance;~~
 2. ~~Details of grading practices;~~
 3. ~~Design details for structural controls; and~~
 4. ~~Details of temporary and permanent stabilization measures including placement of the following on the plan:~~

~~Following initial soil disturbance or redisturbance, permanent or temporary stabilization shall be completed within:~~

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~~(a) Seven (7) calendar days as to the surface of all perimeter dikes, swales, ditches, perimeter slopes, and all slopes greater than three horizontal to one vertical (3:1);~~

~~(b) Fourteen (14) days as to all other disturbed or graded areas on the project site; and~~

e. Proposed stormwater management practices;

~~f. Maintenance shall be performed as necessary to ensure that the stabilized areas continuously meet the appropriate requirements of the Standards and Specifications.~~

~~The requirements of subsections (3)e.4.(a) and (3)e.4.(b) do not apply to those areas which are shown on the plan and are currently being used for material storage or for those areas on which actual construction activities are currently being performed or to interior areas of a surface mine site where the stabilization material would contaminate the recoverable resource.~~

f. Erosion and sediment control plans including:

1. The existing topography and improvements as well as proposed topography and improvements at a scale between 1" = 10' and 1" = 50' with 2 foot contours or other approved contour interval. For projects with more than minor grading, interim contours may also be required;

2. Scale, project and sheet title, and north arrow on each plan sheet;

3. The limit of disturbance (LOD) including:

i. Limit of grading (grading units, if applicable); and

ii. Initial, interim, and final phases;

4. The proposed grading and earth disturbance including:

i. Total disturbed area;

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- ii. Volume of cut and fill quantities; and
- iii. Volume of borrow and spoil quantities;

5. Storm drainage features, including:

- i. Existing and proposed bridges, storm drains, culverts, outfalls, etc.;
- ii. Velocities and peak quantities of flow rates at outfalls for the two-year and ten-year frequency storm events; and
- iii. Site conditions around points of all surface water discharge from the site.

~~g. Sequence of construction describing the relationship between the implementation and maintenance of controls, including permanent and temporary stabilization and the various stages or phases of earth disturbance and construction. The sequence of construction shall, as a minimum, include a schedule and time frame for the following activities:~~

- ~~1. Clearing and grubbing for those areas necessary for installation of perimeter controls;~~
- ~~2. Construction of perimeter controls;~~
- ~~3. Remaining clearing and grubbing;~~
- ~~4. Road grading;~~
- ~~5. Grading for the remainder of the site;~~
- ~~6. Utility installation and whether storm drains will be used or blocked after construction;~~
- ~~7. Installation of stormwater management facilities;~~
- ~~8. Installation of impervious areas;~~
- ~~9. Final grading, landscaping or stabilization; and~~

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~~10. Removal of sediment controls.~~

g. Erosion and sediment control provisions to minimize on-site erosion and prevent off-site sedimentation including:

1. Provisions to preserve topsoil and limit disturbance;
2. Phased construction and implementation of grading unit(s) to minimize disturbances, both in extent and duration;
3. Location and type of all proposed sediment control practices;
4. Design details and data for all erosion and sediment control practices; and
5. Specifications for temporary and permanent stabilization measures including, at a minimum:

i. The "Standard Stabilization Note" on the plan stating:

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

- a) Three (3) calendar days as to the surface of all perimeter dikes, swales, ditches, perimeter slopes, and all slopes greater than three horizontal to one vertical (3:1);
- b) Seven (7) days as to all other disturbed or graded areas on the project site not under active grading; and

ii. Details for areas requiring accelerated stabilization.

~~h. A statement placed on the plan indicating that the developer shall request that the city approve work completed in accordance with the approved erosion and sediment control plan, the grading or building permit, and this article.~~

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~~1. On all sites with disturbed areas in excess of two (2) acres, approval of the inspection agency shall be requested upon completion of installation of perimeter erosion and sediment controls, but before proceeding with any other earth disturbance, excavation or grading. Other building or grading inspection approvals may not be authorized until this initial approval by the inspection agency is made; and~~

~~2. Approval shall be requested upon final stabilization of all sites with disturbed areas in excess of two (2) acres before removal of controls.~~

h. Maintenance shall be performed as necessary to ensure that the stabilized areas continuously meet the appropriate requirements of the Standards and Specifications.

~~i. Certification by the owner or developer that any clearing, grading, excavation, construction, or development, or all of these, will be done pursuant to this plan and that responsible personnel involved in the construction project will have a certification of training at a Maryland Department of the Environment approved training program for the control of sediment and erosion before beginning the project. The certification of training for responsible personnel requirement may be waived by the city on any project involving four (4) or fewer residential units.~~

i. Sequence of construction describing the relationship between the implementation and maintenance of controls, including permanent and temporary stabilization and the various stages or phases of earth disturbance and construction. Any changes or revisions to the sequence of construction must be approved by the city prior to proceeding with construction. The sequence of construction must, at a minimum, include the following:

1. Request for a pre-construction meeting with the appropriate enforcement authority;

2. Clearing and grubbing for those areas necessary for installation of perimeter controls;

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3. Construction and stabilization of perimeter controls;
 4. Remaining clearing and grubbing within installed perimeter controls;
 5. Road grading;
 6. Grading for the remainder of the site;
 7. Utility installation, connections to existing structures, and whether storm drains will be used or blocked after construction;
 8. Installation of stormwater management measures;
 9. Installation of impervious areas;
 10. Final grading, landscaping and stabilization;
 11. Approval of the appropriate enforcement authority prior to removal of sediment controls; and
 12. Removal of controls and stabilization of areas that are disturbed by removal of sediment controls.
- j. ~~Any additional information or data deemed appropriate by the city.~~
- i. A statement placed on the plan indicating that the developer shall request that the city approve work completed in accordance with the approved erosion and sediment control plan, the grading or building permit, and this article:
1. Prior to the start of earth disturbance;
 2. Upon completion of installation of perimeter erosion and sediment controls, but before proceeding with any other earth disturbance, excavation or grading. Other building or grading inspection approvals may not be authorized until this initial approval by the inspection agency is made; and
 3. Prior to the removal of sediment control practices.

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- k. Certification by the owner or developer that any clearing, grading, excavation, construction, or development, or all of these, will be done pursuant to this plan and that responsible personnel involved in the construction project will have a certification of training at a Maryland Department of the Environment approved training program for the control of sediment and erosion before beginning the project. The certification of training for responsible personnel requirement may be waived by the city on any project involving four (4) or fewer residential units. Additionally, the owner or developer shall allow right of entry for periodic on-site evaluation by the City and/or MDE;
- l. Certification by a professional engineer, land surveyor, landscape architect, architect, or forester (for forest harvest operations only) registered in the State that the plans have been designed in accordance with erosion and sediment control laws, regulations, and standards, if required by the city or the Administration; and
- m. Any additional information or data deemed appropriate by the city.

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

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

- (d) *Standard Erosion and Sediment Control Plan.*

- (1) The city may adopt a standard erosion and sediment control plan for activities with minor earth disturbances, such as single-family residences, small commercial and other similar building sites, minor maintenance grading, and minor utility construction.
- (2) A standard erosion and sediment control plan must meet the requirements of this article and the Standards and Specifications.

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

Sec. 8-7. Permits.

(a) * * *

(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 an erosion and sediment control plan, the permit fee and a bond or other security as required in section 8-8 of this chapter. The plans accompanying the application shall be prepared and certified by a professional engineer, professional land surveyor, landscape architect, or other person qualified in the State of Maryland and approved by the city manager.

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

(c) * * *

(d) * * *

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(f) * * * *

Sec. 8-8. Performance bond.

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

(b) * * * *

(c) |* * * *

(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

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surety or any person employed or engaged on his/her behalf shall have the right to go upon the site to complete the required work or make it safe. In the event the city undertakes the work or to make the site safe with the funds from the forfeited cash or corporate bond, such funds shall be used to pay the cost of contracting, including engineering and administration, for restoration of the site to meet the requirements of the permit, bond or this article. If the cost of the work or making it safe exceeds the amount of the cash or corporate bond, letter of credit or other security, the permittee shall continue to be firmly bound under a continuing obligation for payment of all excess costs and expenses incurred by the city. The costs and expenses shall be a lien upon all property and all rights to property, real or personal, of any person liable to pay the same from and after the time such costs are due and payable. The costs shall be listed on the tax bill and shall be collected in the manner of ordinary taxes.

(e) * * * *

(f) A corporate bond or letter of credit shall remain in full force and effect, until completion of the work in accordance with section 8-15 of this chapter. A cash bond or other security shall be returned upon depositor's request to the depositor or to his/her successors or assigns upon completion of the work approved by the city in accordance with section 8-15, except any portion thereof that may have been used. Subsequent to the completion of work, the city manager is authorized to declare as abandoned and forfeited, any cash bond posted pursuant to a requirement of this chapter, and relinquish proceeds thereof to the general treasury of the city, when after giving the depositor or permittee who posted the cash bond thirty (30) days written notice first by registered mail, and if unclaimed by first-class mail, such depositor or permittee fails to request of the city the return of the cash bond. Upon failure to request of the city return of the cash bond, as provided herein, the depositor or permittee, its successors or assigns, heirs and assigns relinquish all claim to said cash bond.

Sec. 8-9. Liability insurance.

If, in the opinion of the city manager, or designee, the nature of the work is such that it may create a hazard to human health, life or safety or endanger adjoining property or property at a higher or lower elevation, or any street or street improvement, or any other public property, the city manager, or designee, may, before issuing a permit under this article, require that the applicant file a certificate of insurance. The certificate of insurance shall show that ~~he~~ the applicant is insured against claims for damages for personal injury and property damage in an amount

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~~not less than five hundred thousand dollars (\$500,000.00)~~ determined by the city manager. 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 ~~himself, his~~ the applicant, its subcontractor or any person directly or indirectly employed by him/her. The amount of such insurance shall be prescribed by the city manager, or designee, in accordance with the nature of the risks involved. Such insurance shall be written by a company licensed to do business in the state and approved by the city. Neither issuance of a permit nor compliance with the provisions hereto or any condition imposed by the city shall relieve any person from any responsibility for damage to persons or property otherwise imposed by law, nor impose any liability upon the city for damages to persons or property.

Sec. 8-10. Inspections.

~~(a) Inspection frequency and reports.~~

- ~~(1) The permittee shall maintain a copy of the approved erosion and sediment control plan on site.~~
- ~~(2) On all sites with disturbed areas in excess of two (2) acres, the permittee shall request that the city manager, or designee, inspect work completed at the stages of construction specified below to ensure accordance with the approved erosion and sediment control plan, the grading or building permit and this article.~~
 - ~~a. Upon completion of installation of perimeter erosion and sediment controls, prior to proceeding with any other earth disturbance or grading. Other building or grading inspection approvals may not be authorized until initial approval by the inspection agency is made; and~~
 - ~~b. Upon final stabilization before the removal of sediment controls.~~
- ~~(3) Every active site having an erosion and sediment control plan should be inspected for compliance with the plan on the average of once every two (2) weeks.~~
- ~~(4) Inspectors shall prepare written reports after every inspection. The inspection report shall describe:~~
 - ~~a. The date and location of the site inspection;~~

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- b. ~~Whether or not the approved plan has been properly implemented and maintained;~~
- c. ~~Any practice deficiencies or erosion and sediment control plan deficiencies; and~~
- d. ~~If a violation exists, the type of enforcement action taken.~~
- (5) ~~The city manager shall notify the on-site personnel or the owner/developer in writing when violations are observed, describing:~~
 - a. ~~The nature of the violation;~~
 - b. ~~The required correction action; and~~
 - c. ~~The time period in which to have the violation corrected.~~
- (b) ~~*Right of entry.* It shall be a condition of every grading, excavation or building permit that the city has the right to enter property periodically to inspect for compliance with this article.~~

The Administration, or the city, if delegated enforcement authority, is responsible for the inspection and enforcement of all land disturbing activities, including those sites requiring an erosion and sediment control plan as specified by this article. This enforcement authority may be delegated to the city through a request by the city or required as a condition of a National Pollutant Discharge Elimination System (NPDES) municipal separate storm sewer system permit.

(a) *Inspection frequency and reports.*

- (1) The owner/developer shall maintain a copy of the approved erosion and sediment control plan on site.
- (2) Every active site having a designed erosion and sediment control plan should be inspected for compliance with the plan on average once every two (2) weeks.
- (3) A written report shall be prepared by the inspection agency after every inspection. The report shall describe:
 - a. The date and location of the site inspection;

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

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

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

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

(c) * * * *

(1) * * * *

(2) * * * *

(d) ~~Complaints.~~ ~~The city shall receive complaints and initiate enforcement procedures when violations are confirmed. Any complaint received shall be acted upon routinely within three (3) working days and the complainant shall be notified of any action or proposed action routinely within seven (7) working days of receipt of the complaint.~~

(d) Complaints. The city shall accept and investigate complaints regarding erosion and sediment control concerns from any parties and:

- (1) Conduct an initial investigation within three (3) working days from receipt of the complaint;
- (2) Notify the complainant of the initial investigation and findings within seven (7) days from receipt of the complaint; and

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- (3) Take appropriate action when violations are discovered during the course of the complaint investigation.

8-11. Enforcement procedures.

* * * *

Sec. 8-12. Protection of public and adjacent property during excavation.

* * * *

Sec. 8.-13. Deposit of soil, rock, liquid, etc., on public or private property prohibited: removal of same from public property; costs of removal constitute lien or property.

* * * *

Sec. 8-14. Reserved. Severability

If any portion, section, subsection, sentence, clause, or phrase of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this article, it being the intent of the city that this article shall stand, notwithstanding the invalidity of any portion, section, subsection, sentence, clause, or phrase, hereof.

Sec. 8-15. Penalties.

- (a) Any person who violates any provision of this article, at the discretion of the city is either:

- (1) Guilty of a misdemeanor, and upon conviction in a court of competent jurisdiction is subject to a fine not exceeding \$10,000 or imprisonment not exceeding one year or both for each violation with costs imposed in the discretion of the court. Each day upon which the violation occurs constitutes a separate offense; or

- ~~(a)~~(2) Guilty of municipal infractions and enforceable pursuant to the provisions of section 1-9. The maximum penalty for each initial and repeat violation shall be established by the city council.

- (b) * * * *

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- (c) * * * *
- (1) * * * *
- (2) * * * *
- a. * * * *
- b. * * * *
- (d) * * * *

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

* * * *

ADOPTED, this 5th day of November, 2012, 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 5th day of November , 2012. Approved by the Mayor of the City of Gaithersburg this 5th day of November, 2012.

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 5th day of November, 2012, and that the same was approved by the Mayor of the City of Gaithersburg on the 5th day of November, 2012. This Ordinance will become effective on the 25th day of November, 2012.

TONY TOMASELLO, Acting City Manager

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