

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 1 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," SO AS TO AMEND SECTION 1-2, ENTITLED "DEFINITIONS AND RULES OF CONSTRUCTION."

BE IT ORDAINED, by the Mayor and Council of the City of Gaithersburg, in public meeting assembled, that Chapter 1 of the City Code is hereby amended to read as follows:

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Section 1-2 – Definitions and rules of construction.

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Formal City Acceptance. Formal City Acceptance of any public project, including but not limited to sediment control, stormwater management, sidewalks or streets, shall be accomplished only with formal acceptance of the public project by the City Manager or designee.

* * *

ADOPTED this ____ day of _____, 2016, by the City Council of Gaithersburg, Maryland.

JUD ASHMAN, MAYOR and

President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this the ____ day of _____, 2016. APPROVED by the Mayor of the City of Gaithersburg, Maryland this the ____ day of _____, 201_.

JUD ASHMAN, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the ___ day of _____, 2016, and the same was APPROVED by the Mayor of the City of Gaithersburg on the ___ day of _____, 2016. This Ordinance will become effective on the ___ day of _____, 2016.

Tony Tomasello, City Manager

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

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 8 OF THE CITY CODE, ENTITLED "EROSION AND SEDIMENT CONTROL AND STORMWATER MANAGEMENT," ARTICLE II, ENTITLED "SEDIMENT CONTROL," SO AS TO AMEND SECTIONS 8-7, ENTITLED "PERMITS," AND 8-10, ENTITLED "INSPECTIONS," ARTICLE III, ENTITLED "STORMWATER MANAGEMENT," SECTIONS 8-26, ENTITLED "PERMITS," 8-27, ENTITLED "PERFORMANCE BOND," AND 8-29, ENTITLED "INSPECTIONS"

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

Chapter 8 - EROSION AND SEDIMENT CONTROL AND STORMWATER MANAGEMENT

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ARTICLE II: SEDIMENT CONTROL

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Section 8-7- Permits

(d) Permit fee. A permit fee schedule may be established by resolution of the mayor and city council for the administration and management of the erosion and sediment control program. The permit fee will provide for the cost of administration and management of the permitting process, and may include inspection of all projects subject to this article, though a separate inspection fee may also be established. Capital improvement projects, refuse disposal areas, sanitary landfills and public works projects constructed by the city shall be exempt from the permit fee.

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Section 8-10 - Inspections.

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(e) If the completed work is to be owned and/or maintained by the City, ownership and responsibility for maintenance shall not convey until formal acceptance of the work by the city manager.

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ARTICLE III: Stormwater Management

* * *

Section 8-26 - Permits

- (a) *Required.* No person shall develop any land without first obtaining a permit from the city and without providing for appropriate stormwater management measures, except as provided by this article, and any standards, rules and regulations promulgated hereunder.
- (b) Application.
- (1) To obtain a permit required by this article, an applicant shall first file an application. The application shall be accompanied by scale plans or drawings, including a grading, erosion and sediment control and final stormwater management plan, the permit fee and a bond or other security as required in section 8-27. The plans accompanying the application shall be prepared and certified by a professional engineer, professional land surveyor, landscape architect, or other person qualified in the State of Maryland and approved by the city manager, or 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 article. Where appropriate, a building permit may not be issued without:
 - a. Recorded easements and/or covenants for the stormwater management facility and easements or covenants to provide adequate access for inspection and maintenance from a public right-of-way, which are approved by the city;
 - b. A covenant or recorded document consisting of the stormwater management maintenance agreement;
 - c. Performance bond as described in section 8-27 and liability insurance as described in section 8-28;

- 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.
- f. A digital drawing file of the impervious cover, in compliance with the City's digital submission requirements policy.

* * *

(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 final erosion and sediment control and final stormwater management plan are approved by the city. The stormwater management plan shall be a condition of the permit. No person shall violate any such conditions so imposed. In granting an approval for any phase of site development, the city may impose such conditions that may be deemed necessary to ensure compliance with the provisions of this article and the preservation of public health and safety.

Sec. 8-27- Performance bond.

* * *

(f) The bond or other security 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 system complies with the approved plan and the provisions of this article, and formal acceptance of the work by the city manager. Partial bond release shall be at the discretion of the city manager, or ~~his or her~~ designee.

* * *

Sec. 8-29 - Inspections.

* * *

(h) If the stormwater management system is to be owned and/or maintained by the City, ownership and responsibility for maintenance shall not convey until formal acceptance of the work by the city manager

* * *

ADOPTED this ___ day of _____, 2016, by the City Council of Gaithersburg, Maryland

JUD ASHMAN, MAYOR and
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this the ___ day of _____, 2016. APPROVED by the Mayor of the City of Gaithersburg, Maryland this the ___ day of _____, 201_.

JUD ASHMAN, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the ___ day of _____, 2016, and the same was APPROVED by the Mayor of the City of Gaithersburg on the ___ day of _____, 2016. This Ordinance will become effective on the ___ day of _____, 2016.

Tony Tomasello, City Manager

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* * *	Existing law unaffected by bill.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 19 OF THE CITY CODE, ENTITLED "STREETS AND SIDEWALKS," ARTICLE II, ENTITLED "ROAD CONSTRUCTION," SO AS TO AMEND SECTIONS 19-13, ENTITLED "BOND REQUIRED BY PERMITTEE," 19-13A ENTITLED "LIABILITY INSURANCE," AND 19-16, ENTITLED "COMPLIANCE WITH ARTICLES; ACCEPTANCE OF PROJECTS AND RELEASE FROM BONDS."

BE IT ORDAINED, by the Mayor and Council of the City of Gaithersburg, in public meeting assembled, that Chapter 19 of the City Code is hereby amended to read as follows:

Chapter 19 - STREETS AND SIDEWALKS

* * *

ARTICLE II: Road Construction

* * *

Sec. 19-13 - Bond required of permittee.

(a) The city shall require from the developer a surety or cash bond, irrevocable letter of credit, corporate bond or other means of security acceptable to the city manager or designee, and approved by the city attorney, prior to the issuance of any permit and ~~Each person to whom a permit is issued under this article shall,~~ prior to beginning any grading or construction pursuant to that permit. The bond or other means of 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 , deliver to the city a corporate bond or other means of security shall be not less than ~~in~~ such amount as is estimated to be the total cost of the project, plus a ten per centum (10%) contingency or unit dollar amount established by the city as contingency. A corporate bond or other security shall be maintained and renewed annually and all securities shall be executed by a surety or guaranty company qualified to transact business in the state and approved by the city. Such corporate bond or security shall run to the city and obligate the principal, its 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. It shall be conditioned upon

the completion of the work authorized by the permit, and upon the repair of any defects in the work which may occur not later than one year after the acceptance of the work for maintenance by the city. The bond or other security required in this section shall include provisions relative to forfeiture for failure to complete work specified in the approved plan, compliance with all the provisions of this article and other applicable laws and regulations, and any time limitations. In lieu of such corporate bond or other security, said permittee may, with the approval of the city manager or designee and the city attorney, deliver to the city a written agreement to complete such work and to repair any such defect, together with cash, certified check, cashier's check or other instrument designed to provide the funds to complete such work and repair any such defects in the event the permittee shall fail to do so. Such instrument may consist of a letter of credit from a commercial bank, a certificate of savings deposit in a commercial bank or savings institution assigned to the city and qualified to transact business in the state, or such other instrument as may be approved by ~~resolution of the council.~~ the city manager or designee and the city attorney. 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, the plan and the permit. Upon the completion of the work authorized by the permit and formal acceptance of the work for maintenance by the city manager, said corporate bond shall be released as to ninety (90) percentum of the amount thereof, or the full amount minus the unit dollar amount withheld by the city, or in those cases where a written agreement has been submitted in lieu of said bond, ninety (90) percentum of the security therefor or the full amount minus the unit dollar amount withheld by the city shall be returned to the permittee. Upon completion of the repair of any defects referred to herein, or upon the expiration of one year from the acceptance of the work for maintenance by the city without the occurrence of any such defects, the remainder of such bond shall be released or the balance of such security shall be returned to the permittee.

(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 and the period of time deemed by the city to be reasonably necessary for the completion of such work.

(c) If a cash bond, letter of credit or other security has been posted, notice of default as provided by the preceding paragraphs shall be given to the principal, and if compliance is not had within the time specified, the city shall proceed without delay and without further notice or proceedings whatsoever to forfeit and convert and use the cash deposited, or any portion of such deposit, or other security to cause the required work to be done, by contract or otherwise, in the discretion of the city manager, or designee.

(d) In the event of any default in the performance of any term or condition of the permit or the bond, letter of credit or other security, the city, the surety or any person

employed or engaged on it's 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 or other security shall not be fully released without a final inspection of completed work and approval by the city, submission of "as-built" plans, including but not limited to those for all materials and easements in future city rights of way, and certification of completion by the city that the work complies with the approved plan and the provisions of this article, and formal acceptance of the project by the city manager. Partial bond release shall be at the discretion of the city manager, or designee.

(bg) Subsequent to 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 permittee who posted the cash bond thirty (30) days written notice first by registered mail, and if unclaimed by first-class mail, such 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 permittee, its successors, heirs and assigns relinquish all claim to said cash bond.

(ch) Prior to releasing any bond or letter of credit required by this chapter, the city manager shall provide an opportunity for interested property owners, citizen groups, and representatives of common ownership communities to provide comment concerning any perceived defects in bonded construction. Such comment must be received by the city within thirty (30) days of permittee's request for release of bonds under this chapter. The city manager or his designee shall promulgate administrative procedures for notification of interested property owners, citizens groups and representatives of common ownership communities. After final inspection of the completed work and approval by the city, including formal acceptance of the project by the city manager, ~~t~~The decision of the city manager as to this release of any bond or letter of credit ~~other security~~ shall be final and shall not be subject to any

administrative appeal or review procedures provided for in sections 24-181 and 24-187(a) of the City Code.

* * *

Sec. 19-13A - 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 Developer file a certificate of insurance. The certificate of insurance shall show that the Developer is insured against claims for damages for personal injury and property damage in an amount not less than two million dollars (\$2,000,000.00). Such damages may also include but are not limited to include damages to the city by deposit or washing of material onto city streets or other public improvements; which may arise from or out of the performance of the work, whether such performance is by the Developer, subcontractor or any person directly or indirectly employed by the Developer. 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. 19-16 - Compliance with articles; acceptance of projects and release from bonds.

All permittees under this article and their agents and servants shall comply with all applicable provisions of this article. Acceptance of any and all projects, and releases from bonds or other security required thereunder, shall be conditioned upon the requirements of section 103-19, Montgomery County Code, 1965, as amended, and formal acceptance of the work by the city manager.

* * *

ADOPTED this ____ day of _____, 2016, by the City Council of Gaithersburg, Maryland.

JUD ASHMAN, MAYOR and

President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this the ____ day of _____, 2016. APPROVED by the Mayor of the City of Gaithersburg, Maryland this the ____ day of _____, 201_.

JUD ASHMAN, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the ____ day of _____, 2016, and the same was APPROVED by the Mayor of the City of Gaithersburg on the ____ day of _____, 2016. This Ordinance will become effective on the ____ day of _____, 2016.

Tony Tomasello, City Manager

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* * *	Existing law unaffected by bill.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 20 OF THE CITY CODE, ENTITLED "SUBDIVISION OF LAND," ARTICLE III, ENTITLED "GENERAL REQUIREMENTS AND STANDARDS FOR SUBDIVISIONS," SO AS TO AMEND SECTIONS 20-19A, ENTITLED "PERMIT AND OTHER REQUIREMENTS FOR PUBLIC PROJECTS," AND ARTICLE VIII, ENTITLED "STREET PROFILES AND GRADE ESTABLISHMENTS," 20-62A ENTITLED "PERMIT AND OTHER REQUIREMENTS FOR PUBLIC PROJECTS.

BE IT ORDAINED, by the Mayor and Council of the City of Gaithersburg, in public meeting assembled, that Chapter 20 of the City Code, is hereby amended to read as follows:

CHAPTER 20: SUBDIVISION OF LAND

* * *

ARTICLE III. - GENERAL REQUIREMENTS AND STANDARDS FOR SUBDIVISIONS

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§ 20-19A, Permit and other requirements for public projects

It shall be unlawful to construct a public street without first obtaining a permit therefor as required in Chapter 19. Such permits shall be subject to the conditions noted in Chapter 19, including (i) such conditions as are necessary to protect the public health, safety and welfare, (ii) the permittee posting with the city such bonds or other financial security to insure the completion, safety, workmanship and restoration of the work and/or work area so permitted, (iii) relocation at the expense of the permittee in the event that the privately owned facility is found to conflict with future public facilities or with access to repair, replace or maintain existing or future public facilities, (iv) the execution by permittee of written agreements of insurance and indemnification as are reasonably necessary to protect the interests of the city, (v) submission of "as-built" plans, including but not limited to those for all materials and easements in future city rights of way, and (vi) if the completed work is to be owned and maintained by the city, formal acceptance by the city manager.

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ARTICLE VIII. - STREET PROFILES AND GRADE ESTABLISHMENTS

* * *

§ 20-62A, Permit and other requirements for public projects

(a) It shall be unlawful for any person to construct any project for public use without first obtaining a permit therefor. Such permits shall be subject to the conditions below, including (i) such conditions as are necessary to protect the public health, safety and welfare, (ii) approval of the project as part of the concept, preliminary and final plan/construction phases for the development, (iii) the permittee posting with the city such bonds or other financial security to insure the completion, safety, workmanship and restoration of the work and/or work area so permitted, (iv) relocation at the expense of the permittee in the event that the privately owned facility is found to conflict with future public facilities or with access to repair, replace or maintain existing or future public facilities, (v) the execution by permittee of written agreements of insurance and indemnification as are reasonably necessary to protect the interests of the city, and (vi) if the completed work is to be owned and maintained by the city, formal acceptance by the city manager.

(b) The owner/developer shall submit the project for approval with the concept, preliminary and final plan/construction phases for the development, which shall meet the requirements of this Code.

(c) The city shall require from the developer a surety or cash bond, irrevocable letter of credit, corporate bond or other means of security acceptable to the city manager or designee and approved by the city attorney, prior to the issuance of any permit and prior to beginning any grading or construction pursuant to that permit. The bond or other means of 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 bond or other means of security shall be not less than such amount as is estimated to be the total cost of the project, plus a ten percentum (10%) contingency or unit dollar amount established by the city as contingency. A corporate bond or other security shall be maintained and renewed annually and all securities shall be executed by a surety or guaranty company qualified to transact business in the state and approved by the city. Such bond or security shall obligate the principal, his or 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. It shall be conditioned upon the completion of the work authorized by the permit, and upon the repair of any defects in the work which may occur not later than one (1) year after the formal acceptance of the work for maintenance by the city manager. The bond or other security required in this section shall include provisions

relative to forfeiture for failure to complete work specified in the approved plan, compliance with all the provisions of this article and other applicable laws and regulations, and any time limitations. In lieu of such corporate bond or other security, said permittee may, with the approval of the city manager or designee and the city attorney, deliver to the city a written agreement to complete such work and to repair any such defect, together with cash, certified check, cashier's check or other instrument designed to provide the funds to complete such work and repair any such defects in the event the permittee shall fail to do so. Such instrument may consist of a letter of credit from a commercial bank, a certificate of savings deposit in a commercial bank or savings institution assigned to the city and qualified to transact business in the state, or such other instrument as may be approved by the city manager or designee and the city attorney. 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, the plan and the permit. Upon the completion of the work authorized by the permit and formal acceptance of the work for maintenance by the city manager, said corporate bond or other security shall be released as to ninety percentum (90%) of the amount thereof, or the full amount minus the unit dollar amount withheld by the city, or in those cases where a written agreement has been submitted in lieu of said bond, ninety percentum (90%) of the security or the full amount minus the unit dollar amount withheld by the city, therefor shall be returned to the permittee. Upon completion of the repair of any defects referred to herein, or upon the expiration of one year from the formal acceptance of the work for maintenance by the city manager without the occurrence of any such defects, the remainder of such bond shall be released or the balance of such security shall be returned to the permittee.

- (1) 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 and the period of time deemed by the city to reasonably necessary for the completion of such work.
- (2) If a cash bond, letter of credit or other security has been posted, notice of default as provided by the preceding paragraphs shall be given to the principal, and if compliance is not had within the time specified, the city shall proceed without delay and without further notice or proceedings whatsoever to forfeit and convert and use the cash deposited, or any portion of such deposit, or other security to cause the required work to be done, by contract or otherwise, in the discretion of the city manager or designee.
- (3) 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.

- (4) 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 work complies with the approved plan and the provisions of this article, and formal acceptance of the work by the city manager. Partial bond release shall be at the discretion of the city manager or designee.
- (5) Subsequent to completion of work, the city manager or designee is authorized to declare as abandoned and forfeited any cash bond posted pursuant to a requirement of this chapter, and relinquish proceeds thereof to the general treasury of the city, when after giving the permittee who posted the cash bond thirty (30) days written notice first by registered mail, and if unclaimed by first-class mail, such 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 permittee, its successors, heirs and assigns relinquish all claim to said cash bond.
- (6) After final inspection of the completed work and approval by the city, including formal acceptance of the project by the city manager, the decision of the city manager or designee as to release of any bond or other security shall be final and shall not be subject to any administrative appeal or review procedures provided for in sections 24-181 and 24-187(a) of the City Code.

(c) 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 developer file a certificate of insurance. The certificate of insurance shall show that the developer is insured against claims for damages for personal injury and property damage in an amount not less than two million dollars (\$2,000,000.00). Such damages may also include but are not limited to include damages to the city by deposit or washing of material onto city streets or other public improvements; which may arise from or out of the performance of the work, whether such performance is by the Developer, subcontractor or any person directly or

indirectly employed by the Developer. 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.

(d) 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.

* * *

ADOPTED this ____ day of _____, 2016, by the City Council of Gaithersburg, Maryland.

JUD ASHMAN, MAYOR and
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this the ____ day of _____, 2016. APPROVED by the Mayor of the City of Gaithersburg, Maryland this the ____ day of _____, 201_.

JUD ASHMAN, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the ____ day of _____, 2016, and the same was APPROVED by the Mayor of the City of Gaithersburg on the ____ day of _____, 2016. This Ordinance will become effective on the ____ day of _____, 2016.

Tony Tomasello, City Manager

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* * *	Existing law unaffected by bill.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 22 OF THE CITY CODE, ENTITLED "TREES AND FOREST CONSERVATION," ARTICLE II, ENTITLED "FOREST STAND DELINEATIONS AND FOREST CONSERVATION PLANS," SO AS TO AMEND SECTIONS 22-8, ENTITLED "APPLICATION, REVIEW AND APPROVAL PROCEDURES," 22-9 ENTITLED "RETENTION, AFFORESTATION AND REFORESTATION REQUIREMENTS," AND 22-12 ENTITLED "VARIANCE PROVISIONS."

BE IT ORDAINED, by the Mayor and Council of the City of Gaithersburg, in public meeting assembled, that Chapter 22 of the City Code is hereby amended to read as follows:

CHAPTER 22: TREES AND FOREST CONSERVATION

* * *

ARTICLE II. - FOREST STAND DELINEATIONS AND FOREST CONSERVATION PLANS

* * *

Section 22-8 - Application, review and approval procedures.

* * *

(e) Issuance of sediment control permit. A sediment control permit must not be issued to a person who must comply with this article until:

- (1) A final forest conservation plan, if required, is approved;
- (2) Any financial security instrument required under this chapter is provided; ~~and~~
- (3) A certificate of insurance, if required, is filed and complies with this chapter; and
- (4) Protective devices for retained areas, required by the forest conservation plan, have been installed and approved by inspection by the city.

Section 22-9 - Retention, afforestation and reforestation requirements.

* * *

(h) Financial security.

(1) Security required. Except as provided in section 22-8 of this chapter, an approved financial security instrument must be posted by applicant to ensure:

- (i) Compliance with all requirements of an approved forest conservation plan including afforestation, reforestation and maintenance; or
- (ii) Full payment of fees to be paid in lieu of afforestation or reforestation, if required under subsection (f) of this section.

(2) Preferred form. The preferred financial security instruments are an irrevocable letter of credit or a cash bond. The letter of credit must expressly state that the total sum is guaranteed to be available and payable on demand directly to the City of Gaithersburg in the event of forfeiture. A certificate of guarantee or a surety bond may also be used, including a bond payable to the city that additionally guarantees completion of public improvements associated with the proposed development. The financial security instrument must be executed by a surety or guaranty company qualified to transact business in the state and approved by the city, and any bond shall be maintained and renewed annually. The financial security instrument must be made payable to the city and must be of a form and content acceptable to the city manager or designee and approved by the city attorney satisfactory to the city and its legal counsel. Such bond or security shall obligate the principal, his or 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. It shall be conditioned upon the completion of the forest conservation plan requirements. The bond required in this section shall include provisions relative to forfeiture for failure to complete forest conservation plan requirements as specified in the approved plan, compliance with all the provisions of this article and other applicable laws and regulations, and any time limitations. In lieu of such corporate bond, said permittee may, with the approval of the city manager or designee and the city attorney, deliver to the city a written agreement to complete such retention, afforestation and reforestation requirements, together with cash, certified check, cashier's check or other instrument designed to provide the funds to complete such work in the event the permittee shall fail to do so. Such instrument may consist of a letter of credit from a commercial bank, a certificate of savings deposit in a commercial bank or savings institution assigned to the city and qualified to transact business in the state, or such other instrument as may be approved by the city manager or designee and the city attorney. 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 provisions of this article, the plan and the permit for the forest conservation plan requirements. Upon the completion of the forest conservation plan requirements, said corporate bond shall be released or the balance of such security shall be returned to the permittee.

(3) When required. The financial security instrument must be provided prior to any land-disturbing activity occurring on a section of the tract subject to the forest conservation plan.

(4) Amount required.

(i) If the financial security is required under subsection (1)(i) of this subsection, the security instrument must be in an amount equal to the estimated cost of afforestation, reforestation and maintenance applicable to the section of the tract subject to the land-disturbing activity. The instrument must include a provision for adjusting the amount based on actual costs. The city manager must notify the obligee of any proposed adjustment and provide the opportunity for an informal conference.

(ii) If the financial security is required under subsection (1)(ii) of this subsection, the security instrument must be in an amount equal to the in-lieu payment.

(5) Release. The financial security instrument must be in effect until all requirements have been fulfilled to the satisfaction of the city manager or his designee. The instrument may provide for the partial release or return of the instrument based on successful implementation of phases of the forest conservation plan.

(6) Events of forfeiture. The financial security instrument may be subject to forfeiture on:

(i) Failure to perform the work under the forest conservation plan in accordance with the required schedule; or

(ii) Failure to pay a required in-lieu fee in a timely manner.

(7) Forfeiture proceedings.

(i) When the city shall find that a default has occurred in the performance of any term or condition of the forest conservation plan or bond, the city manager must notify the obligee by certified mail of the intention of the city to initiate

forfeiture proceedings. Written notice thereof shall be given to the obligee and to the surety of the bond. Such notices shall state the work to be done and the period of time deemed by the city to reasonably necessary for the completion of such work. If a cash bond, letter of credit or other security has been posted, notice of default shall also be given to the principal.

- (ii) The obligee has thirty (30) days from the receipt of the notice of forfeiture to comply with the requirements of the forest conservation plan and any corrections ordered by the city manager.
- (iii) If the obligee fails to comply with above section 22-9(h)(7)(ii), the financial security instrument must be forfeited. The city may opt to 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 forest conservation plan work to be done, by contract or otherwise, in the discretion of the city manager or designee.
- (iv) 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 it's behalf shall have the right to go upon the site to complete the required forest conservation plan work. In the event the city undertakes the work or to make the site safe with the funds from the forfeited cash, bond or other security, such funds shall be used to pay the cost to complete the forest conservation plan to meet the requirements of the permit, bond or this article. If the cost thereof exceeds the amount of the cash or corporate bond, letter of credit or other security, the obligee 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.
- (v) 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 complete the forest conservation plan or in complying with the terms or conditions thereof.

(8) Subsequent to the completion of the 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 applicant or permittee who posted the cash bond thirty (30) days written notice first by registered mail, and if unclaimed by first-class mail, such applicant 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 applicant or permittee, its successors, heirs and assigns relinquish all claim to said cash bond.

(9) After final inspection of the completed forest conservation plan work and approval by the city, the decision of the city manager or designee as to release of any bond or other security shall be final and shall not be subject to any administrative appeal or review procedures provided for in sections 24-181 and 24-187(a) of the City Code.

(i) 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 Developer file a certificate of insurance. The certificate of insurance shall show that the Developer is insured against claims for damages for personal injury and property damage in an amount not less than two million dollars (\$2,000,000.00). Such damages may also include but are not limited to include damages to the city by deposit or washing of material onto city streets or other public improvements; which may arise from or out of the performance of the work, whether such performance is by the Developer, subcontractor or any person directly or indirectly employed by the Developer. 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.

(j) Exception; special provision for smaller tracts. This section does not apply to governmental entities.

(1) For tracts under twenty thousand (20,000) square feet, the planning commission may approve a modified forest conservation plan without the need for an applicant to obtain a variance under this chapter.

(2) The city manager or designee may waive or modify requirements under this chapter for financial security, a short-term maintenance agreement and long-term protective measures.

- (3) Retention, afforestation and reforestation should be required in accordance with this section. However, the afforestation and reforestation requirements for a tract subject to this section may be calculated in terms of tree cover instead of forest cover. The planning commission may grant a waiver of afforestation or reforestation requirements upon a showing of hardship or other appropriate justification.

* * *

Section 22-12 - Variance provisions.

(a) The following trees, shrubs, plants, and specific areas shall be considered priority for retention and protection, and they shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the City of Gaithersburg that the applicant qualifies for a variance under 22-12(d) of this chapter:

- (1) Trees, shrubs, or plants identified on the list of rare, threatened, and endangered species of the U.S. Fish and Wildlife Service or the State of Maryland;
- (2) Trees that are part of a historic site, historic resource, or associated with a historic district or designated by the State of Maryland or City of Gaithersburg as a national, state, or local Champion Tree; and
 - (i) Trees that are part of a historic site, historic resource, or associated with a historic district shall be subject to the Historic Preservation Ordinance under Chapter 24, Article XII of the City Code.
- (3) Trees having a diameter measured at four and one-half (4½) feet above the ground of:
 - (i) 4.30 inches; or
 - (ii) 2.75% of the diameter, measured at four and one-half (4½) feet above the ground, of the current State Champion Tree of that species as designated by the Department.

* * *

ADOPTED this ____ day of _____, 2016, by the City Council of Gaithersburg, Maryland.

JUD ASHMAN, MAYOR and

President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this the ____ day of _____, 2016. APPROVED by the Mayor of the City of Gaithersburg, Maryland this the ____ day of _____, 201_.

JUD ASHMAN, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the ____ day of _____, 2016, and the same was APPROVED by the Mayor of the City of Gaithersburg on the ____ day of _____, 2016. This Ordinance will become effective on the ____ day of _____, 2016.

Tony Tomasello, City Manager

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