



City of Gaithersburg

31 South Summit Avenue
Gaithersburg, Maryland 20877

Mayor and City Council Regular Session Agenda
City Hall - Council Chambers
Monday, December 5, 2016, 7:30 PM

Final Revisions

- **10/17 Minutes**
- **Hyatt House Background Material**
- **Correspondence**

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. REFLECTION

IV. APPROVAL OF MINUTES

- A. Regular Session held October 17, 2016

V. APPOINTMENTS

(appointments to volunteer boards, committees and commissions, made by the Mayor and confirmed by the City Council)

- A. Resolution of the City Council Confirming Reappointments Made by the Mayor to the Historic District Commission

VI. PRESENTATIONS

(certificates from the City and to the City, as well as staff or citizen presentations on topics)

- A. Gaithersburg Police Department Presentation of Promotions

VII. PUBLIC COMMENTS

(public is invited to speak on any subject that is not a public hearing topic on tonight's agenda – each speaker has three minutes)

VIII. FROM THE MAYOR AND CITY COUNCIL

- A. Announcements
 - a. Upcoming Work Session
 - b. December Events and Activities
 - c. Boards, Commissions and Committee Vacancies

IX. FROM THE CITY MANAGER

X. ECONOMIC DEVELOPMENT UPDATE

XI. ORDINANCES / RESOLUTIONS / REGULATIONS

(ordinances and resolutions to be introduced or adopted following appropriate procedures required by the City Code, or resolutions that may require discussion by the Mayor and City Council prior to approval)

- A. Resolution of the Mayor and City Council Authorizing the City Manager to Enter into a Contract to Purchase Eleven (11) Police Interceptor Utility Vehicles
- B. Resolution of the Mayor and City Council the Authorizing the City Manager to Negotiate the Terms of a Proposed Amendment to Annexation Agreement (X-152) for the Hyatt House
- C. Introduction of Ordinances to Amend City Code Chapters, Sections 1-2, 8-7, 8-26, 8-27, 8-29, 19-12, 19-13A, 19-16, 20-19A, 20-62A, 22-8, 22-12 and 22-9, to Address Acceptance of Public Improvements and Bonding Requirements

XII. STAFF GUIDANCE

- A. Sponsorship of Text Amendment, An Ordinance to Amend Chapter 24 of the City Code, Entitled "Zoning", so as to Amend Article I, Entitled "In General", Section 24-1, Entitled "Definitions", Article V, Entitled "Site Development Plans", Section 24-171, Entitled "Site Plan Review", and Article VI, Entitled "Administration and Enforcement of Chapter", Section 24-176, Entitled "Site Work Permits", and Section 24-177, Entitled "Building Permits"

XIII. FROM THE CITY ATTORNEY / DEPUTY CITY MANAGER / OTHER STAFF

XIV. CORRESPONDENCE

(Weekly external and internal correspondence to Mayor and City Council, no discussion)

A. Outside

XV. ADJOURNMENT

To confirm accessibility accommodations, please contact Doris Stokes at 301-258-6310, or email DStokes@gaithersburgmd.gov.

Please turn off all cellular phones and pagers prior to the meeting. Hand held signs brought may not be displayed in a manner which disrupts the meeting, blocks the view of spectators or cameras and poses a safety concern [e.g., signs mounted on stakes]. Your cooperation is appreciated.

The public is invited to attend and observe this session, but except in instances when the committee expressly invites public comments, no member of the public may participate in the discussions. The public may submit written comments to the committee staff liaison to be forwarded to the committee for its consideration. The City of Gaithersburg welcomes citizen involvement on committees. Please visit the City's website at www.gaithersburgmd.gov for vacancies.

ANNOUNCEMENTS

The next Mayor and City Council Work Session will be held Monday, December 12, 2016, at City Hall, 7:30 PM.

Call to Order

Pledge of Allegiance

Reflection

Approval of Minutes



City of Gaithersburg

31 South Summit Avenue
Gaithersburg, Maryland 20877

DRAFT

Mayor and City Council Regular Session Minutes City Hall - Council Chambers Monday, October 17, 2016

I. CALL TO ORDER

A Mayor and City Council regular session was called to order at 7:30 p.m. with Mayor Ashman presiding. Council Members present: Harris, Sesma, Spiegel, and Wu. Council Member absent: Marraffa. Staff present: City Manager Tomasello, Deputy City Manager Enslinger, City Attorney Board, Assistant City Attorney Johnson, Economic and Business Development Director Lonergan, Director of Parks, Recreation, & Culture Potter, Planning and Code Administration Director Schlichting, Information Technology Director Cottrell, Director of Community & Public Relations Monaco, Planning Division Chief Matsen, Long Range Planning Manager Robinson, Community Planning Manager Schwarz, Planner II and Historic District Commission Liaison Berger, Planner Forbes, Community Services Division Manager Herndon, Community Services Case Coordinator Lofton, Digital & Social Media Specialist Smith, Neighborhood Services Division Chief Roman, Parks, Recreation and Culture Director Potter, Police Officer III Lane, and Municipal Clerk Stokes. Planning Commission present for joint public hearing: Bauer, Hopkins, Kaufman, Wessell and Winborne.

II. PLEDGE OF ALLEGIANCE

The Pledge was led by Boy Scout Troop 221, Rachel Carson Elementary School, Gaithersburg, Maryland.

III. REFLECTION

Mayor Ashman called for a moment of silence for his colleague Henry Marraffa who is still hospitalized, battling Leukemia.

IV. APPROVAL OF MINUTES

A. Regular Session held September 6, 2016

Motion was made by Robert Wu, seconded by Ryan Spiegel, that minutes from the Regular Session held September 6, 2016, be adopted.

Vote: 4-0

B. On-Site Work Session held September 12, 2016

Motion was made by Michael Sesma, seconded by Robert Wu, that minutes from the On-Site Work Session held September 12, 2016, be approved.

Vote: 3-0-1 (Abstained: Spiegel)

C. On-Site Work Session held September 26, 2016

Motion was made by Neil Harris, seconded by Michael Sesma, that minutes from the On-Site Work Session held September 26, 2016, be approved.

Vote: 4-0

V. APPOINTMENTS

A. Resolution of the City Council Confirming Appointments and a Reappointment Made by the Mayor to the Commission on Landlord-Tenant Affairs, Olde Towne Advisory Subcommittee and Police Advisory Committee

The City Council confirmed the following appointments and reappointment made by the Mayor: Commission on Landlord-Tenant Affairs, John Monroe (appointment), 8 Melvin Street, Apt. 1032, Gaithersburg, Maryland 20877 and Joshua Fischer (appointment), 104 Park Avenue, #302, Gaithersburg, Maryland 20877, three-year terms; Olde Towne Advisory Subcommittee, Yvette Monroe (appointment), 8 Melvin Street, Apt. 1032, Gaithersburg, Maryland 20877, indefinite term; and the Police Advisory Committee, Charles Ferrell (reappointment), 227 Rolling Road, Gaithersburg, Maryland 20877, two-year term.

Motion was made by Michael Sesma, seconded by Ryan Spiegel, that a Resolution of the City Council Confirming Appointments and a Reappointment Made by the Mayor to the Commission on Landlord-Tenant Affairs, Olde Towne Advisory Subcommittee and Police Advisory Committee (Resolution No. R-55-16), be approved.

Vote: 4-0

B. Resolution of the City Council Confirming an Appointment Made by the Mayor to the Board of Supervisors of Elections

The City Council confirmed the following appointment made by the Mayor to the Board of Supervisors of Elections: William Snyder, 114 Fox Trail Terrance, Gaithersburg, Maryland 20878, four-year term.

Motion was made by Ryan Spiegel, seconded by Neil Harris, that a Resolution of the City Council Confirming an Appointment Made by the Mayor to the Board of Supervisors of Elections (Resolution No. R-56-16), be approved.

Vote: 4-0

VI. OATH OF OFFICE**A. Oath of Office to Board of Supervisors of Elections Member**

Mayor Ashman administered the Oath of Office to William Snyder to serve a four-year term on the City's Board of Supervisors of Elections.

VII. PRESENTATIONS**A. Certificate of Recognition of the Mayor and City Council Presented to Aliyar Agha-Khan**

Mayor Ashman recognized Aliyar Agha-Khan who established a "GoFundMe" campaign and has chosen the City of Gaithersburg Dolores C. Swoyer Camp Scholarship Fund as the recipient of donations totaling \$2,500. Mr. Khan is a 14 year old 9th grade student at Quince Orchard High School. His family has been residents of Gaithersburg for the past 10 years. Aliyar has a huge heart, a great sense of humor, and seems to like business and engineering. The Dolores C. Swoyer Camp Scholarship Fund was established in 1989 by Al and Dolores Swoyer in memory of their daughter. The Swoyer family wanted to set up the Fund in order to provide camp scholarships to Gaithersburg children who may not be able to afford participation in the City's recreation programs without assistance. During the operation of Gaithersburg's 2016 spring and summer programs, 97 families were approved for full or partial assistance. City of Gaithersburg subsidies enabled 71 children to attend Gaithersburg spring and summer camps. The total amount of financial assistance subsidies awarded during 2016 was \$26,983. The City is honored that Aliyar Agha-Khan chose the City of Gaithersburg as his beneficiary.

B. Proclamation of the Mayor and City Council Launching the Gaithersburg Financial Fitness Challenge

Mayor Ashman issued a proclamation to Sue Rogan, Director of Financial Education, Maryland Creating Assets, Savings and Hope (CASH) Campaign, launching the Gaithersburg Financial Fitness Challenge, "It's Your Money, Make it Count." This initiative of the Gaithersburg Mayor and City Council is being implemented in conjunction with members of the Financial Wellness Coalition and Bank On Gaithersburg. The Challenge takes place from October, 2016 to June, 2017. The program allows up to 200 qualifying City residents to earn points for activities related to financial wellness and be given the opportunity to:

- Explore banking, vocational, financial education, Volunteer Income Tax Assistance (VITA) and kids saves challenges
- Work one on one with a Financial Wellness Coalition partner
- Obtain points for completing monthly goals. Points qualify the participants for incentives such as gift cards from local businesses, entry passes to City recreational facilities, and children's prizes

Two Grand Prize drawings will be held in July, 2017, one for \$500 towards the payment of a non-revolving bill and one for a free week of camp through Gaithersburg's Summer in the City program. The program was made possible in part by a grant from the Cities for Financial Empowerment Fund, Inc. A representative from that organization will attend the Launch Party on Wednesday, October 26 from 5 to 7 p.m. at La Casita restaurant. The Gaithersburg Financial Fitness Challenge was modeled after Maryland CASH Academy's "Passport to

Prosperity.” Participants in the Gaithersburg Challenge are welcome to participate in the State Passport program as well. For more information please visit the City’s website at www.gaithersburgmd.gov, or contact Tawana Lofton by phone at 301-258-6395 or via email at tlofton@gaithersburgmd.gov.

C. Proclamation of the Mayor and City Council Designating October 2016 as “Domestic Violence Awareness Month” in the City of Gaithersburg

Mayor Ashman issued a proclamation to bring awareness to Domestic Violence Awareness Month. Gaithersburg is committed to supporting the prevention of domestic violence and assisting those throughout our community who directly and indirectly suffer from its devastating effects. On Saturday, October 8, 2016 Gaithersburg was proud to join with Women Who Care Ministries, the Victims’ Rights Foundation, Sisters 4 Sisters Network and The People’s Community Baptist Church to present the 10th Annual “Restore the Joy” Domestic Violence Awareness Luncheon. The event included a dialog with a panel of experts, a resource fair and inspirational performances. Accepting the proclamation were Judith Clark, Women Who Care Ministries, Greg Wims, Victims’ Rights Foundation (not present), and Kim Barry representing The People’s Community Baptist Church.

VIII. PUBLIC COMMENTS

1. *Joshua Fisher, 104 Park Avenue*, reported on Domestic Violence Awareness Month and the agencies and resources offering support to individuals and families. Thanked the City for bringing awareness to this issue.
2. *Beth Junium, Saybrooke resident*, thanked the City for the installation of a crosswalk on Victory Farm Drive and expressed concern about children having challenges entering the crosswalk. Requested that the police look into it and have a presence there if necessary. Recognized and expressed support of retiring Sergeant Rudy Wagner and his important presence in their community.
3. *Aaron Rosenzweig, Gaithersburg resident*, spoke about the “tiny house” in Gaithersburg and urged members of the City Council to visit.
4. *Sherwin Wells, Help America Inc.*, non-profit organization looking to start a family self-sufficiency program in the area. Stated that he has spoken with landlords on East Diamond Avenue and Planning and Code department staff. Asked the City to consider an exception in the CBD Zone which precludes automotive businesses. Staff will follow up.

IX. JOINT PUBLIC HEARING

A. Schematic Development Plan Application: SDP-7354-2016 Crown Neighborhoods 3 & 5

Long Range Planning Manager Robinson presented the hearing advertised in the September 29 and October 6, 2016 issues of The Washington Post. The property was properly posted, notifications mailed and a notice was placed on the City’s website. There are currently 31 exhibits in the record file and available for review at City Hall during regular business hours. Applicant VII Crown Farm Owner LLC, submitted Schematic Development Plan (SDP) application SDP-7354-2016. The plan is in accordance with the approved and amended X-182 annexation agreement and Sketch Plan Z-315, known as the Crown Property Neighborhoods 3 and 5. The plan proposes a mix of uses, including 244 townhomes, 44 single-family detached units, 80 2-over-2 units, 509 multi-family units, and 15,000 square

feet of future commercial uses and associated road code waivers on approximately 42 acres of land. Mr. Robinson showed maps orienting the City Council and Commission to the site.

David Ramsey, Westbrook Properties, representing the applicant, outlined the presentation for Neighborhoods 3 and 5 and provided a brief update on current development of the overall Crown property. Stated that Crown is broken out into three major segments, Neighborhood 1 to the west, Neighborhood 2 in the middle and Neighborhoods 3 and 5 to the east. Downtown Crown is located in Neighborhood 1, consisting of commercial and retail. In addition, there is retail, the Cadence apartments, as well as 2-over-2 condominiums which are under construction. He further added that coming soon will be 128 loft style condos. Neighborhood 2 is adjacent to Neighborhood 1, consisting of the bulk for-sale residential homes. Said neighborhood is approximately 80% complete or under construction. Townhomes are expected to be completed by Spring of 2017 and single-family homes by late 2017 or early 2018. He noted that proposed improvements are split between Phase 1 and 2. An overview was provided of the housing types and product mix of Neighborhood 3 with 432 residential units comprised of single-family detached (SFD) units, townhomes, 2-over-2 units, and two condominium buildings. Neighborhood 3 also contains a stormwater management pond, a linear park system, and collected pocket parks and open areas. Neighborhood 5 is a stand-alone multi-family structure with ground floor commercial located at the corner of Decoverly Drive and Fields Road. It is proposed to be between 4-9 stories in height based partially upon grade changes. The commercial component is envisioned to be "neighborhood scaled retail" not to exceed 15,000 square feet. The applicant is proposing a commercial space which will contribute to the overall quality of the development on the ground floors.

Josh Sloan, reviewed the design guidelines used to adopt previous approvals which are being proposed for Neighborhoods 3 and 5. Stated that the objective was to adopt the previous approvals in the earlier neighborhoods, keeping with the key topics such as urban design, circulation, building heights, density, architectural controls for both the commercial and multi-family buildings (towns and detached), and the landscape and hardscape guidelines. He noted that densities will be concentrated near the mass transit. The circulation, connectivity and walkability of the street and sidewalk systems were reviewed. Stated that more open space and the enhancement of streetscapes are being integrated into the design. The building massing and facades are being maintained throughout the Crown development. He reiterated the diversity of housing with a surplus of parking for residents and visitors. The architectural elevations and roofing styles are also diverse. Stated that integrated pockets, screening and framing will be added to the linear park and central green. There are two primary focal parks; one centered along the linear park, fronting Crown Park Avenue and the second, a programmed pocket park. The comprehensive pathway plan links to the various open space elements, internal residential blocks, and connectivity to the proposed future CCT station and LSC Loop.

The presenters reported that Westbrook Properties have been working with WSSC to gain approvals and work out a construction timing and schedule for replacing water and sewer lines during the development phasing moving from south to north. The cost for replacing both water mains would be at the expense of the applicant. Neighborhood 3 would undergo construction and be completed by spring of 2017. The work for Neighborhood 5 is not anticipated until 2018.

In response to questions, staff stated that there is sufficient parking and noted that the proposed Neighborhood 5 would not be required to accommodate any future parking for the CCT. Parking for Neighborhood 5 would be located within a podium level and below-grade parking structure. Parking in Neighborhood 3 would be facilitated through podium parking (condos), garages, driveways, and on-street with the majority of blocks providing .5 spaces or greater per unit. Phase 2 improvements would widen Fields Road from Decoverly Drive down to Omega Drive to alleviate traffic. Also, a fully subsidized shuttle service will be expanded and made available for commuters based on demand. In addition, as the buildout occurs, the City will begin working with Montgomery County for the extension of Ride On bus service. Staff reviewed the sidewalk and pathway plan and informed the Council and Commission that the City and the applicant have been working with Montgomery County on the LSC Loop throughout Crown.

Long Range Planning Manager Robinson responded to affordable housing plan questions and provided background on the terms of the annexation agreement, stating that \$3M was given to the housing initiative fund. He reviewed the housing approvals of the annexation agreement. The owners of the various housing types and their HOAs were questioned. The applicant responded that it would be similar to other housing multi-family developments, noting that Crown is a bit more complex. It was stated that retail is currently conceptual, proposing neighborhood scale retail, smaller than downtown Crown and more localized. Justification for the proposed density on the north end of the site and the design plan for utilizing the open space were questioned and relief was requested by the City Council and Commission. Clarification was requested regarding the driveways and on-street parking proposed for single-family units.

Staff will continue to work with the applicant on refining the plan, identifying details that need further explanation and /or revisions. Specifically:

- addition of conceptual elevations for the single-family detached units;
- identifying all public utility easements on the schematic plan;
- relocating handicap parking spaces adjacent to the linear park pavilion; and
- amending the landscape plan to address WSSC comments related to species selections.

There were no speakers from the public.

Motion was made by Lloyd Kaufman, seconded by Daniel Winborne, that the Planning Commission's record on Schematic Development Plan Application: SDP-7354-2016 Crown Neighborhoods 3 and 5, remain open until 5 p.m. Friday November 18, 2016 (32 days) with anticipated recommendation December 7, 2016.

Vote: 5-0

Motion was made by Michael Sesma, seconded by Ryan Spiegel, that the Mayor and City Council's record on Schematic Development Plan Application: SDP-7354-2016 Crown Neighborhoods 3 and 5, remain open until 5 p.m. Friday December 16, 2016 (60 days) with anticipated Policy Discussion January 17, 2017.

Vote: 4-0

X. FROM THE MAYOR AND CITY COUNCIL**A. Announcements****Michael Sesma**

1. Announced that the Mayor and City Council are seeking members to fill two (2) vacancies on the Board of Appeals. Resumes and letters of interest should be submitted by 5:00 pm on Tuesday, November 15, 2016 to: Mayor and City Council, 31 South Summit Avenue, Gaithersburg, Maryland 20877, or send via email to: cityhall@gaithersburgmd.gov. For more information contact Planner Caroline Seiden at 301-258-6330.
2. Announced that the Mayor and City Council and staff plan to conduct a Council in the Communities meeting with the Shady Grove Villages, Washingtonian Village, and Reserve at Crown Pointe communities on Wednesday, October 19, 2016, 7:30 p.m. at Fields Road Elementary School, One School Drive, Gaithersburg, Maryland. Please contact Neighborhood Services Division Chief Kevin Roman at 301-258-6340 for more information or if you need accessibility accommodations.
3. Thanked the citizens for volunteering to serve on the City's Boards, Commissions and Committees.
4. Congratulated Judith Clark and Women Who Care Ministries for their role in addressing domestic violence and providing services to those in need.
5. Applauded the changes for the recently held Oktoberfest event. Extended thanks to staff for organizing the event and to the many sponsors and volunteers who helped.

Robert Wu

1. Mentioned the Oktoberfest event and echoed its success.
2. Announced that the Mayor and City Council are seeking members to fill two (2) vacancies on the Historic District Commission. Incumbents have expressed an interest to be reappointed. Resumes and letters of interest should be submitted by 5:00 pm on Monday, November 7, 2016 to: Mayor and City Council, 31 South Summit Avenue, Gaithersburg, Maryland 20877, or send via email to: cityhall@gaithersburgmd.gov. For more information contact Planner Chris Berger at 301-258-6330.
3. Announced that on October 26, 7 p.m. at Ridgeview Middle School, the Montgomery County Council will be holding a public forum on small cell antennas in public rights-of-ways. Stated that he will be in attendance and hopes that staff will also attend.

Ryan Spiegel

1. Stated the County Council Public Forum mentioned above by his colleague was passed on to staff who will be in attendance to observe. Thank Council Member Wu for mentioning the meeting.
2. Wished the public Happy Sukkot, Rosh Hashanah and Yom Kippur observances.
3. Echoed comments made about those who have volunteered to serve on the City's Boards, Commissions and Committees.
4. Congratulated and expressed support for staff and community volunteers who helped launch the Financial Fitness Challenge.

5. Saluted those making a difference to combat Domestic Violence in our community. Mentioned he served from 2003 to 2006 on the Montgomery County Victim Services Advisory Board addressing the issue and advocating at the county level.
6. Reported on the Maryland Municipal League Fall Conference held in Solomons Island. Several key staff members were in attendance including City Attorney Board and Parks, Recreation and Cultural Director Potter. Important topics discussed were small cell facilities and police training. Stated that the Board adopted their Strategic Plan and formally adopted the legislative priorities for the coming year: stormwater management, highway user revenue, and cooperation between municipalities, the Maryland State Highway Administration and WSSC for construction purposes. Mentioned the Joint Montgomery and Prince Georges County Chapter meeting scheduled for Thursday, October 20th. Mentioned the launching of Time to Talk Maryland; a public service initiative of the league which will talk about racial equity issues and how to have dialogue to help move communities forward. Stated that the City was recognized by Sustainable Maryland and received an eco-friendly plaque that will be hung in City Hall.
7. Mentioned that he has been invited to speak at the University of District of Columbia Law School Legislative Clinic on October 18th and will focus on municipal governance and how items move through the legislative process.
8. Echoed the comments above about Oktoberfest.
9. Clarified the process for public comments and possible responses under from the Mayor and City Council. Mayor Ashman mentioned his decision to not respond to a speaker under public comments.
10. Announced the remaining upcoming activities and events scheduled for the month of October. More information for all of these events, including hours, admission fees, and ticket purchase, is available on the City's website: www.gaithersburgmd.gov.

Neil Harris

1. Congratulated City staff, sponsors and volunteers on a great Oktoberfest event.
2. Reported that he, as a former Kentlands HOA President, had worked closely with Gaithersburg Police Sergeant Wagner in the past and he will be missed.
3. Reported on the passing of his neighbor and friend Allan Katz and expressed condolences to the family.
4. Responded to a speaker from Public Comments; the tiny house in question is really part of a zoning issue and accessory dwelling units are not permitted in that zone where it was built. Reported that, according to survey results, the neighborhood did not want accessory dwelling units to be allowed. Stated that the City has no legal authority to make a special exception in this case.
5. Announced the Mayor and City Council are seeking to fill vacancies on City Commissions, Boards and Committees. For more information and official announcements, visit the City's website at www.gaithersburgmd.gov.

Mayor Ashman

1. Echoed comments made above about Oktoberfest.
2. Attended Restore the Joy Domestic Violence Awareness Luncheon on October 8th.
3. Attended the Wells/Robertson House Family Dinner on September 27th.
4. Announced the Mayor and City Council will conduct a work session on Monday, October 24, to receive annual briefings from the Multicultural Affairs Committee, Senior Advisory Committee, Cultural Arts Advisory Committee and the Gaithersburg Book Festival Committee.
5. Announced that the Mayor and City Council will not conduct a work session on Monday, October 31, 2016. The next regular session will be held on Monday, November 7, 2016, 7:30 p.m. at City Hall.

XI. FROM THE CITY MANAGER

Tony Tomasello

1. Mentioned the WSSC water line protection program, HomeServe. Stated that staff is working on a presentation spot that will be available on the City's website to better educate the public on the optional program.
2. Reported that electric vehicle charging stations have been installed at the parking garage in Olde Towne and the Activity and Benjamin Gaither Centers.
3. Reported on the new position of Trudy Schwarz as Planning Division Chief and the departure of Martin Matsen. Mr. Matsen thanked City staff and the Mayor and City Council on the opportunity to serve the Gaithersburg community.

XII. ECONOMIC DEVELOPMENT UPDATE

Economic and Business Development Director Lonergan

1. Announced that the City's Economic Development office will host its 3rd annual Developer's Luncheon on November 17th at The Retreat at Crown West. The luncheon will feature presentations by City staff to regional real estate brokers and developers and will highlight new projects, regulatory and legislative actions, transportation issues, and development opportunities within Gaithersburg.
2. Announced that a lease, totaling 1,589 square feet, was signed with the Goldberg Group Property Management at 9711 Washingtonian Boulevard which brought the building to a status of fully leased for the very first time. Staff will continue work in maintaining this momentum.

XIII. ORDINANCES / RESOLUTIONS / REGULATIONS

A. Resolution of the Mayor and City Council Authorizing the City Manager to Enter into a Contract to Purchase Road Salt

This resolution authorized the City Manager to award a contract to purchase road salt from Morton Salt Inc., 123 North Wacker Drive, Chicago, Illinois 60606, in the amount of One Hundred Sixty Thousand Dollars (\$160,000); said funds to be expended from the Operating Budget.

Motion was made by Michael Sesma, seconded by Neil Harris, that a Resolution of the Mayor and City Council Authorizing the City Manager to Enter into a Contract to Purchase Road Salt (Resolution No. R-57-16), be approved.

Vote: 4-0

XIV. POLICY DISCUSSION

A. An Ordinance to Amend Chapter 24 (City Zoning Ordinance), Article XII, § 24-224, Entitled, “Definitions”; § 24-225.1, Entitled, “Powers and Duties of Historic District Commission”; § 24-226, Entitled, “Designation of Historic Districts and Historic Sites; Criteria”; and § 24-231, Entitled, “Moratorium on Alteration of Demolition”; and to add § 24-233.1, Entitled, Undue Economic Hardship” (CTAM-7359-2016)

Planner II and Liaison to the Historic District Commission Berger, presented the above ordinance for policy discussion and final action. The Mayor and City Council and Planning Commission conducted a joint public hearing on August 1, 2016. No comments were made by the public during the hearing, but an email in support of the amendment was received. In response to questions and comments made during the hearing, Assistant City Attorney and Planning staff made revisions to the draft ordinance. The Planning Commission’s record closed August 22, 2016 and they reviewed the proposed amendment and modifications during its September 7, 2016, meeting. It was recommended that the Mayor and City Council adopt the proposed amendment. The Mayor and City Council held open its record until 5:00 p.m. on September 20, 2016. One correspondence came in during this time in support of the proposed ordinance.

Motion was made by Neil Harris, seconded by Michael Sesma, that CTAM-7359-2016, An Ordinance to Amend Chapter 24 (City Zoning Ordinance), Article XII, § 24-224, Entitled, “Definitions”; § 24-225.1, Entitled, “Powers and Duties of Historic District Commission”; § 24-226, Entitled, “Designation of Historic Districts and Historic Sites; Criteria”; and § 24-231, Entitled, “Moratorium on Alteration of Demolition”; and to add § 24-233.1, Entitled, Undue Economic Hardship” (Ordinance No. O-10-16), be adopted.

Vote: 4-0

XV. CONSOLIDATED POLICY DISCUSSION

- A. **An Ordinance to Amend Chapter 15A of the City Code, Entitled, "Parks and Other Properties," so as to Amend Section 15A-1, Entitled, "Definitions" and Section 15A-8, Entitled, "Tobacco Products" and An Ordinance to Amend Chapter 18A of the City Code, Entitled, "Smoking and Tobacco Products Placement," so as to Amend Section 18A-1, Entitled, "Definitions" Section 18A-2, Entitled, "Smoking Prohibited in Certain Places," Section 18A-3, Entitled, "Exceptions" and Section 18A-6, Entitled, "Designated Smoking Areas"**

Assistant City Attorney Johnson presented the above for consolidated policy discussion and final action. The Mayor and City Council on May 2, 2016, asked City staff to prepare an ordinance that would broadly prohibit the use of any tobacco product on public property, including the use of cigarettes, e-cigarettes and any other tobacco product. The attached Ordinances include changes to City Code Chapter 15A, focusing on parks and public property, and Chapter 18A on smoking and tobacco use to address vaping (use of e-cigarettes). Montgomery County has regulated tobacco use in County Code §24-9. The Ordinances were introduced at the Mayor and City Council meeting held on August 1, 2016. A consolidated public hearing was held during the Mayor and City Council meeting on September 6, 2016, with a record closing date on September 26, 2016. Staff prepared alternative ordinances to address the comments received during the public hearing. There were three emails received, all in support of the proposed ordinances and one offered an amendment. In response to the discussion during the hearing, staff provided a memorandum dated September 20, 2016, addressing the concerns and questions about limited barber and beauty shop exception and reports and finding of second hand vapor from e-cigarettes. Staff proposed two alternative options for both 15A and 18A. For 15A, the options would take tobacco products out of the definition entirely if the focus was on smoking and vaping alone. The overall prohibition would be limited to the smoking and vaping. In addition, options to broaden the outside exception or a modification to allow ongoing times for said exception or a broader approach.

The majority were in favor of Options #2. Concerns and questions regarding definitions, the inclusion and risks of e-cigarettes and chewing tobacco, limited authority of the City Manager to use discretion and not hinder City services and the workplace, purpose of the ordinance was to address public nuisances and not the regulation of one's behavior. The cost of providing healthcare benefits for employees was noted.

City Manager Tomasello mentioned discussions to do outreach to employees and the public before the effective date of January 1, 2017, to allow for transition and signage requirements. Staff was directed to further review housekeeping amendments and additional signage requirements at a future public hearing. It was suggested to do public outreach prior to any future amendments to the ordinances. Staff was thanked for developing the ordinances and addressing the questions and concerns.

Motion was made by Ryan Spiegel, seconded by Neil Harris, that Option #2, an Ordinance to Amend Chapter 15A of the City Code, Entitled, "Parks and Other Properties," so as to Amend Section 15A-1, Entitled, "Definitions" and Section 15A-8, Entitled, "Tobacco Products" (Ordinance No. O-11-16), be adopted.

Vote: 4-0

Motion was made by Neil Harris, seconded by Ryan Spiegel, that Option #2, an Ordinance to Amend Chapter 18A of the City Code, Entitled, "Smoking and Tobacco Products Placement," so as to Amend Section 18A-1, Entitled, "Definitions" Section 18A-2, Entitled, "Smoking Prohibited in Certain Places," Section 18A-3, Entitled, "Exceptions" and Section 18A-6, Entitled, "Designated Smoking Areas" (Ordinance No. O-12-16), be adopted with amended language to 18A-2.

Vote: 4-0

XVI. STAFF GUIDANCE

A. ASDP-7407-2016 - Courtesy Review of a Request for Approval of an Amendment to Schematic Development Plan for the Property Located at 15710 Shady Grove Road

Planner Forbes presented the above for courtesy review before the Mayor and City Council. The applicant, Vanessa MacDonald of Carvana, on behalf of the property owner Alex Associates c/o Aubinoe Management, submitted an application ASDP-7407-2016 for amendment to Schematic Development Plan. The subject property is located at 15710 Shady Grove Road and zoned MXD (Mixed Use Development). The applicant had requested to demolish the existing Bugaboo Creek Steakhouse restaurant building to construct a 8,200 square foot Carvana automobile fulfillment center and seventy (70) foot car display tower. The property was annexed into the City of Gaithersburg in 1991 and was zoned H-M (Hotel-Motel). In 1994, the property was approved for an 8,470 square foot restaurant. The property was rezoned to MXD as part of the comprehensive rezoning following the adoption of the 1997 Land Use Master Plan. Pursuant to Section 24-198 (C)(2), for amendments to Schematic Development Plans involving change in use or changes other than to use, following a Courtesy Review presentation by staff, the Council shall either:

1. Deem that the application has a minor effect and thereby direct the Planning Commission to make a final decision; or
2. The Council may direct that the amendment be referred to the Planning Commission for further evaluation, public hearing and recommendation. The Council shall thereafter approve or disapprove the recommendation of the Planning Commission.

The proposed building footprint will be slightly smaller than the existing restaurant building. The site plan is proposing to increase the pervious (green space) with afforestation areas and reduce the paving. The Office of Economic Development has provided support for the proposed use and recommended to have the Planning Commission make the final decision on the application in order to promote an efficient site plan entitlement process. Based on these factors, staff recommended that the City Council find the application to have a minor effect and direct the Planning Commission to make a final decision on the amendment. The applicant, Carvana is an online automotive retailer. Customers can purchase pre-owned vehicles through a user-friendly website which provides the opportunity for a 360° view of the vehicle prior to purchase. The lift system houses their inventory of cars in a tower, coin-operated by a vending machine. Not all agreed that it was a minor change.

Motion was made by Neil Harris, seconded by Robert Wu, directing the Planning Commission to make a final decision on ASDP-7407-2016, an Amendment to Schematic Development Plan for the Property Located at 15710 Shady Grove Road.

Vote: 3-1 (Opposed: Spiegel)

XVII. FROM THE CITY ATTORNEY / DEPUTY CITY MANAGER / OTHER STAFF

City Attorney Board

1. Mentioned that there is a proposal at the State level to bring back legislation during this coming legislative session to expand standing to contest comprehensive rezoning by local government. Stated that staff will again testify in opposition. of the bill.
2. Reported that the Board of Supervisors of Elections will be meeting on November 11 to discuss the electronic campaign finance reporting system and options for the 2017 election.

Community Planning Manager Schwarz

1. Thanked the Mayor and City Council for their support and opportunity to step into the position of Planning Division Chief.

XVIII. CORRESPONDENCE

- A. Staff
- B. Outside

XIX. ADJOURNMENT

There being no further business to come before this session of the City Council, the meeting was duly adjourned at approximately 10:20 p.m.

Respectfully submitted,

Doris Stokes, Municipal Clerk

Appointments

Mayor and City Council Agenda Item Request

Meeting Date: 12/5/2016

Type: Appointment

Call to Podium:

Agenda Item Title:

Resolution of the City Council Confirming Reappointments Made by the Mayor to the Historic District Commission

Responsible Staff and Department:

Michelle Coupé, Committee Coordinator
Doris Stokes, Municipal Clerk

Desired Outcome from Council:

Vote on Resolution

SUPPORTING BACKGROUND ON NEXT PAGE

Mayor and City Council Agenda Item Request

Supporting Background Information:

The Mayor has requested that the reappointments outlined in the resolution be confirmed.

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL CONFIRMING REAPPOINTMENTS
MADE BY THE MAYOR TO THE HISTORIC DISTRICT COMMISSION

WHEREAS, terms of service have expired and citizens has expressed a desire to serve on said Committee; and

WHEREAS, the Mayor and City Council believe it to be in the best interest of its citizens of Gaithersburg to make the following reappointments to fill the vacancies:

NOW, THEREFORE, BE IT RESOLVED that the following reappointments made by the Mayor be and are hereby confirmed by the City Council:

Reappointment	Term
Historic District Commission (Three-Year Term)	
Marc Feinstein 132 Canfield Hill Drive Gaithersburg, Maryland 20878	12/2019
Chris Kirtz 102 Center Street Washington Grove, Maryland 20880	12/2019

ADOPTED by the City Council this 5th day of December, 2016.

JUD ASHMAN, MAYOR and
President of the Council

THIS IS TO CERTIFY, that the foregoing Resolution was adopted by the City Council in public meeting assembled on the 5th day of December, 2016.

Tony Tomasello, City Manager



Gaithersburg
A CHARACTER COUNTS! CITY

RECEIVED

July 8, 2016

JUL 15 2016

Mr. Marc Feinstein
132 Canfield Hill Drive
Gaithersburg, MD 20878

PLANNING & CODE
ADMINISTRATION

Dear Commissioner Feinstein:

Your term on the Historic District Commission will be expiring on September 30, 2016. On behalf of the entire community, I would like to express appreciation for your commitment to serving our City in this capacity. Our Boards, Commissions, and Committees perform vital functions in a variety of areas, and we recognize and value your contribution very much.

Our appointment policy requires that all volunteer positions be advertised to provide the public with an opportunity to apply. In the future, we will be evaluating the requests to fill the vacancies on the HDC, and appointments will be made by the Mayor and City Council soon thereafter.

If you would like to be considered for reappointment or if you no longer wish to serve on the HDC please indicate by signing below and returning this letter by Monday, August 1, 2016.

Again thank you for your commitment to the City of Gaithersburg. If you have any questions, please feel free to contact me at 301-258-6330 or cberger@gaitthersburgmd.gov.

Sincerely,

Chris Berger, Planner II
Committee Liaison
Historic District Commission

Please check box:

I would / I would not like to be reappointed to the Historic District Commission.

Marc Feinstein
Name

7.14.2016
Date

City of Gaithersburg • 31 South Summit Avenue, Gaithersburg, Maryland 20877-2038
301-258-6300 • FAX 301-948-6149 • cityhall@gaitthersburgmd.gov • gaitthersburgmd.gov

MAYOR
Jud Ashman

COUNCIL MEMBERS
Neil Harris
Henry F. Marraffa, Jr.
Michael A. Sesma
Ryan Spiegel
Robert T. Wu

CITY MANAGER
Tony Tomasello



Gaithersburg
A CHARACTER COUNTS! CITY

July 8, 2016

Mr. Chris Kirtz
102 Center Street
Washington Grove, MD 20880

Dear Chair Kirtz:

Your term on the Historic District Commission will be expiring on September 30, 2016. On behalf of the entire community, I would like to express appreciation for your commitment to serving our City in this capacity. Our Boards, Commissions, and Committees perform vital functions in a variety of areas, and we recognize and value your contribution very much.

Our appointment policy requires that all volunteer positions be advertised to provide the public with an opportunity to apply. In the future, we will be evaluating the requests to fill the vacancies on the HDC, and appointments will be made by the Mayor and City Council soon thereafter.

If you would like to be considered for reappointment or if you no longer wish to serve on the HDC please indicate by signing below and returning this letter by Monday, August 1, 2016.

Again thank you for your commitment to the City of Gaithersburg. If you have any questions, please feel free to contact me at 301-258-6330 or cberger@gaithersburgmd.gov.

Sincerely,

Chris Berger, Planner II
Committee Liaison
Historic District Commission

Please check box:

I would / I would not like to be reappointed to the Historic District Commission.

Name

Date 07/27/16

City of Gaithersburg • 31 South Summit Avenue, Gaithersburg, Maryland 20877-2038
301-258-6300 • FAX 301-948-6149 • cityhall@gaithersburgmd.gov • gaithersburgmd.gov

MAYOR
Jud Ashman

COUNCIL MEMBERS
Neil Harris
Henry F. Marraffa, Jr.
Michael A. Sesma
Ryan Spiegel
Robert T. Wu

CITY MANAGER
Tony Tomasello

Presentations

Mayor and City Council Agenda Item Request

Meeting Date: 12/5/2016

Type: Presentation

Call to Podium:

Mark Sroka

Agenda Item Title:

Gaithersburg Police Department Presentation of Promotions

Responsible Staff and Department:

Mark Sroka, Chief, Police Department

Desired Outcome from Council:

Receive Presentation and Recognize Officers

SUPPORTING BACKGROUND ON NEXT PAGE

Mayor and City Council Agenda Item Request

Supporting Background Information:

Chief Sroka will make brief remarks and present each recipient with a promotional certificate and badge. Some family members will pin the badges on the officers.

Officers participated in a competitive promotional process for Sergeant and Corporal that consisted of a written exam, resume and oral interview board comprised of allied agency members that resulted in a rank ordered eligibility list.

Promotion from the Rank of Corporal to Sergeant:

Jessica Duke

Promotion from the Rank of POIII to Corporal:

Rico Thompson

Public Comments

From the Mayor and
City Council

Announcements



MEMORANDUM TO: Mayor and City Council
City Manager Tomasello
Interested Parties

FROM: Municipal Clerk Stokes

DATE: November 29, 2016

SUBJECT: Work Session Topics

Meetings begin at 7:30 p.m. in the Council Chambers at City Hall, unless otherwise noted.

Monday, December 12, 2016

- A. SHA Presentation on the Long Draught Branch Stream Restoration Project**
- B. Pavement Management System**

This agenda is subject to change. Mayor and City Council Meetings are broadcast Live on Comcast Channel 13, RCN Channel 13 and Verizon FiOS Channel 25 within the City of Gaithersburg limits. Replays of the meeting air daily at 7 a.m. and 7 p.m. Live and archived meetings can be viewed on the internet at www.gaithersburgmd.gov/tv. Meetings are also broadcast live county wide on Comcast Channel 190.

Receive City agendas, minutes and news via e-mail.
Log on to the myGaithersburg e-mail-based news service at
www.gaithersburgmd.gov/myGaithersburg

Upcoming Events and Activities – December 2016

We expect to serve more than 1,800 children through our **Holiday Giving Program** this December. Monetary donations are still needed and can conveniently be made online under the Community Services page on the City's website.

Gaithersburg's **Winter Lights Festival** is open nightly through December 31st. It will be closed on December 25th.

The Main Street Farmers Market in Kentlands stays open on Saturdays throughout the winter, weather permitting.

A **Community Meeting** will be held on December 6th at City Hall to discuss the replacement of playground equipment at Griffith Park.

The **Gaithersburg Chorus** will be performing its Winter Concert on December 9th at Gaithersburg Presbyterian Church and December 10th at the Rosborough Theatre at Asbury Methodist Village.

Langston Hughes' **Black Nativity** is on stage at the Arts Barn weekends through December 18th.

Santa will be visiting Gaithersburg on December 10th at the Community Museum and December 17th at Casey Community Center.

See **Rufus the RednoseRaindog**, a holiday puppet show, at the Arts Barn December 10th and 17th.

Applications for this year's **Young Artist Awards** are due December 15th. Youth ages 12 to 18 are invited to participate in a juried competition in several music categories.

"The Holidays" is the theme for this month's **StoryTime Station** at the Community Museum on December 27th.

More information for all of these events, including hours, admission fees, and ticket purchase, is available at gaithersburgmd.gov.

VACANCY ANNOUNCEMENT

The Mayor and City Council are seeking members to serve on a number of City Boards, Commissions and Committees. Joining is a way to get involved and help your community.

The following have vacancies:

Animal Control Board*(One Alternate Public-at-Large/Business Community and One Alternate Representative of the Montgomery County Veterinary Medical Association or shall have training and/or experience in the proper training or care of animals; Open until filled)*

Board of Supervisors of Elections*(One Alternate; Open until filled)*

Community Advisory Committee

Cultural Arts Advisory Committee

Educational Enrichment Committee

Environmental Affairs Committee

Multicultural Affairs Committee

Police Advisory Committee

Senior Advisory Committee

Transportation Committee

If you are interested in serving on any of the above, please send a letter of interest and resume to: Mayor and City Council, 31 South Summit Avenue, Gaithersburg, Maryland 20877, or via email to: cityhall@gaitthersburgmd.gov.

For more information and official announcements, please visit the City's website at www.gaithersburgmd.gov or contact the City Manager's Office at 301-258-6310.

From the City Manager

Economic Development Update

Ordinances, Resolutions, and Regulations

Mayor and City Council Agenda Item Request

Meeting Date: 12/5/2016

Type: Ordinance / Regulations / Resolution

Call to Podium:

Mark Scafide, Public Works Operations Division Chief

Agenda Item Title:

Resolution of the Mayor and City Council Authorizing the City Manager to Enter into a Contract to Purchase Eleven (11) Police Interceptor Utility Vehicles

Supporting Background Information:

Seven (7) police vehicles, units 7746, 7806, 7807, 7815, 7818, 7819 and 7830 are approaching the end of their useful service life. Due to their age, condition, mileage and/or reliability, these vehicles need to be replaced. Once the replacement vehicles are ready for service, these seven (7) vehicles will be sold at public auction.

Furthermore, four (4) additional police vehicles were approved as a part of the FY17 budget process.

Responsible Staff and Department:

Mark Scafide, Public Works Operations Division Chief

Fiscal Amount: \$314,726

Desired Outcome from Council:

Vote on Resolution

Authorization Type: Award Contract

Description of Item(s):

Purchase eleven (11) Police Patrol Vehicles. These new units shall be Ford Police Interceptor Utility Vehicles. All eleven (11) units will be equipped with all-wheel drive. These units will be purchased using the Maryland State Contract (BPO# 001B6400315).

Mayor and City Council Agenda Item Request

Bid Information:

Advertisement Date:

Newspaper(s) / Website(s):

Bids Opened / Tabulated Date:

Contractor / Vendor:

Company Name: Hertrich Fleet Services
Street Address: 1123 Industrial Parkway
P. O. Box Number:
City: Denton
State: Maryland
ZIP: 21629

Contract / Purchase Amount: Not to Exceed \$314,726

Funds to be Expended From: Operating Budget and Asset Replacement Fund

Account Numbers: 1211-596000 \$113,078
3850-595150 \$201,648

Funds Available: YES

RESOLUTION NO. _____

RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE
CITY MANAGER TO ENTER INTO A CONTRACT TO PURCHASE
ELEVEN (11) POLICE INTERCEPTOR UTILITY VEHICLES

WHEREAS, Section 57 of the City Charter provides that the City Council may permit negotiations of contracts without sealed bids for products and services, where in the opinion of the Council, the interests of the City would be best served by negotiated contracts; and

WHEREAS, it is recommended to purchase eleven (11) Police Interceptor Utility Vehicles; and

WHEREAS, the City wishes to utilize the Maryland State contract (BPO# 001B6400315), to purchase police vehicles:

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Gaithersburg, that the City Manager be and is hereby authorized to award a contract to purchase eleven (11) Police Interceptor Utility Vehicles from Hertrich Fleet Services, 1123 Industrial Parkway, Denton, Maryland 21629, in an amount not to exceed Three Hundred Fourteen Thousand Seven Hundred Twenty-Six Dollars (\$314,726), comprised as follows: Two Hundred One Thousand Six Hundred Forty-Eight Dollars (\$201,648) expended from the Asset Replacement Fund and One Hundred Thirteen Thousand Seventy-Eight Dollars (\$113,078) expended from the Operating Budget.

ADOPTED by the City Council this 5th day of December, 2016.

JUD ASHMAN, MAYOR and
President of the Council

THIS IS TO CERTIFY, that the foregoing Resolution was adopted by the City Council, in public meeting assembled on the 5th day of December, 2016.

Tony Tomasello, City Manager

Mayor and City Council Agenda Item Request

Meeting Date: 12/5/2016

Type: Ordinance / Regulations / Resolution

Call to Podium:

Lynn Board

Agenda Item Title:

Resolution of the Mayor and City Council authorizing the City Manager to negotiate the terms of a proposed amendment to Annexation Agreement (X-152) for the Hyatt House

Responsible Staff and Department:

Lynn Board, City Manager's Office
Trudy Schwarz, Planning & Code Administration
Rob Robinson, Planning & Code Administration

Desired Outcome from Council:

Vote on Resolution

SUPPORTING BACKGROUND ON NEXT PAGE

Mayor and City Council Agenda Item Request

Supporting Background Information:

The City annexed approximately 26.7983 acres of land into its corporate boundaries in 1990 (X-152) and entered into an Annexation Agreement with Gateway Investment Associated Limited Partnership, Residence Inn by Marriott, Inc., and members of the Teunis family, the owners of the property at that time, for development of the annexed lands. The property has been developed with the Walnut Grove (also known as the Gateway Commons) neighborhood and the Hyatt House.

Owners of the Hyatt House portion of the annexed property are seeking to amend the Annexation Agreement to convert the existing Hyatt House extended stay hotel into a senior housing project. This project would only involve a minor change in the footprint of the existing buildings to add elevators to the buildings. The project would include a renovation of the exterior façade as well as interior renovations. Attached is a Memorandum describing the requested revisions to the Annexation Agreement.

RESOLUTION NO. _____

RESOLUTION OF THE MAYOR AND CITY COUNCIL THE AUTHORIZING
THE CITY MANAGER TO NEGOTIATE THE TERMS OF A PROPOSED
AMENDMENT TO ANNEXATION AGREEMENT FOR THE HYATT HOUSE

ANNEXATION X-152

WHEREAS, the owners of the property known as the Hyatt House located at 200 Skidmore Boulevard, Gaithersburg, Maryland, part of an annexation containing approximately 26.7938 acres of land, have requested an amendment to Annexation Agreement approved in conjunction with Annexation X-152; and

WHEREAS, the Mayor and Council have determined that the Annexation Agreement between the City of Gaithersburg and the owners of the Hyatt House Property should be amended to facilitate the redevelopment of the property for a senior housing project, with associated amenities:

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of Gaithersburg, that the City Manager be and is hereby authorized to negotiate the terms for an amendment to the Annexation Agreement with the owners of the Hyatt House Property relative to Annexation X-152.

ADOPTED by the City Council this 5th day of December, 2016.

JUD ASHMAN, MAYOR and
President of the Council

THIS IS TO CERTIFY, that the foregoing Resolution was adopted by the City Council, in public meeting assembled on the 5th day of December, 2016.

Tony Tomasello, City Manager

MEMORANDUM

TO: Mayor and City Council

FROM: N. Lynn Board, City Attorney

CC: Tony Tomasello, City Manager
John Schlichting, Director of Planning and Code Administration
Trudy Schwarz, Planning Division Chief
Rob Robinson, Long Range Planning Manager

RE: Amendment to Annexation Agreement – Hyatt House Property

DATE: November 17, 2016

MRK, the developer for a proposed senior housing project on the property currently operated as the Hyatt House extended stay hotel is proposing an Amendment to Annexation Agreement (X-152) to modify the conditions under which MRK may develop the portion of the property subject to the Annexation Agreement upon which the Hyatt House is located. As you are aware, an amendment to an annexation agreement is a contractual negotiation between the parties and does not require a formal public hearing. Staff will be seeking a Resolution to authorize the City Manager to negotiate and execute this amendment at a future Mayor and Council meeting. If the Amendment to Annexation Agreement is approved, as part of the redevelopment process MRK will be seeking to rezone the property and will apply for site plan approval, all of which will include further public processes, including public hearings.

BACKGROUND

In 1990 the City of Gaithersburg annexed approximately 26.7938 acres of land into the City pursuant to an annexation proposed by Gateway Investment Associates Limited Partnership, Residence Inn by Marriott, Inc., Robert H. Teunis, Betty Lu Teunis, Ralph D. Teunis, Jr. and Doris Teunis. This annexation was subject to an Annexation Agreement dated November 9, 1990. The Annexation Agreement set forth the development of the property as two parcels: One parcel to be developed by Gateway as a residential development of not to exceed 135 dwelling units, which is now known as Walnut Grove; and one parcel to be developed by Marriott as a 150-unit Marriott Residence Inn, which is now the Hyatt House located at 200 Skidmore Boulevard.

No change to the provisions of the Annexation Agreement is being proposed for the residential portion of the property. With regard to the Hyatt House parcel, it is currently zoned C-2, which would not allow the senior housing use. The current Annexation Agreement contains provisions for a traffic impact study and limitations on the scheduled arrival and departure times for hotel employees to facilitate trip reductions. A copy of the Annexation Agreement is attached.

REDEVELOPMENT AND AMENDMENT PROPOSAL

The developer of the proposed senior housing project is requesting the following terms to accommodate its proposed project:

1. MRK shall apply to rezone the Property from the current C-2 Zone to the CD Zone to enable conversion from the existing extended stay hotel use to senior multi-family rental housing, up to 150 units. The Annexation Agreement would be amended to include a City acknowledgment that CD zoning of the Property is in conformance with the Master Plan and is an appropriate zoning classification for the Property. The City would acknowledge that the Property satisfies the CD Zone development standards and that no further dedications, requirements, or compliance with development standards are necessary to accomplish the rezoning.

Staff Comment: Staff would seek to clarify this language to ensure that the Annexation Agreement did not commit the City to rezone the Property to the requested zoning classification, effectively by-passing the rezoning public process.

2. Upon rezoning approval, MRK shall apply for site plan approval for the conversion. All existing site conditions and improvements are allowed to remain. MRK shall endeavor to keep current buildings in their general location, but may apply for changes, including, but not limited to, installation of elevators, to enable the senior multi-family housing use. If applicable, site plan approval will be approved at the staff level.

Staff Comment: Based on review of preliminary proposals, Staff believes that Planning Commission approval will be required for this project.

3. The Property currently provides approximately 150 surface parking spaces. MRK shall be allowed to have a combination of units for 55+ residents and 62+ residents provided that the total parking demand (1 space per dwelling unit for 55+ residents, plus 1 space per 2 dwelling units for 62+ residents, plus 1 space for any property manager employees) does not exceed the total number of parking spaces currently provided on the Property.

Staff Comment: Visitor parking spaces should also be included in this calculation.

4. MRK shall provide transportation analysis for the conversion. If the transportation analysis demonstrates that the trip generation rates for the proposed senior housing use are equal to or less than the existing trip generation rates for extended stay hotel use, then no additional transportation improvements or conditions may be imposed. The City agrees that no further analysis, studies, or conditions, other than those described in this Amendment, pursuant to the Gaithersburg Zoning Ordinance, Gaithersburg Subdivision Regulations, City Code, or otherwise, shall be or may be required to evaluate the adequacy of roads or transit and that no other roadway improvements shall be required by the City to support the project.

Staff Comment: The transportation analysis should be provided with the rezoning application and this provision should set forth that additional transportation improvements or conditions may be imposed if the transportation analysis demonstrates that trip generation rates increase for the proposed senior housing. Also the language should be clarified as conditions unrelated to trip generation rates may be imposed as part of the site plan and permitting process.

5. Any existing Declaration of Covenants on the Property regarding vehicle trips shall be terminated.
6. The project will not be subject to any school test, or green building regulations.

Staff Comment: This language should be clarified to only apply to the proposed renovation of the Property for the senior housing use and not for any future redevelopment of the Property.

7. Stormwater management, forest conservation, and other similar regulations shall apply, and be limited to, any proposed changes on the Property.
8. The project will comply with the City's current affordable housing requirements.
9. No additional impact taxes may be imposed.

Staff Comment: The City may not be able to waive all impact taxes imposed by the County and will seek County input.

10. The City shall support the rezoning and use conversion. The City agrees that if otherwise in compliance with the City's subdivision and zoning laws and findings required for the CD zone, it will approve plans, including concept plans, schematic development plans, site plans, and record plats, and all other required development approvals and permits to permit the development, construction, and occupancy of buildings on the Property that are in substantial conformance with this Amendment.

Staff Comment: Staff would seek to clarify this language to ensure that the Annexation Agreement did not commit the City to rezone the Property to the requested zoning classification, effectively by-passing the rezoning and site plan public process.

11. MRK may elect at any time, in its sole discretion, not to pursue approvals. In the event that MRK does not elect to move forward with the project, in its discretion, this amendment shall be null and void.

In order to apprise the community of MRK's intention to seek amendment of the Annexation Agreement, public outreach through a community meeting between MRK and the Walnut Grove neighborhood is scheduled for November 28, 2016. Staff will be able to provide an update on this meeting at the Mayor and Council meeting.

Parcel Identifier: 795096
794797
777510
777521
777508
777532

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT is made this 9th day of November, 1990, by and among GATEWAY INVESTMENT ASSOCIATES LIMITED PARTNERSHIP, a Virginia limited partnership ("Gateway"), RESIDENCE INN BY MARRIOTT, INC., a Delaware corporation ("Marriott"), ROBERT H. TEUNIS, BETTY LU TEUNIS, RALPH D. TEUNIS, JR., DORIS TEUNIS (collectively, the "Property Owners"), and THE MAYOR AND COUNCIL OF THE CITY OF GAITHERSBURG ("Gaithersburg").

R E C I T A L S :

A. The Property Owners and Wiseman Development Company, a Delaware corporation ("Wiseman") (collectively with the Property Owners, the "Petitioners") filed a Petition for Annexation with Gaithersburg, identified as Annexation Petition X-152, requesting that Gaithersburg annex approximately 26.7938 acres of land located along the east side of Maryland Route 355, south of the intersection of Maryland Route 355 and South Westland Drive, and more particularly described in the metes and bounds description attached to and made a part of this Annexation Agreement as Exhibit "A" (the "Subject Property"). The State of Maryland, as the owner of a portion of the Subject Property (the "SHA Property"), consented to the filing of this Petition for Annexation.

B. Wiseman is the general partner of Gateway. Gateway is the contract purchaser of all of the Subject Property except the SHA Property (the "Gateway Property"). Following annexation Gateway intends to purchase the Gateway Property from the Property Owners. Gateway then intends to sell a portion of the Gateway Property to Marriott (the "Marriott Property").

C. As part of the Petition for Annexation, the Petitioners requested that Gaithersburg include in an accompanying ordinance a provision to classify the Marriott Property in the C-2 Zone, the SHA Property in the R-A Zone, and the Gateway Property in the RP-T Zone, as shown on the proposed zoning plan attached to and incorporated by reference into this Annexation Agreement as Exhibit "B".

D. Gateway and Marriott have indicated to Gaithersburg that, if the Subject Property is annexed and rezoned as shown on Exhibit "B", Gateway and Marriott intend to develop the Gateway Property and the Marriott Property as shown on the 50' scale concept plan, which has been reviewed and approved by the Gaithersburg Planning Department ("Planning Department"), attached to and incorporated by reference into this Annexation Agreement as Exhibit "C".

E. On March 19, 1990, Gaithersburg conducted a public hearing on the Petition for Annexation and on the Annexation Resolution to annex the Subject Property. Gaithersburg conducted a public worksession on June 25, 1990.

F. Pursuant to the provisions of Article 23A, Section 9(c), Annotated Code of Maryland 1957 (1987 Repl. Vol.), on July 31, 1990, the County Council for Montgomery County, Maryland, adopted Resolution 11-2173, approving Gaithersburg's proposed rezoning of the Subject Property to the C-2, R-A and RP-T Zones, as shown on Exhibit "B", and a total dwelling unit yield on the RP-T zoned portion of the Subject Property not to exceed 135 dwelling units, including eight (8) moderately priced dwelling units ("MPDUs") to be constructed on or off-site.

CLERK'S OFFICE
MONTGOMERY CO MD

90 NOV 19 A 11:28 J

G. On October 15, 1990, Gaithersburg adopted the Annexation Resolution annexing the Subject Property and an accompanying ordinance (Ordinance No. 0-23-90) rezoning the Subject Property to the C-2, R-A and RP-T Zones, as shown on Exhibit "B", subject to specific conditions and limitations. On that same date, Gaithersburg adopted a resolution authorizing the City Manager to enter into this Annexation Agreement with Gateway, Marriott and the Property Owners which incorporates the conditions and limitations imposed by Gaithersburg on the annexation and rezoning of the Subject Property.

H. Gateway, Marriott and the Property Owners desire to enter into this Annexation Agreement to establish the development plan for the Subject Property to which all parties will abide and the conditions upon which this annexation is accepted by Gaithersburg.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. The Recitals set forth above are incorporated in and made a part of this Annexation Agreement.

2. Gateway, Marriott and/or the Property Owners shall be permitted to develop the Subject Property pursuant to Exhibit "C", subject to site plan approval (preliminary and final) by the Gaithersburg Planning Commission (the "Planning Commission") and meet all required governmental codes and approvals for building and occupancy permits, as well as the following conditions and limitations.

a. Marriott and/or the Property Owners shall be permitted to develop the Marriott Property pursuant to Exhibit "C" with a 150-unit Marriott Residence Inn.

b. Gateway and/or the Property Owners shall be permitted to develop the Gateway Property pursuant to Exhibit "C" with approximately (not to exceed 135 dwelling units) 79 townhouse (market rate) units, 48 patio homes (market rate) (zero lot line, single-family detached dwellings) and eight (8) MPDUs.

c. At the time of submission for final site plan approval for any portion of the Subject Property by the Planning Commission, Gateway and/or the Property Owners shall submit a current traffic impact study to the Planning Department to demonstrate that Gateway and/or the Property Owners will mitigate the traffic impact on the critical intersections and links of roads, including those programmed in Gaithersburg's Capital Improvement Budget, Montgomery County's Capital Improvements Program and Maryland's Consolidated Transportation Program, with the traffic generated by the proposed development, plus all other development that has been platted at the time of the study. Gateway and/or the Property Owners shall also submit a copy of the traffic impact study to the M-NCPPC Transportation Planning Division ("M-NCPPC") for review and comment. The traffic impact study shall be prepared utilizing:

1. The trip generation rates adopted by the Montgomery County Planning Board in December, 1989 for local area transportation review;
2. The local trip distribution patterns based on good engineering practices; and
3. The critical lane analysis method to determine the acceptable level of service at identified critical intersections.

Subject to all required governmental approvals, the traffic impact study shall consider the existing traffic generated by existing development, as well as the potential traffic which will be generated by development of the Subject Property and other nearby recorded but unbuilt subdivisions.

d. At the time of final site plan approval of any portion of the Subject Property by the Planning Commission, Gateway, and/or the Property Owners shall agree with Gaithersburg to make the following intersection improvements at the intersection of Maryland Route 355 and South Westland Drive at Gateway's and/or the Property Owners' sole expense (said improvements to be attached as conditions to the final site plan approval):

1. Construction of an additional westbound left-turn lane on South Westland Drive to permit dual left turns onto southbound Maryland Route 355;
2. Construction of an exclusive free-flow northbound right-turn lane on Maryland Route 355 for traffic turning right onto eastbound South Westland Drive; and
3. Modification of the existing traffic signal operation at Maryland Route 355 and South Westland Drive to permit an exclusive left-turn movement from westbound South Westland Drive onto southbound Maryland Route 355 (via split-phasing).

Subject to all required governmental approvals, the modification of the existing traffic signal shall be completed and the construction contracts for the first two intersection improvements identified above shall be let within twelve (12) months of the issuance of the initial building permit for development of the Subject Property.

e. At the time of final site plan approval for any portion of the Subject Property by the Planning Commission, if warranted by the traffic impact study described above, Gateway and/or the Property Owners shall agree with Gaithersburg to implement a trip reduction program or to make intersection improvements at Gateway's and/or the Property Owners' sole expense to address traffic capacity problems at two adjacent intersections which now operate at a level of service ("LOS") "F", being the intersection of Maryland Route 355 and Shady Grove Road and the intersection of Maryland Route 355 and West Deer Park Drive. Prior to site plan approval, M-NCPPC shall be given an opportunity to review and comment upon any proposed trip reduction program and intersection improvements for these two intersections and the intersection of Maryland Route 355 and South Westland Drive.

f. Marriott shall schedule the arrival and departure of employees working at the Marriott Residence Inn such that the employees do not arrive or depart with more than five vehicular trips in the morning peak hour (7:15 - 8:15 a.m.) and the evening peak hour (4:45 - 5:45 p.m.). A plan outlining the details of this trip reduction program shall be made available to Gaithersburg prior to any occupancy permit issuance for the Marriott Residence Inn.

g. Gateway and/or the Property Owners shall design and build the proposed stormwater management/storm drain system shown on Exhibit "C" to meet current Montgomery County stormwater management standards.

h. Prior to preliminary site plan approval of any portion of the Subject Property by the Planning Commission, Gateway and/or the Property Owners shall submit a tree survey identifying all trees on the site of 6" caliper or greater on the Subject Property to be reviewed by the Planning Department. Consistent with the other provisions of this Annexation Agreement, Gateway, Marriott and/or the Property Owners shall make every reasonable effort during the development of the Subject Property to save or replace trees (with an equal amount of total caliper inches) as identified by the Planning Department and the tree survey.

i. Gateway and/or the Property Owners shall provide 2.25 parking spaces per townhouse garage unit per Section 24-219 of the Gaithersburg Zoning Ordinance. In addition, at the time of the establishment of a homeowner's association for the proposed residential development of the Gateway Property, Gateway and/or the Property Owners shall execute homeowner's association documents that include language requiring a homeowner to use his/her townhouse garage as a garage and not as additional living or storage area, said documents to be reviewed and approved by the City Attorney.

j. The site plan for the Gateway Property approved by the Planning Commission shall provide that the rear yards of all townhouse units shall be accessible by a topographically level, 10 foot wide, parcel of ground owned and maintained by the homeowners association, which will provide access to these rear yards for the homeowners and for emergency services.

k. In conjunction with development of the Gateway Property, Gateway and/or the Property Owners shall install an adequate landscape buffer and berm 50 feet in depth along the Gateway Property's common property line with the Oakmont industrial area. Gateway and/or the Property Owners shall also provide 75 feet of landscape buffering along the Gateway Property's common property line with the I-370 ramp.

l. Execution of this Annexation Agreement by the parties shall constitute concept approval by Gaithersburg under the Gaithersburg site plan review process for the development of the Subject Property outlined in this Annexation Agreement. Following execution of this Annexation Agreement, Gateway, Marriott and/or the Property Owners shall submit site plan review applications for preliminary and final review by the Planning Commission that shall be consistent with the development of the Subject Property outlined in this Annexation Agreement. The Planning Commission's decision on preliminary and final review of the submitted site plan review applications shall also be consistent with the development of the Subject Property outlined in this Annexation Agreement.

3. The provisions of this Annexation Agreement shall be binding upon and inure to the benefit of the parties to this Annexation Agreement and to their respective heirs, successors and assigns. Any of the parties may elect to record this Annexation Agreement among the Land Records of Montgomery County, Maryland. Any party electing to do so shall provide all other parties with a recorded copy of this Annexation Agreement.

4. Modifications to this Annexation Agreement shall only be binding if in writing and signed by the party against whom such modification is sought to be enforced.

5. The parties acknowledge that no approvals related to the development depicted on Exhibit "C" will be granted by Gaithersburg until the annexation is lawfully affected pursuant to Article 23A, Section 9 of the Annotated Code of Maryland. The parties acknowledge that no building permits related to the development depicted on Exhibit "C" will be granted by

Gaithersburg until all properties which are part of the development plan but not part of Annexation Petition X-152 are annexed in the City of Gaithersburg.

6. All conditions set forth in Paragraph two of this Agreement shall be fully met and completed within the time frames called for in this Agreement, but not later than January 1, 1997. Should any condition required to be fulfilled by Gateway, Marriott, and/or the Property Owners not be fulfilled by this time, building and occupancy permits issued by Gaithersburg may be suspended or revoked and no further permits issued until said conditions are met. Upon the conveyance of their respective portions of the Subject Property to Gateway, the Property Owners shall be fully released from all terms, conditions and requirements of this Annexation Agreement, and such release shall remain in force or effect so long as the Property Owners do not subsequently become the owners of the Subject Property.

[SIGNATURE PAGES FOLLOW]

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BAS 9556, p. 0775, MSA_CE63_9514. Date available 06/22/2005. Printed 11/18/2016.

IN WITNESS WHEREOF, the parties have executed this Annexation Agreement on the day and year first indicated above.

ATTEST:

GATEWAY INVESTMENT ASSOCIATES LIMITED PARTNERSHIP, a Virginia limited partnership

By: WISEMAN DEVELOPMENT COMPANY a Delaware corporation, General Partner

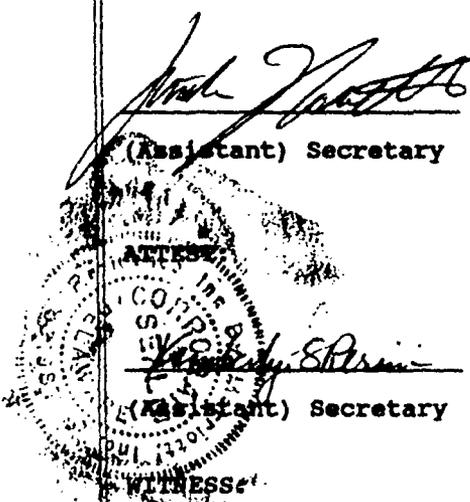
By: [Signature]
Stephen K. Wiseman, President

RESIDENCE INN BY MARRIOTT, INC., a Delaware corporation

By: [Signature]
Stephen P. Crantz (Vice) President

THE CITY OF GAITHERSBURG

By: [Signature]
Sanford W. Daily, City Manager



[Signature]
(Assistant) Secretary

[Signature]
(Assistant) Secretary

WITNESS:
[Signature]

WITNESS:
[Signature]

WITNESS:
[Signature]

WITNESS:
[Signature]

WITNESS:
[Signature]

[Signature]
Robert H. Teunis

[Signature]
Betty Lu Teunis

[Signature]
Ralph D. Teunis

[Signature]
Doris Teunis

Mail to:
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, MD 20878
Attention Patricia J. Patula

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BAS 9556, p. 0776, MSA_CE63_9514. Date available 06/22/2005. Printed 11/18/2016.

STATE OF Virginia
to wit:
COUNTY OF Stafford

I HEREBY CERTIFY that on this 30th day of October, 1990, before me, a Notary Public in and for the State and County aforesaid, personally appeared Stephen K. Wiseman, known to me (or satisfactorily proven) to be the President of Wiseman Development Company, a Delaware corporation and General Partner of Gateway Investment Associates Limited Partnership, a Virginia limited partnership, and that such corporate officer, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said corporation, as general partner of said partnership.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Rebecca L. Gault
Notary Public

My Commission Expires: May 25, 1992

STATE OF Maryland
to wit:
COUNTY OF Montgomery

I HEREBY CERTIFY that on this 31 day of October, 1990, before me, a Notary Public in and for the State and County aforesaid, personally appeared Scott P. Pianta, known to me (or satisfactorily proven) to be the (Vice) President of Residence Inn by Marriott Inc., a Delaware corporation, and that such corporate officer, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

James J. Moran
Notary Public

My Commission Expires: April 1, 1995

STATE OF MARYLAND
to wit:
COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this 9th day of November, 1990, before me, a Notary Public in and for the State and County aforesaid, personally appeared Sanford Dally, known to me (or satisfactorily proven) to be the City Manager of the City of Gaithersburg, Maryland, signing for the Mayor and Council of the City of Gaithersburg, and that such City Manager, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said City.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Marjorie E. Eyer
Notary Public Marjorie E. Eyer

My Commission Expires: 8/1/92

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BAS 9556, p. 0777, MSA_CE63_9514. Date available 06/22/2005. Printed 11/18/2016.

STATE OF Maryland
to wit:
COUNTY OF Frederick

I HEREBY CERTIFY that on this 19th day of October, 1990, before me, a Notary Public in and for the State and County aforesaid, personally appeared Robert N. Teunis, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed instrument and acknowledged that said individual executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Sonia Coupard
Notary Public

My Commission Expires:
SONIA COUPARD
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires April 1, 1992
STATE OF Maryland
to wit:
COUNTY OF Frederick



I HEREBY CERTIFY that on this 19th day of October, 1990, before me, a Notary Public in and for the State and County aforesaid, personally appeared Betty Lu Teunis, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed instrument and acknowledged that said individual executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Sonia Coupard
Notary Public

My Commission Expires:
SONIA COUPARD
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires April 1, 1992
STATE OF Maryland
to wit:
COUNTY OF Montgomery

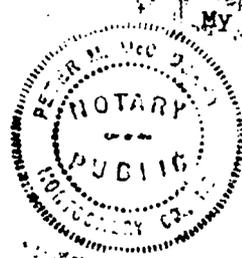


I HEREBY CERTIFY that on this 19th day of October, 1990, before me, a Notary Public in and for the State and County aforesaid, personally appeared Ralph D. Teunis, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed instrument and acknowledged that said individual executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Peter M. Kelly
Notary Public

My Commission Expires: July 6, 1994



MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BAS 9556, p. 0778, MSA_CE63_9514. Date available 06/22/2005. Printed 11/18/2016.

STATE OF Maryland
wit:
COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this 29th day of October, 1990, before me, a Notary Public in and for the State and County aforesaid, personally appeared Doris Teunis, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed instrument and acknowledged that said individual executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Peter M. McCloskey
Notary Public

My Commission Expires: July 6, 1994

ATTORNEY'S CERTIFICATE

I HEREBY CERTIFY that I am an attorney duly licensed to practice before the Court of Appeals of Maryland and that the foregoing Annexation Agreement was prepared under my supervision.

Stephen P. Elmendorf
Stephen P. Elmendorf

FOR RECORDING PURPOSES ONLY:

Parties: Gateway Investment Associates Limited Partnership
c/o Wiseman Development Company
1143 New Hampshire Avenue, Suite 217
Washington, DC 20037

Residence Inn by Marriott, Inc.
Residence Inn Development
c/o Felix J. Cacciato, Jr.
Marriott Corporation
1 Marriott Drive
Dept. 510.01
Washington, DC 20058

The City of Gaithersburg
c/o Sanford Daily, City Manager
Gaithersburg City Hall
31 South Summit Avenue
Gaithersburg, MD 20878

Robert H. Teunis
Betty Lu Teunis
16819 Crabbs Branch Way
Rockville, MD 20855

Ralph D. Teunis, Jr.
Doris Teunis
5630 Bradley Blvd.
Bethesda, MD 20814

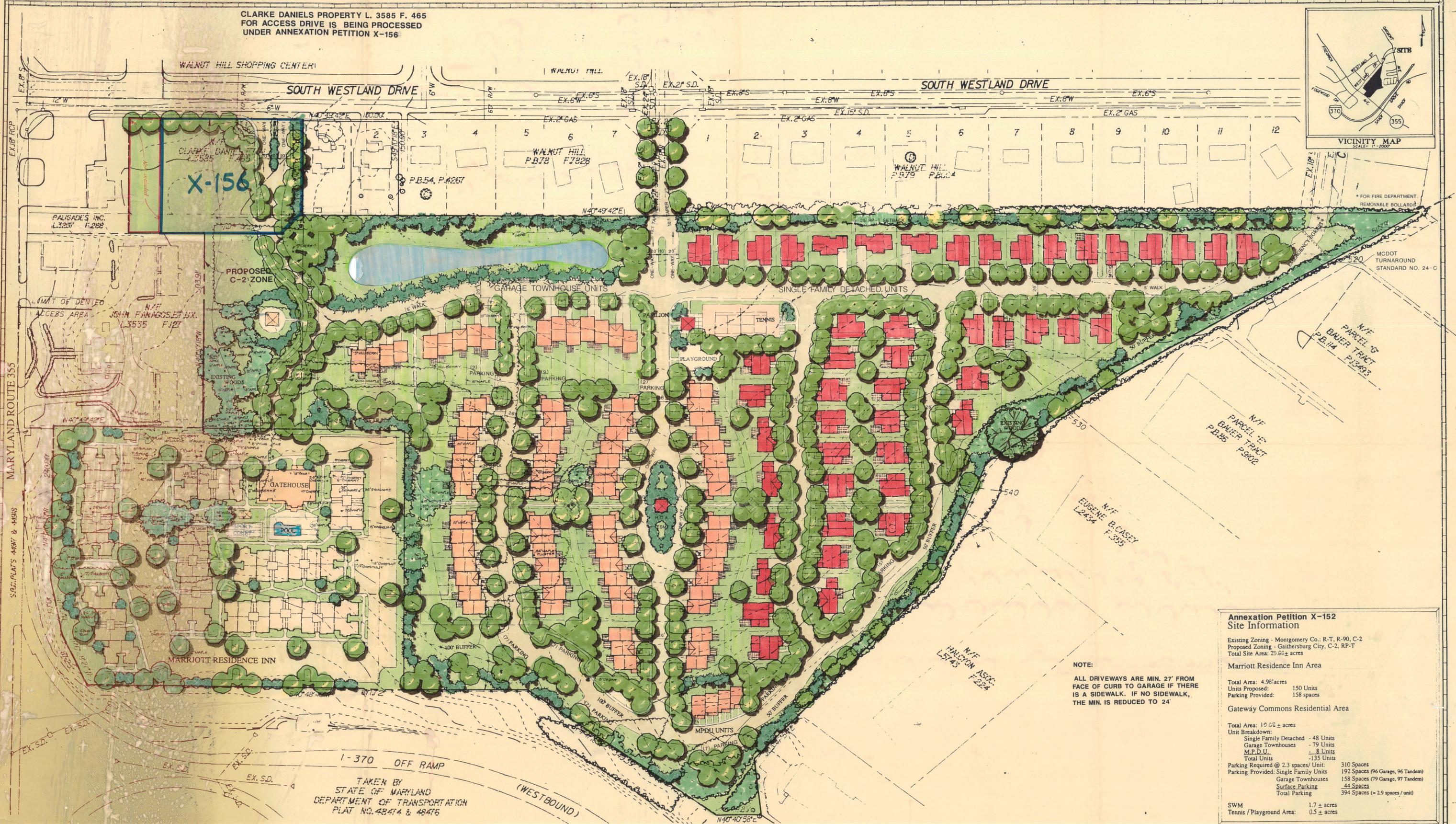
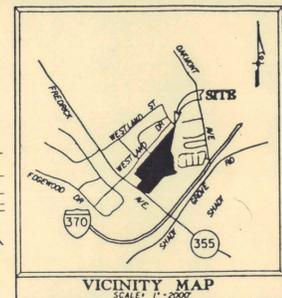
Property Location: Southeast quadrant of the intersection of Maryland Route 355 and South Westland Drive, Gaithersburg, MD 20878

Title Insurer: N/A

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BAS 9556, p. 0779, MSA_CE63_9514. Date available 06/22/2005. Printed 11/13/2015



CLARKE DANIELS PROPERTY L. 3585 F. 465
 FOR ACCESS DRIVE IS BEING PROCESSED
 UNDER ANNEXATION PETITION X-156



**Annexation Petition X-152
 Site Information**

Existing Zoning - Montgomery Co.: R-T, R-90, C-2
 Proposed Zoning - Gaithersburg City, C-2, RP-T
 Total Site Area: 25.66± acres

Marriott Residence Inn Area

Total Area: 4.98± acres
 Units Proposed: 150 Units
 Parking Provided: 158 spaces

Gateway Commons Residential Area

Total Area: 10.62± acres
 Unit Breakdown:
 Single Family Detached - 48 Units
 Garage Townhouses - 79 Units
 M.P.D.U. - 8 Units
 Total Units - 135 Units
 Parking Required @ 2.3 spaces/Unit: 310 Spaces
 Parking Provided: Single Family Units 192 Spaces (96 Garage, 96 Tandem)
 Garage Townhouses 158 Spaces (79 Garage, 97 Tandem)
 Surface Parking 44 Spaces
 Total Parking 394 Spaces (= 2.9 spaces/unit)

SWM 1.7± acres
 Tennis /Playground Area: 0.5± acres

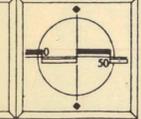
NOTE:
 ALL DRIVEWAYS ARE MIN. 27' FROM
 FACE OF CURB TO GARAGE IF THERE
 IS A SIDEWALK. IF NO SIDEWALK,
 THE MIN. IS REDUCED TO 24'

TAKEN BY
 STATE OF MARYLAND
 DEPARTMENT OF TRANSPORTATION
 PLAT NO. 48474 & 48476

GATEWAY COMMONS

MONTGOMERY COUNTY, MARYLAND

OWNER: WISEMAN DEVELOPMENT CO. 1430 Springhill Road, McLean, VA 22102
 CONCEPTUAL SITE PLAN DATE: SEPT. 4, 1990
 Revised 10/12/90 by Greenhorn & O'Mara, Inc. per City of Gaithersburg comments.



Project Overview

- Mix of One Bedroom and Two Bedroom units
- Apartment Features:
 - Stainless steel appliances
 - Granite countertops
 - White wooden cabinetry
 - Walk-in closets
 - Balcony
- Common Amenities:
 - Swimming pool & sun deck
 - Outdoor entertainment area
 - Fitness center
 - Clubhouse with kitchen & seating
 - Business center
 - Sport court
 - Central laundry facilities



Proposed Plan Continued

Before and After Comparison



Proposed Plan Continued

Typical Front Elevation



① TYPICAL FRONT ELEVATION
1/16" = 1'-0"

Proposed Plan Continued

Elevator Towers



Proposed Plan Continued

Inspiration



Proposed Plan Continued

Perspective View



From: [Rob Robinson](#)
To: [Lynn Board](#); [Trudy Schwarz](#)
Cc: [Kirk Eby](#); "[Barr, Stuart R.](#)"
Subject: Hyatt House Community Meeting
Date: Wednesday, November 30, 2016 9:22:36 AM

I attended the community meeting Monday evening regarding the conversion of the Hyatt House to senior housing. There were 14 attendees which were comprised of the executive boards of the Walnut Hill and Gateway Commons HOAs. The applicant gave a brief presentation regarding the change. I informed the audience regarding the various City processes that would need to occur and when further public input would be sought. Both groups were appreciative of the information provided and that the applicant engaged them early in the process. Questions related to operational issues and conversion from a hotel to housing were asked. The issue of parking was raised. The applicant announced that this would be 55+. At the end, both HOA groups voiced their support for this proposal and look forward to remaining informed throughout the process.

Rob Robinson III, AICP CEP
FCA Qualified Professional
Long Range Planning Manager
City of Gaithersburg
301-258-6330 Ext. 2122

The opinions expressed in this message are not necessarily those of the City of Gaithersburg Staff, Mayor or Council.

Mayor and City Council Agenda Item Request

Meeting Date: 12/5/2016

Type: Ordinance / Regulations / Resolution

Call to Podium:

Lynn Board

Agenda Item Title:

Introduction of Ordinances to Amend City Code Chapters, Sections 1-2, 8-7, 8-26, 8-27, 8-29, 19-12, 19-13A, 19-16, 20-19A, 20-62A, 22-8, 22-12 and 22-9, to Address Acceptance of Public Improvements and Bonding Requirements

Responsible Staff and Department:

Lynn Board, City Manager's Office
John Schlichting, Planning and Code Administration
Wes Burnette, Planning and Code Administration

Desired Outcome from Council:

Staff recommends that the City Council vote to sponsor the text amendment and notify the public that a public hearing will be scheduled for Tuesday, January 17, 2017.

Public Hearing History	
Introduction Date:	12/5/2016
Advertisement Date :	
Public Hearing Date:	
Record Held Open Date:	
Policy Discussion Date:	
Anticipated Adoption Date:	

SUPPORTING BACKGROUND ON NEXT PAGE

Mayor and City Council Agenda Item Request

Supporting Background Information:

Staff has undertaken a comprehensive review of the City Code provisions related to acceptance of public improvements and bonding and other surety issues to ensure that there is uniformity of the City's requirements and that the City is adequately protected.

The proposed City Code Amendments include:

1. Sec. 1-2 Definitions and Rules of Construction.
2. Sec. 8-7 Permits.
3. Sec. 8-10 Inspections.
4. Sec. 8-26 Permits.
5. Sec. 8-27 Performance Bonds.
6. Sec. 8-29 Inspections.
7. Sec. 19-13 Bond Requirements by Permittee.
8. Sec. 19-13A Liability Insurance
9. Sec. 19-16 Compliance with Articles; Acceptance of Projects and Release from Bonds.
10. Sec. 20-19A Permit and Other Requirements for Public Projects.
11. Sec. 20—62A Permit and Other Requirements for Public Projects.
12. Sec. 22-8 Application, Review and Approval Procedures.
13. Sec. 22-9 Retention, Afforestation and Reforestation Requirements.
14. Sec. 22-12 Variance Provisions

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:

* * *

Section 1-2 – Definitions and rules of construction.

* * *

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

* * *

ARTICLE II: SEDIMENT CONTROL

* * *

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.

* * *

Section 8-10 - Inspections.

* * *

(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.

* * *

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

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 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

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>Double underlining</u>	Added by Amendment.
Double strikethrough	Deleted from existing law or the bill by amendment.
* * *	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

* * *

§ 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.

* * *

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

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 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.

Staff Guidance

Mayor and City Council Agenda Item Request

Meeting Date: 12/5/2016

Type: Staff Guidance

Call to Podium:

Lynn Board

Agenda Item Title:

Sponsorship of Text Amendment, An Ordinance to Amend Chapter 24 of the City Code, Entitled "Zoning", so as to Amend Article I, Entitled "In General", Section 24-1, Entitled "Definitions", Article V, Entitled "Site Development Plans", Section 24-171, Entitled "Site Plan Review", and Article VI, Entitled "Administration and Enforcement of Chapter", Section 24-176, Entitled "Site Work Permits", and Section 24-177, Entitled "Building Permits"

Responsible Staff and Department:

Lynn Board, City Manager's Office
John Schlichting, Planning & Code Administration
Trudy Schwarz, Planning & Code Administration

Desired Outcome from Council:

Staff recommends that the City Council vote to introduce the ordinance and notify the public that a joint public hearing with the Planning Commission will be scheduled for Tuesday, January 17, 2017.

SUPPORTING BACKGROUND ON NEXT PAGE

Mayor and City Council Agenda Item Request

Supporting Background Information:

Staff has undertaken a comprehensive review of the City Code provisions related to acceptance of public improvements and bonding and other surety issues to ensure that there is uniformity of the City's requirements and that the City is adequately protected and is seeking Mayor and Council sponsorship of the following amendments to Chapter 24 of the City Code:

1. Sec. 24-1 Definitions
2. Sec. 24-171 Site Plan Review
3. Sec. 24-176A Site Work Permits
4. Sec. 24-177 Building Permits

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE, ENTITLED "ZONING", SO AS TO AMEND ARTICLE I, ENTITLED "IN GENERAL", SECTION 24-1, ENTITLED "DEFINITIONS", ARTICLE V, ENTITLED "SITE DEVELOPMENT PLANS", SECTION 24-171, ENTITLED "SITE PLAN REVIEW", AND ARTICLE VI, ENTITLED "ADMINISTRATION AND ENFORCEMENT OF CHAPTER" SECTION 24-176, ENTITLED "SITE WORK PERMITS" AND SECTION 24-177, ENTITLED "BUILDING PERMITS"

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

CHAPTER 24: ZONING

ARTICLE I. - IN GENERAL

Section 24-1 - Definitions.

* * *

Footprint . A designated area covered by the foundation wall of a structure or area of the base on which a structure stands or is supported.

Formal City Acceptance. Formal City Acceptance of any public project, including sidewalks or streets, shall as specified in Chapter 1 of the City Code, include formal acceptance by the City Manager or designee.

Fortunetelling business. Any attempt to tell fortunes or predict the future (for pay or voluntary contributions) by means of occult or psychic powers, faculties, or forces; necromancy, palmistry, psychic psychometry, spirits, mediumship, seership, prophesy, cards, crystals, talismans, sorcery, charms, potions, magnetism, tea leaves, magic, numerology, mechanical devices, handwriting analyses, phrenology, character readings, or any other similar means. A fortunetelling business shall not be considered allowed as a home occupation, or classified as a church, or other place of worship. This definition shall not apply to fortunetelling at street festivals, carnivals, comedic routines, fundraisers, or other similar entertainment purposes operated on a limited basis and not requiring the issuance of a use an occupancy permit. The term "limited basis" shall mean operation of the use not more than four (4) times per year and not to exceed twelve (12) days in any year.

* * *

ARTICLE V. - SITE DEVELOPMENT PLANS

* * *

Section 24-171 - Site plan review.

(1) In the review and approval of a site development plan, the planning commission shall have the following powers which shall be exercised for the purpose of avoiding adverse impact on the neighboring properties and public facilities, reducing traffic hazards and improving traffic circulation within or without the property which is the subject of the plan, preserving existing desirable natural features, protecting environmental resources, assuring adequate light and air to buildings within or without the subject property, providing adequate access to such buildings by fire and rescue equipment, providing convenient access to such buildings from off-street parking spaces, avoiding overcrowding of persons and buildings within the development, ensuring the provision or development of recreational and other amenities, and facilitating the creation and maintenance of common or public open space, parking areas and private drainage systems.

* * *

(k) To require that, as a condition to the issuance of building and/or site work permits, bonds or other financial security or instrument be posted with the city, satisfactory to the city manager or designee, to ensure the construction and/or maintenance of approved on-site, private recreational facilities, amenities, buildings and areas, and any landscaping, screening, access and parking elements being part of the approved site plan. ~~Prior to releasing any bond or letter of credit required for elements of an approved site plan, 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 permittees 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. The decision of the city manager as to this release of any bond or letter of credit 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. 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 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, heir and assigns relinquish all claim to said cash bond; and~~

* * *

ARTICLE VI. ADMINISTRATION AND ENFORCEMENT OF CHAPTER

* * *

Section 24-176A - Site work permits.

(a) A site work permit shall be required to ensure the construction and/or maintenance of approved on-site, private recreational facilities, amenities, buildings and areas, and any landscaping, screening, access and parking elements being part of the approved site plan.

(b) 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 not be less than such amount as is estimated to be the total cost of the project to ensure the construction and/or maintenance of approved on-site, private recreational facilities, amenities, buildings and areas, and any landscaping, screening, access and parking elements being part of the approved site plan, subject to, at the city's option, a ten percentum (10%) contingency or unit dollar amount established by the city as contingency. 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. The bond 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. A corporate bond 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. 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 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, and shall be deposited with the city with

documentation that the funding has been deposited in compliance with and subject to the provisions of this article.. 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 bond, letter of credit or other security shall obligate the principal, his executors, administrators, successors and assigns, jointly and severally with the surety, and shall inure to the benefit of the city, its officers and employees and to any person aggrieved by the principal's failure 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, the plan and the permit. Upon the completion of the work authorized by the permit, said corporate bond shall be released as to ninety per centum (90%) of the amount thereof, or the full amount minus the unit dollar amount withheld by the city, if any contingency was retained, or in those cases where a written agreement has been submitted in lieu of said bond, ninety per centum (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, the remainder of such bond shall be released or the balance of such security shall be returned to the permittee.

(c) Whenever the city shall find that a default has occurred in the performance of any term or condition of the permit or bond, letter of credit or other security, written notice thereof shall be given to the principal and to the surety of the bond. Such notices shall state the work to be done, the estimated cost thereof and the period of time deemed by the city to be reasonably necessary for the completion of such work.

(d) 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 or other surety or any other person employed or engaged on his behalf 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 in accordance with subparagraph (d) below in the discretion of the city manager or designee.

(e) 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 the site 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.

(f) 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.

(g) The bond, letter of credit or other security shall not be fully released without a final inspection of completed work. A corporate bond or letter of credit shall remain in full force and effect, until completion of the work in accordance with section 24-171 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.

(h) Prior to releasing any bond or other security required for elements of an approved site plan, 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 the 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, citizen groups and representatives of common ownership communities. The decision of the city manager as to this release of any bond or letter of credit 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) A cash bond or other security shall be returned upon depositor's request to the depositor or to his successors or assigns upon completion of the work approved by the city as provided herein and in accordance with section 24-171, 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.

(j) 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.

* * *

Section 24-177 - Building permits.

(a) No building or other structure shall be erected, moved, added to or structurally altered without a permit therefore, issued by the city manager or designee. ~~his authorized representative.~~ No building permit requiring a site work permit shall be issued prior to the issuance of said site work permit. No building permit shall be issued except in conformity with the provisions of this chapter, except after written order from the board of appeals. Each application for a building permit shall be accompanied by duplicate copies of a plat or site plan as required ~~[for all but single-family dwellings, two-family dwellings or semidetached dwellings as noted in section 24-168]~~, the fee established by the city council and application as provided for this purpose, and a building plan drawn to scale showing:

* * *

(b) All building plans, other than single family residences, shall be signed by a professional architect registered in the state. If the estimated cost of building exceeds fifty thousand dollars (\$50,000.00), plans shall be signed by a professional structural engineer registered in the state.

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

From the City Attorney,
Deputy City Manager
and Other Staff

Outside Correspondence



Distributed to M&CC:12/5/16
Letter of Condolence

City of Temecula

41000 Main Street ■ Temecula, CA 92590 ■ Mailing Address: P.O. Box 9033 ■ Temecula, CA 92589-9033
(951) 694-6416 ■ Fax (951) 694-6499 ■ www.cityoftemecula.org

Michael S. Naggar
Mayor

Maryann Edwards
Mayor Pro-Tem

Jeff Comerchero
Council Member

Michael McCracken
Council Member

Matt Rahn
Council Member

951-506-5100
FAX 951-694-6499

November 22, 2016

Honorable Mayor Jud Ashman
City of Gaithersburg
31 S Summit Avenue
Gaithersburg, Maryland 20877

Dear Honorable Mayor Ashman,

On behalf of the City Council of the City of Temecula, I would like to convey our heartfelt condolences to you and to the City of Gaithersburg in the loss of Council Member Henry Marraffa. As an expression of our sympathies the City Council Meeting of November 17, 2016 was conducted and adjourned in his memory.

We will continue to keep you in our thoughts and prayers as you go through this difficult time.

Sincerely,

Mike Naggar
Mayor

cc: Temecula City Council Members



Mark P. Sroka
Chief of Police

GAITHERSBURG POLICE DEPARTMENT



Gaithersburg
A CHARACTER COUNTS! CITY

November 16, 2016

Distributed to M&CC:12/5/16
Committee Reappointment

David Weber
105 Midtown Rd
Gaithersburg, MD 20878

Dear Mr. Weber:

Your term on the Police Advisory Committee will be expiring soon. On behalf of the entire community I would like to express appreciation for your commitment to serving our City in this capacity. Our Boards, Commissions, and Committees perform vital functions in a variety of areas, and we recognize and value your contribution very much.

Our appointment policy requires that all volunteer positions be advertised to provide the public with an opportunity to apply. In the near future, we will be evaluating the requests to fill the vacancies on the Police Advisory Committee, and appointments will be made by the Mayor and City Council soon thereafter.

If you would like to be considered for reappointment or if you no longer wish to serve on Police Advisory Committee, please indicate by signing below and returning this letter within 30 days of the printed date.

Again thank you for your commitment to the City of Gaithersburg. If you have any questions, please feel free to contact Officer Dan Lane at (301) 258-6168 or at dlane@gaitthersburgmd.gov

Sincerely,

Chief of Police, Mark P. Sroka
Police Advisory Committee

Please check box:

I would / I would not like to be reappointed to the Police Advisory Committee.

Name

Date



A Nationally Accredited Law Enforcement Agency

Adjournment