

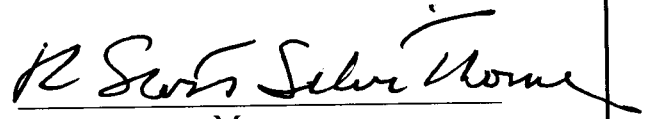
ORDINANCE NO. 2014-30

AN ORDINANCE AMENDING CHAPTER 110, ARTICLE II, DIVISION 3, DIVISION 11, SUBDIVISIONS I AND II, AND DIVISION 12, OF THE CODE OF THE CITY OF FAIRFAX, VIRGINIA, PERTAINING TO STORM WATER AND STORM DRAINAGE FACILITIES, CHESAPEAKE BAY PRESERVATION, AND EROSION AND SEDIMENT CONTROL

BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 110, Article II, Division 3, Division 11, Subdivisions I and II, and Division 12, of the Code of the City of Fairfax, Virginia, is hereby amended as provided in Exhibit A attached to this Ordinance.

This ordinance shall become effective as provided by law.

Introduced: May 13, 2014
City Council hearing: June 24, 2014
Adopted: June 24, 2014



Mayor
7/3/14

Date

ATTEST:



City Clerk

Votes

Councilman DeMarco	Aye
Councilman Drummond	Aye
Councilman Greenfield	Aye
Councilman Meyer	Aye
Councilmember Schmidt	Aye
Councilman Stombres	Aye

Fairfax, Virginia, Code of Ordinances >> PART II - CODE >> Chapter 110 - ZONING >> ARTICLE II. - DISTRICT DEVELOPMENT STANDARDS AND REGULATIONS GENERALLY >> DIVISION 3. CHESAPEAKE BAY PRESERVATION >>

DIVISION 3. CHESAPEAKE BAY PRESERVATION

Sec. 110-78. Purpose and intent.

- (a) This division is enacted to implement the requirements of Code of Virginia, § 62.1-44.15:75 et seq., the Chesapeake Bay Preservation Act. These regulations establish the criteria that the city shall use to determine the extent of the Chesapeake Bay preservation areas. These regulations also establish criteria for use by the city in approving, denying or modifying requests to rezone, subdivide, use, develop and/or redevelop land in Chesapeake Bay preservation areas. The intent of the city council and the purpose of this division is to:
- (1) Protect sensitive environmental lands within the city;
 - (2) Safeguard the quality of state waters;
 - (3) Prevent further increase in pollution of state waters;
 - (4) Reduce existing pollution of state waters; and
 - (5) Promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the city.
- (b) Unless otherwise stated in this division, the review and approval procedures provided for in chapter 110 of the City Code, Zoning, shall be adhered to in reviewing and approving development, redevelopment and uses governed by this division.

Sec. 110-84. General performance standards for Chesapeake Bay preservation areas.

- (a) *Purpose and intent.* The performance standards included in this division establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.

The performance standards are intended to prevent a net increase in nonpoint source pollution from new development and to achieve a ten percent reduction in nonpoint source pollution from redevelopment.

- (b) *Development and redevelopment in Chesapeake Bay preservation areas.*

- (1) Land disturbance shall be minimized and limited to the area necessary to provide for the desired use or development.
 - a. In accordance with an approved subdivision or site plan, the extent of land disturbing activity, including clearing or grading, shall be limited to the specified

- construction footprint. The limits of disturbance shall be clearly shown on submitted plans and physically marked on the development site.
- b. Ingress and egress during construction shall be limited to one access point unless otherwise approved by the zoning administrator.
- (2) Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use and development proposed and in accordance with the "Virginia Erosion and Sediment Control Handbook."
- a. Existing trees shall be preserved outside the limits of disturbance, however, diseased trees or trees weakened by age, storm, fire or other injury may be removed.
 - b. Clearing and grading shall be limited outside the defined limits of disturbance. Clearing shall be allowed only to provide public roads, necessary access, positive site drainage, water quality BMPs, and the installation of utilities, as approved by the zoning administrator.
 - c. Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected at the drip line of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be permitted within the area protected by the barrier.
- (3) Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the use or development permitted.
- (4) Notwithstanding any other provisions of this division, or any exceptions or exemptions thereto, any land disturbing activity exceeding 2,500 square feet, shall comply with the requirements of the Chapter 110, Article II, Division 11, Storm Drainage Facilities, and Division 12, Erosion and Sediment Control.
- (5) All on-site sewage disposal systems not requiring a VPDES permit shall be pumped out at least once every five years. However, owners of on-site sewage treatment systems may submit documentation every five years, certified by a sewage handler permitted by the Virginia Department of Health, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.
- (6) A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system that operates under a permit issued by the state water control board until the structure is served by public sewer.
- (7) For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices consistent with Chapter 110, Article II, Division 11, Storm Drainage Facilities and 9VAC25-870-63 of the Virginia Stormwater Management Regulations.

- (8) Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state and local laws and regulations shall be obtained and evidence of such submitted to the zoning administrator in accordance with the development review procedures outlined in section 110-86.
- (c) *Performance criteria for resource protection areas.* The following criteria shall apply specifically within resource protection areas and supplement the general performance criteria contained in this section:
- (1) All redevelopment activities shall conform to the regulations contained in Chapter 110, Article II, Division 2, Floodplains; Division 11, Storm Drainage Facilities; and Division 12, Erosion and Sediment Control. Redevelopment shall be permitted in the resource protection area only if there is no increase in the amount of impervious cover within the RPA and no further encroachment within the RPA.
 - (2) A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within resource protection areas in accordance with section 110-85 and section 110-80(e).
- (d) *Buffer area requirements.* To minimize the adverse effects of human activities on the core components of resource protection areas, state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients.

The buffer area shall be maintained to meet the following additional performance standards:

- (1) In order to maintain the functional value of the buffer area, indigenous vegetation may be removed, subject to approval of the zoning administrator, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices (including those that prevent upland erosion and concentrated flows of stormwater), as follows:
- (2) When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the zoning administrator may permit encroachments into the required buffer area pursuant to section 110-89, Administrative waivers and special exceptions, and in accordance with the following provisions:
 - a. Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
 - b. Where practicable, a vegetated area shall be established elsewhere on the lot or parcel in a manner that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area; and
 - c. In no case shall the encroachment extend into the seaward 50 feet of the buffer area.

- (3) When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989 and November 25, 2003, the zoning administrator may permit encroachments into the required buffer area pursuant to section 110-89, Administrative waivers and special exceptions, and in accordance with the following provisions:
 - a. The lot or parcel was created as a result of a legal process conducted in conformity with the city's subdivision regulations;
 - b. Conditions or mitigation measures imposed through a previously-approved exception shall be met;
 - c. If the use of a best management practice was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required;
 - d. The criteria listed in subsection 110-84(d)(2) shall be satisfied.

Sec. 110-85. Water quality impact assessment.

- (a) *Purpose and intent.* The purpose of the water quality impact assessment is to:
 - (1) Identify the impacts of proposed development on water quality and lands within resource protection areas;
 - (2) Ensure that, where redevelopment does take place within resource protection areas, it is located on those portions of a site and in a manner that is least disruptive to the natural functions of resource protection areas; and
 - (3) Specify mitigation to address water quality protection.
- (b) *Water quality impact assessment required.* A water quality impact assessment shall be submitted for:
 - (1) Any proposed land disturbance, development or redevelopment within a resource protection area including any buffer area modification or reduction as provided for in section 110-84; or
 - (2) Any proposed development or redevelopment in the resource management area that may significantly impact water quality due to the unique characteristics of the site or intensity of the proposed use or development, as determined by the zoning administrator in accordance with this section and subsection 110-80(e) .

There shall be two levels of water quality impact assessment: a minor assessment and a major assessment.

- (c) *Minor water quality impact assessment.* A minor water quality impact assessment pertains only to development resulting in no more than 5,000 square feet of land disturbance, or development that encroaches onto the landward 50 feet of the 100-foot buffer area. The calculations of a minor assessment will demonstrate that the remaining buffer area and necessary best management practices will result in removal of no less than 75 percent of sediments and 40 percent of nutrients from postdevelopment stormwater runoff. A minor assessment shall include a site drawing to scale that shows the following:
 - (1) Location of the components of any RPA, including the 100-foot buffer area;

- (2) Location and nature of the proposed improvements, including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or reserve drainfield sites;
- (3) Type and location of proposed best management practices to meet the required general performance standards specified in section 110-84;
- (4) Location of existing vegetation on site, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification; and
- (5) A revegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.

(d) *Major water quality impact assessment.* A major water quality impact assessment shall be required for any development that exceeds 5,000 square feet land disturbance or that encroaches onto the seaward 50 feet of the 100-foot buffer area; or is located in the resource management area and is deemed necessary by the zoning administrator.

The information required in this section shall be considered a minimum, unless the zoning administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.

The following elements shall be included in the preparation and submission of a major water quality impact assessment:

- (1) All of the information required in a minor water quality impact assessment, as specified in subsection (c) above;
- (2) A hydrogeological element that describes existing topography, estimates of soils characteristics and potential for erosion, hydrology of the area, impacts on wetlands and streams, proposed mitigation measures, and a listing of requisite permits with permit or application status.
- (3) A landscape element that fully describes existing trees required to be identified as part of a tree-management plan in accordance with subsection 110-252(c); limits of clearing and grading; trees and indigenous vegetation that are to be preserved within the disturbed area; measures to be taken to protect vegetation, proposed plantings, and other vegetative measures used to enhance water quality; and a proposed construction schedule that includes all activities related to clearing, grading, and proposed plantings; and
- (4) Such other measures as deemed necessary by the zoning administrator to ensure the impact to water quality can be accurately predicted.

(e) *Submission and review requirements.*

- (1) Copies of all site drawings and other applicable information as required by subsections (c) and (d) above shall be submitted to the zoning administrator for review and approval.
- (2) All information required in this section shall be certified by a professional engineer, land surveyor, landscape architect, soil scientist, or wetland delineator certified or licensed to practice in the Commonwealth of Virginia.

- (3) RPA boundaries shall include a jurisdictional determination or verification letter from the U.S. Army Corps of Engineers for all Waters of the U.S.
 - (4) Water quality impact assessments shall be prepared and submitted to the zoning administrator in conjunction with the development review procedures outlined in section 110-86.
 - (5) As part of any major water quality impact assessment submittal, the zoning administrator may require review and written comments by the Chesapeake Bay local assistance department (CBLAD). The zoning administrator should incorporate comments made by CBLAD into the final review of the major water quality impact assessment.
- (f) *Evaluation procedure.*
- (1) Upon the completed review of a minor water quality impact assessment, the zoning administrator shall determine if any proposed modification or reduction to the buffer area is consistent with the provisions of this division and make a finding based upon the following criteria:
 - a. The proposed encroachment is necessary and there is no other location on site to place improvements without disturbing the buffer area;
 - b. The impervious surface is minimized;
 - c. The proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
 - d. The development, as proposed, meets the purpose and intent of this division;
 - e. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality; and
 - f. Any other information deemed necessary by the zoning administrator.
 - (2) Upon the completed review of a major water quality impact assessment, the zoning administrator shall determine if the proposed development is consistent with the purpose and intent of this division and make a finding based upon the following criteria:
 - a. The disturbance of any wetlands is minimized;
 - b. The development will not result in significant disruption of the hydrology of the site;
 - c. The development will not result in significant degradation to aquatic life;
 - d. The development will not result in unnecessary destruction of plant materials on site;
 - e. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent offsite sedimentation;
 - f. Proposed stormwater-management measures are adequate to control the stormwater runoff to achieve the required performance standard for pollutant control;
 - g. Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits;

- h. The design and location of any proposed drainfield will be in accordance with the general performance standards outlined in section 110-84;
 - i. The development, as proposed, is consistent with the purpose and intent of this division;
 - j. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.
- (3) The zoning administrator may require additional mitigation measures where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the zoning administrator based on the criteria listed above in subsections (1) and (2).
- (4) The zoning administrator shall find the proposal to be inconsistent with the purpose and intent of this division when the impacts created by the proposal cannot be mitigated.

Sec. 110-86. Development review procedures.

- (a) *Generally.* Any land disturbance, development, or redevelopment with land disturbing activity exceeding 2,500 square feet shall comply with the development review procedures outlined herein, where applicable, prior to any clearing, grading or construction on the site.
- (b) *Required information.* The following plans or studies shall be submitted, unless otherwise provided for:
- (1) If applicable, a subdivision or site plan submitted in accordance with the provisions of chapter 86, Subdivisions, and chapter 110, Zoning, of the City Code;
 - (2) A RPA site-specific study as provided for in subsection 110-86(c) of this division;
 - (3) If applicable, a water quality impact assessment as required in section 110-85
 - (4) A tree-management plan consistent with the provisions of chapter 110, division 10, Tree preservation, landscaping and screening;
 - (5) A stormwater management plan consistent with the design and performance standards of chapter 110, Division 11, Storm Drainage Facilities;
 - (6) An erosion and sediment control plan consistent with the provisions of chapter 110, division 12, Erosion and Sediment Control; and
 - (7) Copies of all wetlands permits required by law.
- The required plans and studies shall include the delineation of the RPA boundary, the delineation of required buffer areas, and a maintenance agreement as deemed necessary by the zoning administrator to ensure proper maintenance of best management practices in order to continue their functions. These required plans and studies may be coordinated or combined as deemed appropriate by the zoning administrator. However, the zoning administrator may also determine that any of the information required in this section may be unnecessary due to the scope and nature of the proposed development.
- (c) *RPA site-specific study.* An RPA site-specific study shall be submitted as part of the development review procedures required by this division and in conjunction with site plan or subdivision approval.

- (1) The RPA site-specific study shall be drawn to scale and clearly delineate the resource protection area components outlined in subsection 110-79(a)(1).
- (2) Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1987.
- (3) The RPA site-specific study shall delineate the site-specific geographic extent of the resource protection area.
- (4) The RPA site specific study shall be drawn at the same scale as the site plan or subdivision plan and shall be certified by a professional engineer, land surveyor, landscape architect, soil scientist, or wetland delineator certified or licensed to practice in the Commonwealth of Virginia.
- (5) RPA boundaries shall include a jurisdictional determination or verification letter from the U.S. Army Corps of Engineers for all Waters of the U.S.

(d) *Tree-management plan.* A tree-management plan shall be submitted as part of the development review procedures required by this division and shall be prepared in accordance with the requirements set forth in subsection 110-252(c). No clearing, grading, or construction on any lot or parcel shall be permitted without an approved tree management plan.

In addition to the tree management plan contents required in subsection 110-252(c), the following supplemental information shall be provided for land disturbance, development, or redevelopment activity proposed within the resource protection area:

- (1) Any required buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this division, shall be shown on the tree management plan.
- (2) Within the buffer area, trees to be removed for sight lines, vistas, access paths, and best management practices, as provided for in this division, shall be shown on the plan. Vegetation required by this division to replace any existing trees within the buffer area shall also be shown on the tree management plan.
- (3) Trees to be removed for stream bank stabilization projects and any replacement vegetation required by this division shall be shown on the landscaping plan.

(e) *Stormwater management plan.* A stormwater management plan shall be submitted as part of the development review procedures required by this division and in conjunction with site plan or subdivision approval.

- (1) *Contents.* The stormwater management plan shall be developed in accordance with Chapter 110, Article II, Division 11, Storm Drainage Facilities.

a. For facilities, verification of structural soundness, including a professional engineer or class IIIB surveyor certification, shall be provided.

- (2) All engineering calculations shall be performed in accordance with procedures outlined in the current edition of the "Virginia State Stormwater Management Handbook."
- (3) The plan shall establish a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and

persons responsible for performing maintenance in accordance with Section 110-136 of Chapter 110, Article II, Division 11, Storm Drainage Facilities.

- (f) *Erosion and sediment control plan.* An erosion and sediment control plan shall be submitted as part of the development review procedures required by this division in conjunction with site plan or subdivision approval that satisfies the requirements of Chapter 110, Article II, Division 12, Erosion and Sediment Control, of the Code of the city.
- (g) Physical improvements required by this division may be bonded in accordance with sections 86-4 and 110-107 of the Code of the city.

Sec. 110-88. Exemptions.

The following uses shall be exempt from the criteria contained in this division:

- (a) Construction, installation, operation and maintenance of electric, natural gas, fiber-optic, telephone transmission lines, railroads, public roads, public trails, and their appurtenant structures; provided that said construction, installation, operation and maintenance is in accordance with the Erosion and Sediment Control Law (Code of Virginia, § 62.1-44.15:51 et seq.) and the Stormwater Management Act (Code of Virginia, § 62.1-44.15:24 et seq.). An erosion and sediment control plan and a stormwater management plan approved by the City of Fairfax shall be deemed to constitute compliance with this provision. The exemption of public roads is further conditioned on the optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize both encroachment into the RPA and adverse effects on water quality.
- (b) Construction, installation and maintenance of water, sewer, natural gas, and underground telecommunications and cable television lines [owned, permitted, or both, by the city or regional service authority], provided that:
 - (1) Such utilities and facilities shall be located outside the RPA to the degree possible;
 - (2) No more land shall be disturbed than is necessary to provide for the proposed utility installation;
 - (3) All construction, installation and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality; and
 - (4) Any land disturbance exceeding an area of 2,500 square feet complies with all City erosion and sediment control and stormwater management requirements.
- (c) The following land disturbances within the RPA shall be exempted from this division: (i) water wells; (ii) passive recreation facilities, such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities, provided that it is demonstrated to the satisfaction of the zoning administrator that:
 - (1) Any required permits, except those to which this exemption specifically applies, shall have been issued;
 - (2) Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;
 - (3) The intended use does not conflict with nearby planned or approved uses; and

- (4) Any land disturbance exceeding an area of 2,500 square feet shall comply with all City erosion and sediment control and stormwater management requirements.