## Chapter 14 FLOODPLAIN MANAGEMENT, EROSION AND SEDIMENT CONTROL, AND DRAINAGE[[1]](#footnote-1)

### ARTICLE I. IN GENERAL

Secs. 14-1—14-18. Reserved.

### ARTICLE II. FLOODPLAIN MANAGEMENT[[2]](#footnote-2)

#### DIVISION 1. GENERALLY

Sec. 14-19. Purpose.

In accordance with Code of Virginia, Title 10.1, Ch. 6 (Code of Virginia, § 10.1-600 et seq.), and the National Flood Insurance Act of 1968, 42 USC 4001—4129, the purpose of this article is to promote the public health, safety and general welfare through the establishment of comprehensive floodplain management regulations designed to:

(1) Minimize loss of life and property due to flooding conditions;

(2) Prevent unnecessary disruption of commerce and public services in times of flooding;

(3) Avoid unnecessary and extraordinary expenditure of public funds for flood protection and relief; and

(4) Contribute to the maintenance of a stable tax base.

(Code 1993, § 13-21; Code 2004, § 50-31; Code 2015, § 14-19; Ord. No. 2014-95-66, § 3, 4-28-2014)

Sec. 14-20. Methodology.

In order to accomplish its purpose, this article establishes requirements and procedures for review of proposed development and land-disturbing activity within designated floodplain districts and includes provisions for:

(1) Prohibiting development and land-disturbing activity which, acting alone or in combination with other development or activity, will cause unacceptable increases in flood heights or velocities;

(2) Restricting or prohibiting certain development and land-disturbing activity within areas subject to flooding;

(3) Requiring that development permitted in floodplain districts be protected or floodproofed against flooding and flood damage in accordance with applicable sections of the Virginia Uniform Statewide Building Code;

(4) Controlling the alteration or relocation of watercourses, channels and floodplains and controlling filling, grading and other land-disturbing activity within floodplain areas in accordance with State and local requirements and procedures;

(5) Ensuring that those who develop land subject to flooding are aware of potential flood hazards and assume responsibility for their actions; and

(6) Ensuring that development in Chesapeake Bay Preservation Areas meets the requirements of this chapter.

(Code 1993, § 13-22; Code 2004, § 50-32; Code 2015, § 14-20; Ord. No. 2004-330-320, § 1, 12-13-2004)

Sec. 14-21. Definitions.

Words and terms not specifically defined in this section shall be interpreted in accordance with such normal dictionary meaning or customary usage as is appropriate to the context. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*100-year flood* means the base flood (i.e., the flood having a one percent chance of being equaled or exceeded in any given year).

*Accessory structure* means a structure used for purposes incident and subordinate to another structure on the same property and that does not exceed 200 square feet in area.

*Base flood* means the flood having a one percent chance of being equaled or exceeded in any given year (i.e., the 100-year flood).

*Base flood elevation* means the elevation computed by the Federal Emergency Management Agency to which floodwater is anticipated to rise during the base flood, as reflected in the City's flood insurance rate map.

*Basement* means any area of the building having its floor sub-grade (below ground level) on all sides.

*Chesapeake Bay Preservation Areas* means those areas so designated in Article IV of this chapter.

*Conditional letter of map revision* means an official Federal Emergency Management Agency determination by letter that is a formal review as to whether a proposed flood protection project or other project complies with the minimum National Flood Insurance Program requirements for such projects with respect to delineation of special flood hazard areas. A conditional letter of map revision does not revise the effective floodplain insurance rate map or flood insurance study.

*Development* means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures for which a building permit must be obtained under the requirements of the Virginia Uniform Statewide Building Code and this article, mining, dredging, filling, grading, paving, excavation or drilling operations, or the storage of equipment or materials.

*Digital flood insurance rate map* means a flood insurance rate map that has been made available digitally.

*Director* means the Director of Public Utilities or a designee thereof.

*Elevated structure* means a non-basement structure built to have the lowest floor elevated above the ground level by means of solid foundation perimeter walls, pilings, columns, posts or piers.

*Elevation certificate* means an official record or document that shows new structures and substantial improvements in all identified special flood hazard areas are properly elevated.

*Encroachment* means the advance or infringement of uses, plant growth, fill excavation, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

*Existing construction* and *existing structure* mean, for the purpose of determining rates, structures for which the start of construction commenced before June 15, 1979, which is the effective date of the City's initial flood insurance rate map.

*Flood* or *flooding* means:

(1) A general and temporary condition of partial or complete inundation of normally dry land areas from:

a. Overflow of inland or tidal waters;

b. Unusual and rapid accumulation of runoff of surface waters from any source; or

c. Mudflow; or

(2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event that results in flooding as defined in subsection (1) of this definition.

*Flood fringe district* means any normally dry land area susceptible to partial or complete inundation during the 100-year flood and lying outside of the floodway district. The outermost boundary of the flood fringe district shall be the elevation of the 100-year flood contained in the flood profiles of the flood insurance study and shown on the flood boundary and floodway map.

*Flood insurance rate map* means an official map of the City on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the City.

*Flood insurance study* means a report by the Federal Emergency Management Agency that examines, evaluates and determines flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow or flood-related erosion hazards.

*Floodplain* means the area, including watercourse, susceptible to partial or complete inundation during the 100-year flood.

*Floodplain districts* means those areas subject to partial or complete inundation by waters of the 100-year flood, including floodway districts, flood fringe districts and approximate floodplain districts.

*Floodproofing* means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

*Floodway district* means the channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot. Areas included in the floodway district are defined in Table 2 of the flood insurance study prepared by the Federal Emergency Management Agency dated December 15, 1978, and as revised, effective July 20, 1998, April 2, 2009, and July 16, 2014.

*Freeboard* means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management.

*Frequency flood* means a flood at a certain magnitude that will occur for a water body or drainage area over a certain period of time.

*Highest adjacent grade* means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

*Historic structure* means any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the United States Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed in the Virginia Landmarks Register; or

(4) Individually listed on a local inventory of historic places certified by the Virginia Landmarks Register.

*Hydrologic and hydraulic engineering analysis* means an analysis performed by a licensed professional engineer, in accordance with standard engineering practices that are accepted by the Virginia Department of Conservation and Recreation and the Federal Emergency Management Agency, and used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

*Land-disturbing activity* means any land change, including, but not limited to, clearing, grading, excavating, transporting and filling of land, or other construction activities which would disturb the natural vegetation or the existing contours of the land, which may result in soil erosion from water or wind and the movement of sediments into public or private storm drainage facilities.

*Letter of map amendment* means an official written determination from the Federal Emergency Management Agency based on technical data showing that a property was incorrectly included in a designated special flood hazard area that amends the current effective flood insurance rate map and establishes that a property as defined by metes and bounds, or a structure, is not located in a special flood hazard area.

*Letter of map change* means an official written determination from the Federal Emergency Management Agency that amends or revises an effective flood insurance rate map or flood insurance study, including a letter of map amendment, a letter of map revision, a letter of map revision based on fill or a conditional letter of map revision.

*Letter of map revision* means an official written determination from the Federal Emergency Management Agency that revises an effective flood insurance rate map or flood insurance study, based on technical data that might show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features.

*Letter of map revision based on fill* means an official Federal Emergency Management Agency determination by letter that a structure or parcel of land has been elevated by fill above the base flood elevation and, therefore, is no longer exposed to flooding associated with the base flood. In order to qualify for the letter of map revision based on fill, the fill must have been permitted and placed in accordance with all applicable City legal requirements.

*Lowest floor* means the lowest floor of the lowest enclosed area of a structure, including basements. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR 60.3.

*Manufactured home* means a structure subject to Federal regulations which:

(1) Is transportable in one or more sections;

(2) Is eight body feet or more in width and 40 body feet or more in length in the traveling mode or is 320 or more square feet when erected on-site;

(3) Is built on a permanent chassis;

(4) Is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required facilities; and

(5) Includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

*Mudflow* means a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water. The term "mudflow" does not include landslides, slope failures, or a saturated soil mass moving by liquidity down a slope.

*New construction* means, for the purposes of determining insurance rates, structures for which the start of construction commenced on or after June 15, 1979, which is the effective date of the City's initial flood insurance rate map, and includes any subsequent improvements to such structures. For floodplain management purposes, the term "new construction" means structures for which the start of construction commenced on or after May 29, 1979, which is the effective date of the City's original floodplain management ordinance, and includes any subsequent improvements to such structures.

*Post-flood insurance rate map structure* means a structure for which construction or substantial improvement occurred after June 15, 1979.

*Pre-flood insurance rate map structure* means a structure for which construction or substantial improvement occurred on or before June 15, 1979.

*Recreational vehicle* means a vehicle which is built on a single chassis; is 400 square feet or less when measured at the largest horizontal projections; is designed to be self-propelled or permanently towable by a light-duty truck; and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

*Repetitive loss structure* means a building, covered by a contract for flood insurance, that has incurred flood-related damages on at least two occasions during a ten-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25 percent of the market value of the building at the time of each flood event.

*Shallow flooding area* means a special flood hazard area with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, where velocity flow might be evident, and where such flooding is characterized by ponding or sheet flow.

*Special flood hazard area* means the land on the floodplain subject to a one percent or greater chance of being flooded in any given year as determined in Section 14-59.

*Start of construction* includes "substantial improvement" and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

*Storm drainage facility* means any sewer, ditch, creek, river, lake, swale, watercourse or any other natural or manmade facility through which stormwater or storm runoff may pass regularly or intermittently in a concentrated fashion.

*Structure* means a walled and roofed building, including, but not limited to, a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

*Substantial damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

*Substantial improvement* means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include:

(1) Any project for improvement of a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to ensure safe living conditions; or

(2) Any alteration of a historic structure, provided that:

a. The alteration will not preclude the structure's continued designation as a historic structure;

b. A historic structure undergoing repair or rehabilitation that otherwise would constitute a substantial improvement as defined in this section must comply with all applicable provisions of this Code that do not preclude the structure's continued designation as a historic structure;

c. Documentation that a specific provision of this Code will cause removal of the structure from the National Register of Historic Places or the Virginia Landmark Register must be obtained from the Secretary of the Interior or the Virginia Historic Preservation Officer, and a copy of such documentation must be provided to the City; and

d. Any exemption from otherwise applicable provisions of this Code will be the minimum necessary to preserve the historic character and design of the structure.

*Watercourse* means any natural or manmade channel, lake, river, creek, stream, wash or other topographic feature on or over which waters flow at least periodically. The term "watercourse" includes, but is not limited to, specifically designated areas in which substantial flood damage may occur.

(Code 1993, § 13-23; Code 2004, § 50-33; Code 2015, § 14-21; Ord. No. 2004-330-320, § 1, 12-13-2004; Ord. No. 2009-12-31, § 1, 2-23-2009; Ord. No. 2009-220-2010-8, § 2, 1-25-2010; Ord. No. 2014-95-66, § 3, 4-28-2014)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 14-22. Applicability.

This article shall apply to all lands within the City located within designated floodplain districts.

(Code 1993, § 13-24; Code 2004, § 50-34; Code 2015, § 14-22)

Sec. 14-23. Compliance.

No land shall be developed; no structure shall be located, constructed, reconstructed, enlarged or structurally altered; and no land-disturbing activity shall take place within any floodplain district or Chesapeake Bay Preservation Area except in full compliance with this article, Chapter 30 and other applicable legal requirements.

(Code 1993, § 13-25; Code 2004, § 50-35; Code 2015, § 14-23; Ord. No. 2014-95-66, § 3, 4-28-2014)

Sec. 14-24. Related codes and ordinances; abrogation and greater restrictions.

The sections of this article supersede other land development-related codes and ordinances that may apply within designated floodplain districts, except that the sections of this article shall not be deemed to abrogate any provision of another code or ordinance which imposes additional or more stringent restrictions, including the Chesapeake Bay Preservation Area legal requirements set forth in Article IV of this chapter.

(Code 1993, § 13-26; Code 2004, § 50-36; Code 2015, § 14-24; Ord. No. 2004-330-320, § 1, 12-13-2004; Ord. No. 2014-95-66, § 3, 4-28-2014)

Sec. 14-25. Degree of protection; disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Floods more severe than the regulatory (100-year) flood can and will occur on rare occasions, as flood heights may be increased by natural and manmade causes. The sections of this article are not intended to imply that lands outside the designated floodplain districts or development permitted within such districts will be free from flooding or flood damage. This article shall not create liability on the part of the City or any officer or employee thereof for any flood damages that may result under compliance with this article or any administrative decision lawfully made pursuant to this article.

(Code 1993, § 13-27; Code 2004, § 50-37; Code 2015, § 14-25)

Secs. 14-26—14-54. Reserved.

#### DIVISION 2. FLOODPLAIN MANAGEMENT

Sec. 14-55. Director duties and responsibilities.

The Director shall administer and implement this article and, among other duties set forth in this article, shall:

(1) Review applications for permits to determine whether proposed activities will be located in the special flood hazard area.

(2) Interpret the floodplain boundaries and provide available base flood elevation and flood hazard information.

(3) Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.

(4) Review applications to determine whether all necessary permits have been obtained from the Federal, State, and local agencies from which prior or concurrent approval is required, including, in particular, permits from State agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction, including bridges, culverts, and structures; any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing nontidal waters of the State.

(5) Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Division of Dam Safety and Floodplain Management of the Virginia Department of Conservation and Recreation, and any other appropriate agencies, including, but not limited to, the Virginia Department of Environmental Quality, the Virginia Marine Resources Commission, and the United States Army Corps of Engineers, and have submitted copies of such notifications to the Federal Emergency Management Agency.

(6) Approve applications and issue permits to develop in flood hazard areas if the provisions of the requirements of this article have been met or disapprove applications if the requirements of this article have not been met.

(7) Inspect, or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine whether such buildings, structures, and other development comply with this article, whether such buildings, structures, and other development do not comply with this article, or whether such buildings, structures, and other development violate this article.

(8) Review elevation certificates and require incomplete or deficient certificates to be corrected.

(9) Submit to the Federal Emergency Management Agency, or require applicants to submit to the Federal Emergency Management Agency, data and information necessary to maintain flood insurance rate maps, including hydrologic and hydraulic engineering analyses prepared by or for the City, within six months after such data and information becomes available if the analyses indicate changes in base flood elevations.

(10) Maintain and permanently keep records that are necessary for the administration of this chapter, including:

a. Flood insurance studies, flood insurance rate maps, including historic studies and maps, and current effective studies and maps, and letters of map change; and

b. Documentation supporting issuance and denial of permits, elevation certificates, documentation of the elevation, in relation to the data on the flood insurance rate map, to which structures have been floodproofed, records of lowest floor and floodproofing elevations for new construction and substantial improvements, where base flood elevation data is utilized, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.

(11) Enforce the provisions of this article, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.

(12) Advise the Board of Zoning Appeals concerning the intent of this article and, for each application for a variance, prepare a staff report and recommendation.

(13) Administer the requirements related to proposed work on existing buildings, including:

a. Making determinations as to whether buildings and structures that are located in flood hazard areas, and that are damaged by any cause, have been substantially damaged.

b. Making reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate or reconstruct any such structure, and prohibit the noncompliant repair of substantially damaged structures, except for temporary emergency protective measures necessary to secure or to stabilize a structure to prevent additional damage.

(14) Undertake, as the Director determines is appropriate due to the circumstances, other actions, which may include, but are not limited to:

a. Issuing press releases, public service announcements and other public information materials related to permit requests and repair of damaged structures;

b. Coordinating with other Federal, State, and local agencies to assist with substantial damage determinations;

c. Providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and

d. Assisting property owners with documentation necessary to file claims for increased cost of compliance coverage under National Flood Insurance Program flood insurance policies.

(15) Notify the Federal Emergency Management Agency when the corporate boundaries of the City have been modified, and:

a. Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to this article has either been assumed or relinquished through annexation; and

b. If the flood insurance rate map for any annexed area includes special flood hazard areas that have flood zones subject to requirements that are not set forth in this article:

1. Prepare proposed amendments to this article to adopt the flood insurance rate map and appropriate requirements;

2. Request that the Mayor submit the proposed amendments to City Council for consideration at the same time as or prior to the date of annexation; and

3. Provide the Division of Dam Safety and Floodplain Management of the Virginia Department of Conservation and Recreation and the Federal Emergency Management Agency with copies of amendments to this article.

(16) Upon the request of the Federal Emergency Management Agency, complete and submit a report concerning participation in the National Flood Insurance Program. The Federal Emergency Management Agency may request information regarding the number of buildings in the special flood hazard area, the number of permits issued for development in the special flood hazard area, and the number of variances issued for development in the special flood hazard area.

(17) Take into account flood, mudslide, and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire City, whether or not such hazards have been specifically delineated geographically by mapping, surveying or other appropriate methodology.

(18) To the extent not otherwise specified herein, be responsible for the City's compliance with 44 CFR 59.22, as may be applicable.

(Code 2004, § 50-39; Code 2015, § 14-55; Ord. No. 2014-95-66, § 2, 4-28-2014)

Sec. 14-56. Use and interpretation of flood insurance rate maps.

The Director shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of flood insurance rate maps:

(1) Where field surveyed topography indicates that adjacent ground elevations:

a. Are below the base flood elevation, even in areas not delineated as a special flood hazard area on a flood insurance rate map, the area shall be considered as a special flood hazard area and subject to the requirements of this article; and

b. Are above the base flood elevation, the area shall be regulated as a special flood hazard area, unless the applicant obtains a letter of map change that removes the area from the special flood hazard area.

(2) In special flood hazard areas identified by the Federal Emergency Management Agency where base flood elevation and floodway data have not been identified and in areas where the Federal Emergency Management Agency has not identified special flood hazard areas, any other flood hazard data available from a Federal, State, or other source shall be reviewed and reasonably used.

(3) Base flood elevations and designated floodway boundaries on flood insurance rate maps and in flood insurance studies shall take precedence over base flood elevations and floodway boundaries by any other sources if such other sources show reduced floodway widths or lower base flood elevations.

(4) Other sources of data shall be reasonably used if such sources show increased base flood elevations or larger floodway areas than are shown on flood insurance rate maps and in flood insurance studies.

(5) If a preliminary flood insurance rate map or a preliminary flood insurance study has been provided by the Federal Emergency Management Agency:

a. Upon the issuance of a letter of final determination by the Federal Emergency Management Agency, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from the Federal Emergency Management Agency for the purposes of administering this article.

b. Prior to the issuance of a letter of final determination by the Federal Emergency Management Agency, the use of preliminary flood hazard data shall be deemed the best available data and used where no base flood elevations or floodway areas are provided on the effective flood insurance rate map.

c. Prior to issuance of a letter of final determination by the Federal Emergency Management Agency, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations or designated floodway widths in existing flood hazard data provided by the Federal Emergency Management Agency. Such preliminary data may be subject to change and to appeal to the Federal Emergency Management Agency.

(Code 2004, § 50-40; Code 2015, § 14-56; Ord. No. 2014-95-66, § 2, 4-28-2014)

Sec. 14-57. Establishment of floodplain districts.

In order to accomplish the purposes of this division, floodplain districts are hereby established and shall include those areas of the City subject to inundation by waters of the 100-year flood. The basis for delineation of such districts shall be the flood insurance study for the City prepared by the Federal Emergency Management Agency, dated December 15, 1978, as revised, effective July 20, 1998, April 2, 2009, and July 16, 2014, and any subsequent revisions or amendments thereto.

(Code 2004, § 50-41; Code 2015, § 14-57; Ord. No. 2014-95-66, § 2, 4-28-2014)

Sec. 14-58. District boundaries; official floodplain map.

The boundaries of the floodplain districts are established as shown on the flood insurance rate maps, flood boundary maps, and floodway maps, prepared by the Federal Emergency Management Agency, dated June 15, 1979, as revised, effective July 20, 1998, April 2, 2009, and July 16, 2014, and any subsequent revisions or amendments thereto, which maps are incorporated by reference into this division. The flood insurance rate maps, flood boundary maps, and floodway maps, together with the flood insurance study for the City, shall be kept on file in the Office of the Director.

(Code 2004, § 50-42; Code 2015, § 14-58; Ord. No. 2014-95-66, § 2, 4-28-2014)

Sec. 14-59. Types of floodplain districts.

(a) *Basis of districts.* The various floodplain districts shall include special flood hazard areas. The basis for the delineation of these districts shall be the City's flood insurance study and the flood insurance rate maps for the City prepared by the Federal Insurance Administration of the Federal Emergency Management Agency, dated June 15, 1979, as revised, effective July 20, 1998, April 2, 2009, and July 16, 2014, and any subsequent revisions or amendments thereto. The Director may identify and regulate local flood hazard or ponding areas that are not delineated on the flood insurance rate maps. Such areas may be delineated on a local flood hazard map using the best available topographic data and locally derived information, such as flood of record, historic high water marks or approximate study methodologies. The boundaries of the special flood hazard area districts are established as shown on the flood insurance rate map which are incorporated by reference into this article and which shall be kept on file by the Director. The floodplain districts shall be as follows:

(1) The floodway district shall be those areas within the floodplain that are capable of carrying the waters of the 100-year flood without increasing the water surface elevation of that flood more than one foot at any point. The areas included in the floodway district are specifically defined in the flood insurance study and shown on the accompanying flood boundary and floodway map or flood insurance rate map. Within any floodway area of the floodway district of an AE Zone, no encroachments, including infill, new construction, substantial improvements or other development shall be permitted, unless the party requesting the encroachment has demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels within the community during the occurrence of the base flood discharge. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses and computations shall be submitted in sufficient detail to allow a thorough review by the Director.

(2) The flood fringe district shall be that area of the 100-year floodplain not included in the floodway district. The basis for the outermost boundary of the flood fringe district shall be the 100-year flood elevations contained in the flood profiles of the flood insurance study and as shown on the accompanying flood boundary and floodway map or flood insurance rate map.

(3) The approximated floodplain district shall be those areas identified as an A or A Zone on the maps accompanying the flood insurance study. In these zones, no detailed flood profiles or elevations are provided, but the 100-year floodplain boundary has been approximated.

(b) *Overlay concept.*

(1) The floodplain districts described in subsection (a) of this section shall be overlays to the existing underlying districts as shown on the official zoning map referred to in Section 30-200, and the provisions of this article concerning floodplain districts shall supplement the underlying zoning regulations set forth in Chapter 30.

(2) If there is any conflict between the provisions or requirements of this division and the provisions or requirements of Chapter 30, the provisions or requirements of this division shall apply.

(Code 2004, § 50-43; Code 2015, § 14-59; Ord. No. 2014-95-66, § 2, 4-28-2014)

Sec. 14-60. Interpretation of district boundaries.

Any person questioning or contesting the interpretation of any district boundary shall be afforded reasonable opportunity to present supporting evidence and technical data to the Director for review and consideration. Following any such review and consideration, the Director shall be responsible for the interpretation of the boundaries of the floodplain districts and the Director's interpretation of the boundaries of the floodplain districts shall apply for purposes of this article.

(Code 2004, § 50-44; Code 2015, § 14-60; Ord. No. 2014-95-66, § 2, 4-28-2014)

Sec. 14-61. Determination of flood elevations for approximate floodplain districts.

Where the specific 100-year flood elevation and floodway area for an approximate floodplain district cannot be determined from such sources of data as the United States Army Corps of Engineers Floodplain Information Reports, the United States Geological Survey Flood-Prone Quadrangle or such other source acceptable to the Director, the applicant for the proposed development or land-disturbing activity shall determine the elevation in accordance with hydrologic and hydraulic engineering techniques. Such analyses shall be undertaken only by a licensed professional engineer, who shall certify that the technical methods used reflect currently accepted engineering concepts. Studies, analyses and computations shall be submitted in sufficient detail to allow thorough review by the Director, who shall accept or reject the applicant's determination of the elevation for purposes of implementing this article. The accuracy of data submitted for such determination shall be the responsibility of the applicant.

(Code 2004, § 50-45; Code 2015, § 14-61; Ord. No. 2014-95-66, § 2, 4-28-2014)

Sec. 14-62. District boundary changes; overlay concept.

The delineation of any floodplain district boundary may be revised by an ordinance adopted by the City Council where natural or manmade changes have occurred so as to alter the floodway or the area subject to inundation by waters of the 100-year flood or more detailed studies conducted or undertaken by the United States Army Corps of Engineers or other qualified agency, firm or individual documents the need for such revision. Prior to any such revision, approval shall be obtained in writing from the Federal Insurance Administration of the Federal Emergency Management Agency.

(Code 2004, § 50-46; Code 2015, § 14-62; Ord. No. 2014-95-66, § 2, 4-28-2014)

Secs. 14-63—14-82. Reserved.

#### DIVISION 3. DISTRICT REGULATIONS

Sec. 14-83. Floodplain districts generally.

(a) *Permits required.* No development or land-disturbing activity within a designated floodplain district shall be undertaken until after issuance of a building permit or land-disturbing activity permit as required by Article V of this chapter. For the purpose of issuance of a permit, the 100-year flood elevation shall be the base floodwater surface elevation, with floodway, as shown in Table 2, floodway data of the flood insurance study dated December 15, 1978, and as revised effective July 20, 1998, April 2, 2009, July 16, 2014, and any subsequent revisions or amendments thereto.

(b) *Compliance with building code.* No development shall be permitted within any floodplain district except in strict compliance with the applicable sections of the Virginia Uniform Statewide Building Code.

(c) *Effect on capacity of floodways and watercourses.* No development or land-disturbing activity shall be permitted which would adversely affect the capacity of any floodway or watercourse subject to this article.

(d) *Alteration or relocation of watercourses.* Prior to any alteration or relocation of any watercourse, approval shall be obtained from the United States Army Corps of Engineers, the State Water Control Board, and the Virginia Marine Resources Commission; a joint permit application is available from any of these organizations. Furthermore, notification of such proposal shall be given by the applicant to all affected adjacent jurisdictions, the Division of Soil and Water Conservation of the Virginia Department of Conservation and Recreation, and the Federal Emergency Management Agency. The applicant shall be responsible for obtaining such approval and providing required notices. Proof of approval by the United States Army Corps of Engineers, the State Water Control Board, and the Virginia Marine Resources Commission as well as required notification shall be furnished to the Director prior to issuance of any land-disturbing activity permit.

(e) *Chesapeake Bay Site Plan approval required.* No development or land-disturbing activity shall be undertaken in a Chesapeake Bay Preservation Area until after a Chesapeake Bay Site Plan has been approved in accordance with the requirements of Article IV of this chapter.

(f) *Provision of vehicular access.* No new residential construction, with start of construction on or after December 9, 1991, shall be permitted without the provision of adequate vehicular access to the site at all times prior to and during the 100-year flood. Adequacy of access shall be as determined by the Director, after consultation with and approval by the Fire Marshal.

(Code 1993, § 13-61; Code 2004, § 50-91; Code 2015, § 14-83; Ord. No. 2004-330-320, § 1, 12-13-2004; Ord. No. 2009-12-31, § 1, 2-23-2009; Ord. No. 2014-95-66, § 3, 4-28-2014; Ord. No. 2024-176, § 2, 7-22-2024)

Sec. 14-84. Design criteria for utilities and facilities.

(a) *Design criteria generally.* The design criteria established by the most recent version of the Virginia Uniform Statewide Building Code and the Virginia Residential Code shall be applicable to utilities and facilities proposed to be installed within any floodplain district. For privately installed sanitary sewer or water facilities which are subject to approval by the District Health Director, the Director shall be satisfied, after conferring with the District Health Director and Commissioner of Buildings, that the applicable sections of the Uniform Statewide Building Code are met. In addition, the following particular design criteria shall be applicable:

(1) *Drainage facilities.* All storm drainage facilities shall be designed to convey the flow of surface waters so as to minimize or eliminate damage to persons or property. The system shall ensure drainage away from buildings and on-site waste disposal sites. The Director may require a primarily underground system to accommodate frequent floods and a secondary surface system to accommodate larger, less frequent floods. Drainage plans shall be consistent with and coordinated with local and regional drainage plans. The facilities shall be designed such that the quantity of runoff from a developed site during a ten-year storm event shall not exceed the quantity of runoff from the same site, pre-development, during a ten-year storm event.

(2) *Streets and sidewalks.* Streets and sidewalks shall be designed to minimize potential for increasing or aggravating flood levels. Drainage openings shall be provided to sufficiently discharge floodwaters without unduly increasing flood heights from the ten-year storm event.

(3) *On-site waste disposal systems.* On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(b) *Standards for flood fringe and approximated floodplain.*

(1) When base flood elevation data or floodway data have not been provided, the Director shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or any other source, in order to administer the provisions of this article. When such base flood elevation data is utilized, the Director shall obtain:

a. The elevation (in relation to the mean sea level) of the lowest floor (including the basement) of all new and substantially improved structures; and

b. If the structure has been floodproofed in accordance with Federal Emergency Management Agency requirements, the elevation in relation to the mean sea level to which the structure has been floodproofed.

(2) When the data is not available from any source, the lowest floor of the structure shall be elevated to no lower than the highest adjacent grade.

(c) *Standards for the floodway district.* The following provisions shall apply within the floodway district:

(1) Encroachments, including fill, new construction, substantial improvements and other developments are prohibited, unless certification (with supporting technical data) by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood.

(2) Development activities which increase the water surface elevation of the base flood may be allowed, provided that the property owner or designated representative first applies, with the City's endorsement, for a conditional flood insurance rate map and floodway revision, and receives the approval of the Federal Emergency Management Agency.

(3) All new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this article.

(4) The placement of manufactured homes (mobile homes) is prohibited, except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision, provided the anchoring, elevation, and encroachment standards are met.

(Code 1993, § 13-63; Code 2004, § 50-93; Code 2015, § 14-84; Ord. No. 2009-12-31, § 1, 2-23-2009; Ord. No. 2014-95-66, § 3, 4-28-2014)

Cross reference(s)—Utilities, Ch. 28.

Sec. 14-85. Subdivision requirements.

In addition to those requirements set forth elsewhere in this Code relative to the subdivision of land, the following requirements shall apply to any proposed subdivision and any portion of a proposed subdivision that lies within a floodplain district:

(1) The 100-year floodplain shall be delineated on tentative and final subdivision plats.

(2) Residential building lots shall be provided with adequate buildable area outside of the 100-year floodplain.

(3) The design criteria for utilities and facilities set forth in this article shall be met.

(Code 1993, § 13-64; Code 2004, § 50-94; Code 2015, § 14-85; Ord. No. 2009-12-31, § 1, 2-23-2009)

Cross reference(s)—Subdivision of land, Ch. 25.

Sec. 14-86. Existing structures.

Structures and uses of structures that lawfully existed at the effective date of the ordinance from which this article is derived or of subsequent amendment of this article, and that do not conform with this article or any amendment hereto may be continued subject to the following conditions:

(1) Existing structures and uses located within a floodway district shall not be expanded or enlarged, unless the effect of proposed expansion or enlargement on flood heights is fully offset by accompanying improvements.

(2) Any repair, reconstruction or improvement of an existing structure within a floodplain district to an extent so as to constitute substantial improvement as defined in this article shall be undertaken only in full compliance with the Uniform Statewide Building Code.

(Code 1993, § 13-65; Code 2004, § 50-95; Code 2015, § 14-86; Ord. No. 2014-95-66, § 3, 4-28-2014)

Sec. 14-87. Manufactured homes and recreational vehicles.

(a) *Manufactured homes.* Manufactured homes that are placed or substantially improved on-site shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to at least one foot above the base flood elevation and at least three feet above grade; the chassis shall be securely anchored to an adequately anchored foundation system of reinforced piers or other foundation elements of at least equivalent strength to resist flotation, collapse, and lateral movement.

(b) *Recreational vehicles.* Recreational vehicles placed on sites shall either:

(1) Be on-site for fewer than 180 consecutive days;

(2) Be fully licensed and ready for highway use (i.e., be on their wheels or jacking system, be attached to the site by quick-disconnect-type utilities and security devices, and have no permanently attached additions); or

(3) Meet the permit requirements for placement and the elevation and anchoring requirements for manufactured homes in subsection (a) of this section.

(Code 1993, § 13-66; Code 2004, § 50-96; Code 2015, § 14-87; Ord. No. 2009-12-31, § 1, 2-23-2009; Ord. No. 2014-95-66, § 3, 4-28-2014)

Sec. 14-88. New construction and substantial improvements.

(a) All substantial improvements to existing structures or new construction within any floodplain district shall conform to the applicable sections of the Virginia Uniform Statewide Building Code.

(b) New construction or substantial improvement of any existing commercial, industrial, or nonresidential building (or manufactured home) shall have the lowest floor, including basement, elevated to no lower than one foot above the base flood elevation. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied.

(c) For historic structures as defined in this article, where elevation is not preferable, floodproofing may be allowed instead of elevation one foot above the base flood elevation. A registered professional engineer or architect shall certify on the certificate plans and floodproofing certificate that the construction design and methods meet the applicable requirements and shall submit such certificate to the Director.

(d) Fully enclosed areas below the lowest floor shall be used solely for parking of vehicles, building access or storage and shall have permanent openings designed to allow the entry and exit of floodwaters in accordance with specifications as set forth at 44 CFR 60.3(c)(5).

(Code 1993, § 13-67; Code 2004, § 50-97; Code 2015, § 14-88; Ord. No. 2009-12-31, § 1, 2-23-2009; Ord. No. 2014-95-66, § 3, 4-28-2014)

Secs. 14-89—14-119. Reserved.

#### DIVISION 4. ADMINISTRATION AND ENFORCEMENT

Sec. 14-120. Required permits.

(a) *Building permits.* For the purposes of this article, building permits shall be obtained as follows:

(1) A building permit to erect, construct, reconstruct, enlarge, extend or structurally alter any building or structure within a floodplain district shall be required as set forth in the Virginia Uniform Statewide Building Code. Applications for building permits shall be filed with the Commissioner of Buildings, and no such permit shall be issued until the applicant has furnished satisfactory evidence that all necessary permits have been received from those governmental agencies from which approval is required by State and Federal law.

(2) In addition to information required by the Virginia Uniform Statewide Building Code to be provided in conjunction with building permit applications, the following shall be included when the property involved is located within a floodplain district:

a. The elevation of the 100-year flood and delineation of the 100-year floodplain;

b. The elevation of the lowest floor, including basement; and

c. The elevation to which a nonresidential structure is to be floodproofed.

(b) *Permits for land-disturbing activities.* Permits for land-disturbing activities shall be obtained as follows:

(1) A permit for any land-disturbing activity within a floodplain district shall be required as set forth in Article V of this chapter which pertains to site control, erosion and drainage, provided that the exceptions contained therein shall not be applicable within floodplain districts.

(2) For land-disturbing activity proposed in conjunction with construction for which a building permit application has been filed, a site grading and drainage plan shall be approved by the Director prior to issuance of the building permit, and a separate land-disturbing activity permit shall be required.

(3) Application for land-disturbing activity permits shall be made to the Director, and no such permit shall be issued nor shall any site grading and drainage plan be approved until the applicant has furnished satisfactory evidence that all necessary permits have been received from those governmental agencies from which approval is required by State and Federal law, and until the Director is satisfied that the applicable sections of this article and the site control, erosion and drainage regulations are met.

(4) The 100-year floodplain shall be delineated on all plans submitted for approval of land-disturbing activity and site grading and drainage.

(c) *Chesapeake Bay Site Plan.* A Chesapeake Bay Site Plan shall be required for any property located within a Chesapeake Bay Preservation Area in accordance with Article IV of this chapter.

(Code 1993, § 13-82; Code 2004, § 50-122; Code 2015, § 14-120; Ord. No. 2004-330-320, § 1, 12-13-2004; Ord. No. 2014-95-66, § 3, 4-28-2014; Ord. No. 2024-176, § 2, 7-22-2024)

Sec. 14-121. Modifications to requirements of building code.

(a) *Notification of cost of flood insurance.* Upon granting a modification to construct a structure below the 100-year flood level, the Building Code Board of Appeals shall notify the applicant in writing that the cost of flood insurance will be commensurate with the increased risk resulting from such construction.

(b) *Records of modifications granted.* Records shall be maintained by the Building Code Board of Appeals of all modifications granted, including the justification for each, and shall be included in any reports required by and submitted to the Federal Emergency Management Agency (FEMA).

(Code 1993, § 13-83; Code 2004, § 50-123; Code 2015, § 14-121)

Cross reference(s)—Building code, § 5-1.

Sec. 14-122. Special exceptions.

(a) *Conditions.* The Director shall have the authority set forth in 44 CFR 60.6 to grant special exceptions to the sections of this article, other than such sections as pertain to the requirements of the Virginia Statewide Uniform Building Code and to the Chesapeake Bay Preservation Act set forth in Article IV of this chapter, provided that the applicant shall furnish sufficient information and documentation to satisfy the Director as to the following factors:

(1) There will be no increased danger to life and property due to increased flood heights or velocities caused by encroachments;

(2) Proposed development or activity within a floodway district will not cause any increase in flood levels during the 100-year flood;

(3) There will be no danger that materials may be swept downstream or onto other properties to the injury of others;

(4) The ability of proposed water supply and sanitation systems to avoid contamination and unsanitary conditions;

(5) The susceptibility of the proposed development and its contents to flood damage will be minimal;

(6) The expected heights, velocity, duration, rate of rise and sediment transport of floodwaters at the site will be acceptable in view of the purposes of this article;

(7) The availability of necessary access to the facility prior to and during periods of flooding;

(8) The requirements of the proposed development or activity for a waterfront location and the lack of availability of suitable alternative locations not subject to flooding or not requiring the issuance of a special exception;

(9) The appropriateness of the proposed development or activity with regard to the City's master plan;

(10) The proposed development or activity will not result in any conflict with the purposes of this article or with other codes and ordinances that may be applicable;

(11) The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the special exception is the minimum necessary to preserve the historic character and design of the structure; and

(12) The exception shall be the minimum required to provide relief from the exceptional hardship to the applicant.

(b) *Notification of cost of flood insurance.* Upon issuance of a special exception for any development or activity below the 100-year flood level, the Director shall notify the applicant in writing that the cost of flood insurance will be commensurate with the increased risk resulting from such development or activity.

(c) *Records of special exceptions issued.* The Director shall maintain records of all special exceptions granted, including the justification for each, and shall include any applicable records in reports required by and submitted to the Federal Insurance Administrator.

(Code 1993, § 13-84; Code 2004, § 50-124; Code 2015, § 14-122; Ord. No. 2004-330-320, § 1, 12-13-2004; Ord. No. 2009-12-31, § 1, 2-23-2009; Ord. No. 2014-95-66, § 3, 4-28-2014)

Sec. 14-123. Appeals.

Final decisions of the Director relative to interpretation of the sections of this article, the interpretation of floodplain district boundaries and the granting or denying of special exceptions shall be subject to review by the Circuit Court of the City, provided an appeal is filed within 30 days from the date of the final written decision of the Director.

(Code 1993, § 13-85; Code 2004, § 50-125; Code 2015, § 14-123)

Sec. 14-124. Penalties.

A violation of the terms of this article shall be deemed to be a Class 1 misdemeanor and, upon conviction, shall be punishable as provided in Section 1-16. In addition, all other actions are hereby reserved, including an action in equity for the proper enforcement of this article. The imposition of a fine or penalty for any violation of, or noncompliance with, this article shall not excuse the violation or noncompliance or permit it to continue, and all such persons shall be required to correct or remedy such violations within a reasonable time. The City may maintain an action to compel a responsible party to abate, raze, or remove any public nuisance arising from any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article in accordance with Code of Virginia, § 15.2-900 or as otherwise authorized by law. Flood insurance may be withheld from structures constructed in violation of this article.

(Code 1993, § 13-86; Code 2004, § 50-126; Code 2015, § 14-124; Ord. No. 2014-95-66, § 3, 4-28-2014)

Secs. 14-125—14-146. Reserved.

### ARTICLE III. RESERVED[[3]](#footnote-3)

Secs. 14-147—14-178. Reserved.

### ARTICLE IV. CHESAPEAKE BAY PRESERVATION AREAS[[4]](#footnote-4)

#### DIVISION 1. GENERALLY

Sec. 14-179. Authority for article.

This article is issued under the authority of Code of Virginia, § 62.1-44.15:67 et seq. (the Chesapeake Bay Preservation Act, hereinafter "the Act").

(Code 2004, § 50-300; Code 2015, § 14-179; Ord. No. 2014-116-89, § 2, 5-27-2014)

Sec. 14-180. Purpose of article.

(a) The purpose of this article is to protect and improve the water quality of the Chesapeake Bay, its tributaries, and other State waters by minimizing the effects of human activity upon these waters and implementing the Act, which provides for the definition and protection of certain lands called Chesapeake Bay Preservation Areas, which if improperly used or developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries.

(b) This article establishes the criteria that the City of Richmond shall use to determine the extent of the Chesapeake Bay Preservation Areas. This article establishes criteria for use by the City in granting, denying or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas. This article identifies the requirements which the City shall employ to ensure that the use and development of land in Chesapeake Bay Preservation Areas shall be accomplished in a manner that protects the quality of State waters pursuant to Code of Virginia, §§ 62.1-44.15:73 and 62.1-44.15:76.

(Code 2004, § 50-301; Code 2015, § 14-180; Ord. No. 2014-116-89, § 2, 5-27-2014)

Sec. 14-181. Definitions.

The following words and terms used in this article have the following meanings, unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in Code of Virginia, § 62.1-44.15:68 and are incorporated by reference herein.

*Act* means the Chesapeake Bay Preservation Act found in Code of Virginia, Title 62.1, Ch. 3.1, Art. 2.5 (Code of Virginia, § 62.1-44.15:67 et seq.).

*Administrator* means the Director of Public Utilities or his or her designee. For purposes of this article, the Administrator is also responsible for reviewing and approving or disapproving the site plan required by this chapter and determining whether to grant exceptions from the requirements of this chapter.

*Best management practice* means schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface water and groundwater systems from the impacts of land-disturbing activities.

*Buffer area* means an area of natural or established vegetation managed to protect other components of a resource protection area and State waters from significant degradation due to land disturbances.

*Chesapeake Bay Preservation Area* means any land designated by the City pursuant to Division 3 of this article and Code of Virginia, § 62.1-44.15:74. A Chesapeake Bay Preservation Area shall consist of a resource protection area and a resource management area.

*Chesapeake Bay Preservation Areas Map* means the map adopted by City Council that shows the general location of designated resource preservation areas, resource management areas and intensely developed areas.

*Chesapeake Bay Site Plan* means a site plan required for any zoning, subdivision or other land development review process that shows any of the following features which are present on the site: tidal wetlands, nontidal wetlands, water bodies with perennial flow, floodplains, highly erodible soils, steep slopes, and highly permeable soils. The plan shall also display the following information: north arrow, scale, acreage of site, limits of Chesapeake Bay Preservation Areas on the property, limits of existing and proposed clearing and grading, areas of existing and proposed impervious cover, existing and proposed topography, and all existing and proposed stormwater management facilities. Site plans submitted to show compliance with the requirements of this article shall also contain:

(1) The location of any sewage disposal systems or reserve drain fields;

(2) The location of all significant plant material, including all trees on-site six inches or greater in diameter at breast height (groups of trees may be outlined);

(3) A description of the impact the development will have on existing vegetation;

(4) All trees to be removed and a description of all steps to be taken to mitigate the impact on existing vegetation; and

(5) A description, including location and design, of all measures to be taken to meet the requirements of Sections 14-263 and 14-264.

*City* means the City of Richmond.

*Department of Environmental Quality* means the Virginia Department of Environmental Quality.

*Development* means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures or the clearing of land for non-agricultural or non-silvicultural purposes.

*Director* means the Director of Public Utilities or his or her designee.

*Floodplain* means all lands that would be inundated by floodwater as a result of a storm event of a 100-year return interval.

*Highly erodible soils* means soils (excluding vegetation) with an erodibility index from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula RKLS/T, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

*Highly permeable soils* means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the National Soil Survey Handbook of November 1996, in the "Field Office Technical Guide" of the United States Department of Agriculture Natural Resources Conservation Service.

*Impervious cover* means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt or compacted gravel surface.

*Infill* means utilization of vacant land in previously developed areas.

*Intensely developed areas* means those areas designated by the City pursuant to Section 14-233.

*Nontidal wetlands* means those wetlands other than tidal wetlands that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the United States Environmental Protection Agency pursuant to Section 404 of the Federal Water Pollution Control Act.

*Plan of development,* for the purposes of this article, means any process or site plan review in local zoning and land development regulations designed to ensure compliance with Code of Virginia, § 62.1-44.15:74 and with this article, prior to issuance of a building permit.

*Public road* means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to:

(1) The Erosion and Sediment Control Law (Code of Virginia, § 62.1-44.15:51 et seq.); and

(2) The Virginia Stormwater Management Act (Code of Virginia, § 62.1-44.15:24 et seq.).

This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by the City.

*Redevelopment* means the process of developing land that is or has been previously developed.

*Resource management area* means that component of the Chesapeake Bay Preservation Area that is not classified as the resource protection area.

*Resource protection area* means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of State waters.

*Silvicultural activities* means forest management activities, including, but not limited to, the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation, that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to Code of Virginia, § 10.1-1105 and are located on property defined as real estate devoted to forest use under Code of Virginia, § 58.1-3230.

*State Water Control Board* means the Virginia State Water Control Board.

*Substantial alteration* means expansion or modification of a building or development that would result in a disturbance of land exceeding an area of 2,500 square feet in the resource management area only.

*Tidal shore* or *shore* means land contiguous to a tidal body of water between the mean low water level and the mean high water level.

*Tidal wetlands* means vegetated and nonvegetated wetlands as defined in Code of Virginia, § 28.2-1300.

*Use* means an activity on the land other than development, including, but not limited to, agriculture, horticulture and silviculture.

*Water-dependent facility* means a development of land that cannot exist outside of the resource protection area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to:

(1) Ports;

(2) The intake and outfall structures of power plants, water treatment plants, sewage treatment plants and storm sewers;

(3) Marinas and other boat docking structures;

(4) Beaches and other public water-oriented recreation areas; and

(5) Fisheries or other marine resource facilities.

(Code 2004, § 50-302; Code 2015, § 14-181; Ord. No. 2014-116-89, § 2, 5-27-2014)

Cross reference(s)—Definitions generally, § 1-2.

Secs. 14-182—14-200. Reserved.

#### DIVISION 2. PROGRAM

Sec. 14-201. Program development.

The City shall develop measures necessary to comply with the Act and this article. In conjunction with other State water quality programs, the City shall encourage and promote:

(1) Protection of existing high quality State waters and restoration of all other State waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them;

(2) Safeguarding the clean waters of the Commonwealth from pollution;

(3) Prevention of any increase in pollution;

(4) Reduction of existing pollution; and

(5) Promotion of water resource conservation in order to provide for the health, safety and welfare of the present and future citizens of the Commonwealth.

(Code 2004, § 50-310; Code 2015, § 14-201; Ord. No. 2004-331-321, § 1, 12-13-2004)

Sec. 14-202. Elements of program.

The City program contains the elements listed below:

(1) The map delineating the limits of designated Chesapeake Bay Preservation Areas as shown on the Chesapeake Bay Preservation Areas Map, consisting of said layer in the City's geographic information system mapping system and as such adopted by City Council. Such referenced map is hereby declared to be a part of this article and may be amended from time to time by the City Council.

(2) Performance criteria, applying in Chesapeake Bay Preservation Areas, that employs the requirements in Division 4 (Section 14-262 et seq.) of this article.

(3) The comprehensive plan which incorporates the protection of Chesapeake Bay Preservation Areas and of the quality of State waters, in accordance with criteria set forth in Title 9, Agency 25, Chapter 830, Part V (9VAC25-830-180 et seq.) of the Virginia Administrative Code.

(4) The subdivision ordinance that:

a. Incorporates measures to protect the quality of State waters in Chesapeake Bay Preservation Areas, as set forth in Title 9, Agency 25, Chapter 830, Part VI (9VAC25-830-180 et seq.) of the Virginia Administrative Code; and

b. Assures that all subdivisions in Chesapeake Bay Preservation Areas comply with the criteria set forth in Division 4 (Section 14-262 et seq.) of this article.

(5) The erosion and sediment control ordinance that requires compliance with the criteria in Division 4 (Section 14-262 et seq.) of this article.

(6) The Virginia Stormwater Management Program ordinance that requires compliance with the criteria in Article V of this chapter.

(7) The Chesapeake Bay Site Plan review required prior to the issuance of a building permit or land-disturbing permit to assure that use and development of land in Chesapeake Bay Preservation Areas is accomplished in a manner that protects the quality of State waters.

(Code 2004, § 50-311; Code 2015, § 14-202; Ord. No. 2014-116-89, § 2, 5-27-2014)

Editor's note(s)—Ord. No. 2016-221, § 1 provides: "That the Chesapeake Bay Preservation Areas Map, incorporated into Chapter 14, Article IV of the Code of the City of Richmond (2015), as amended, by section 14-202(1) thereof, be and is hereby amended to reflect new development and stream determinations as shown on the map entitled "City of Richmond, DPU, Chesapeake Bay Map Update—2016," prepared by the Department of Public Utilities, and dated July 21, 2016, a copy of which is attached to, incorporated into, and made a part of this ordinance."

Sec. 14-203. Review by City.

The City shall review the information submitted under Section 14-234 and shall approve or reject the Chesapeake Bay Site Plan within 45 days of the receipt thereof. Failure of the City to act within 45 days shall constitute approval of the plan. The City shall approve the Chesapeake Bay Site Plan only if the City finds that the plan meets the performance criteria set forth in this article for the Chesapeake Bay Preservation Area in which the property is located.

(Code 2004, § 50-312; Code 2015, § 14-203; Ord. No. 2014-116-89, § 2, 5-27-2014)

Secs. 14-204—14-229. Reserved.

#### DIVISION 3. CHESAPEAKE BAY PRESERVATION AREA DESIGNATION CRITERIA

Sec. 14-230. Purpose.

The criteria in this division provide direction for the designation of the ecological and geographic extent of Chesapeake Bay Preservation Areas. Chesapeake Bay Preservation Areas are divided into resource protection areas and resource management areas that are subject to the criteria in Division 4 (Section 14-262 et seq.) of this article. In addition, the criteria in this division provide guidance for the identification of areas suitable for redevelopment that are subject to the redevelopment criteria in Division 4 (Section 14-262 et seq.) of this article.

(Code 2004, § 50-320; Code 2015, § 14-230; Ord. No. 2014-116-89, § 2, 5-27-2014)

Sec. 14-231. Resource protection areas.

(a) At a minimum, resource protection areas shall consist of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may cause significant degradation to the quality of State waters. In their natural condition, these lands provide for the removal, reduction or assimilation of sediments, nutrients and potentially harmful or toxic substances in runoff entering the Bay and its tributaries, and minimize the adverse effects of human activities on State waters and aquatic resources.

(b) The resource protection area shall include:

(1) Tidal wetlands;

(2) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;

(3) Tidal shores;

(4) Such other lands considered by the City to meet the provisions of subsection (a) of this section and to be necessary to protect the quality of State waters and lands delineated on the Chesapeake Bay Preservation Areas Map; and

(5) A buffer area not less than 100 feet in width located adjacent to and landward of the components listed in subsections (b)(1) through (4) of this section, and along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the resource protection area notwithstanding the presence of permitted uses, encroachments, and permitted vegetation clearing in compliance with Division 4 (Section 14-262 et seq.) of this article.

(c) Designation of the components listed in subsections (b)(1) through (4) of this section shall not be subject to modification by the City, unless based on reliable, site-specific information as provided for in Section 14-234 and Section 14-263(6).

(d) For the purpose of generally determining whether water bodies have perennial flow, the City may use either the designation of water bodies depicted as perennial on the most recent United States Geological Survey 7½-minute topographic quadrangle map (scale 1:24,000) or a reliable, site-specific determination conducted pursuant to Section 14-234.

(Code 2004, § 50-321; Code 2015, § 14-231; Ord. No. 2014-116-89, § 2, 5-27-2014; Ord. No. 2018-025, § 1, 2-26-2018)

Sec. 14-232. Resource management areas.

(a) Resource management areas shall include land types that, if improperly used or developed, have a potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area.

(b) A resource management area shall be provided contiguous to the entire inland boundary of the resource protection area. The following land categories shall be considered for inclusion in the resource management area and, where mapping resources indicate the presence of these land types contiguous to the resource protection area, should be included in designations of resource management areas:

(1) 100-year floodplains;

(2) Highly erodible soils, including steep slopes;

(3) Highly permeable soils;

(4) Nontidal wetlands not included in the resource protection area; and

(5) Such other lands considered by the City to meet the provisions of subsection (a) of this section and to be necessary to protect the quality of State waters and lands delineated on the Chesapeake Bay Preservation Areas Map.

(c) Resource management areas shall encompass a land area large enough to provide significant water quality protection through the employment of the criteria in Title 9, Agency 25, Chapter 830, Part IV (9VAC25-830-120 et seq.) and the requirements in Title 9, Agency 25, Chapter 830, Parts II (9VAC25-830-50 et seq.) and V (9VAC25-830-160 et seq.) of the Virginia Administrative Code. For the purpose of mapping those resource management areas, so designated because they buffer designated resource protection areas, the map shall include, at a minimum, a 500-foot buffer around any designated resource protection area and the limits of any land categories listed in subsection (b) of this section which extend beyond this 500-foot buffer. In areas where the resource management area buffers a stream, shown as a blue line on the Chesapeake Bay Preservation Areas Map, or a water body contiguous to such stream and where the site-specific evaluation has yet to be done, the City Council may amend the Chesapeake Bay Preservation Areas Map to include any area within a 600-foot buffer outward from the center of such stream or water body as a resource management area.

(Code 2004, § 50-322; Code 2015, § 14-232; Ord. No. 2014-116-89, § 2, 5-27-2014; Ord. No. 2018-025, § 1, 2-26-2018)

Sec. 14-233. Intensely developed areas.

(a) The City may designate intensely developed areas as an overlay of Chesapeake Bay Preservation Areas within its jurisdiction. For the purposes of this article, intensely developed areas shall serve as redevelopment areas in which development is concentrated as of November 11, 1991. Areas so designated shall comply with the performance criteria for redevelopment in Division 4 (Section 14-262 et seq.) of this article.

(b) The City shall examine the pattern of residential, commercial, industrial and institutional development within Chesapeake Bay Preservation Areas and areas of existing development and infill sites where little of the natural environment remains may be designated as intensely developed areas, provided at least one of the following conditions existed at the time the City's program was originally adopted:

(1) Development has severely altered the natural state of the area such that it has more than 50 percent impervious surface.

(2) Public sewer and water systems, or a constructed stormwater drainage system, or both, have been constructed and served the area by November 11, 1991. This condition does not include areas planned for public sewer and water or constructed stormwater drainage systems.

(3) Housing density is equal to or greater than four dwelling units per acre.

(Code 2004, § 50-323; Code 2015, § 14-233; Ord. No. 2014-116-89, § 2, 5-27-2014)

Sec. 14-234. Site-specific refinement of Chesapeake Bay Preservation Area boundaries.

(a) The City shall, on all properties located within a designated Chesapeake Bay Preservation Area, as part of the Chesapeake Bay Site Plan review process pursuant to Section 14-263(10) or during the review of a water quality impact assessment pursuant to Section 14-264(6), ensure or confirm that:

(1) A reliable, site-specific evaluation is conducted to determine whether water bodies on or adjacent to the development site have perennial flow; and

(2) Chesapeake Bay Preservation Area boundaries are to be adjusted, as necessary, on the site, based on this evaluation of the site.

(b) Where no existing evaluation has been confirmed, the City shall ensure that a reliable, site-specific evaluation is conducted by either conducting the site evaluation or requiring the person applying to use or develop the site to conduct the evaluation and submit the resulting findings for review. When required by the City, site-specific evaluations shall be performed using one of the protocols acceptable to the Virginia Department of Environmental Quality, which include the North Carolina and Fairfax County field indicator protocols referred to in the document adopted by the Commonwealth of Virginia entitled "Determinations of Water Bodies with Perennial Flow, Guidance on the Chesapeake Bay Preservation Area Designation and Management Regulations" and any other protocol either set forth in written guidance issued by the Virginia Department of Environmental Quality or for which the Administrator has received written confirmation from an authorized representative of the Virginia Department of Environmental Quality that such protocol is acceptable to the Virginia Department of Environmental Quality. Each site-specific evaluation must be performed, and certified as complete and accurate, by a qualified professional. To be qualified, a professional must (i) work or be certified in a related field such as stream ecology, hydrology, or hydrogeology, (ii) have secondary education, post-secondary education, or technical training in a related field such as stream ecology, hydrology, or hydrogeology, and (iii) have field experience performing or substantially assisting with the performance of a site-specific evaluation using the protocol employed. The City may, at its sole discretion, conduct a site-specific evaluation using a professional qualified pursuant to this section for any purpose.

(Code 2004, § 50-324; Code 2015, § 14-234; Ord. No. 2014-116-89, § 2, 5-27-2014; Ord. No. 2018-025, § 1, 2-26-2018)

Secs. 14-235—14-261. Reserved.

#### DIVISION 4. LAND USE AND DEVELOPMENT PERFORMANCE CRITERIA

Sec. 14-262. Purpose.

(a) The purpose of this division is to achieve the goals of the Act and Section 14-201 by establishing criteria to implement the following objectives: prevent a net increase in nonpoint source pollution from new development and development on previously developed land where the runoff was treated by a water quality protection best management practice, achieve a ten-percent reduction in nonpoint source pollution from development on previously developed land where the runoff was not treated by one or more water quality best management practices, and achieve a 40-percent reduction in nonpoint source pollution from agricultural and silvicultural uses.

(b) In order to achieve these goals and objectives, the criteria in this division establishes performance standards to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, maximize rainwater infiltration, and ensure the long-term performance of the measures employed.

(c) The criteria in this division became mandatory on January 1, 2005. They are supplemental to the various planning and zoning concepts employed by the City in granting, denying, or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas.

(d) The City has incorporated the criteria in this division into its comprehensive plan and subdivision ordinance and may incorporate the criteria in this division into such other ordinances and regulations as may be appropriate, in accordance with Code of Virginia, § 62.1-44.15:74 and Title 9, Agency 25, Chapter 830, Parts V (9VAC25-830-160 et seq.), VI (9VAC25-830-180 et seq.), and VII (9VAC25-830-200 et seq.) of the Virginia Administrative Code. The criteria may be employed in conjunction with other planning and zoning concepts to protect the quality of State waters.

(Code 2004, § 50-330; Code 2015, § 14-262; Ord. No. 2014-116-89, § 2, 5-27-2014)

Sec. 14-263. General performance criteria.

Through its applicable land use ordinances, regulations and enforcement mechanisms, the City shall require that any use, development or redevelopment of land in Chesapeake Bay Preservation Areas meet the following performance criteria:

(1) No more land shall be disturbed than is necessary to provide for the proposed use or development.

(2) Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the use or development proposed. Indigenous vegetation may be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and filtering nonpoint source pollution.

(3) Where the best management practices are utilized that require regular or periodic maintenance to continue their functions, such maintenance shall be ensured through a maintenance agreement with the owner or developer or some other mechanism approved by the City that achieves an equivalent objective. Maintenance agreements submitted for best management practices installed or used in areas of the City served by the municipal separate storm sewer system pursuant to Section 14-331 will be accepted if consistent with the requirements above.

(4) All development exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development review process consistent with Code of Virginia, § 15.2-2286(A)(8) and subdivision (1)(e) of 9VAC25-830-240 of the Virginia Administrative Code.

(5) Land development shall minimize impervious cover consistent with the proposed use or development.

(6) Any land-disturbing activity that exceeds an area of 2,500 square feet (including construction of all single-family houses, septic tanks and drain fields, but otherwise as defined in Code of Virginia, § 62.1-44.15:51) shall comply with the requirements of Article V of this chapter.

(7) Where applicable, stormwater management criteria consistent with the water quality protection provisions of the Virginia Stormwater Management Program Regulations shall be satisfied.

(a) Subject to the foregoing, the following stormwater management options shall be considered to comply with this subsection:

(1) Incorporation on the site of best management practices that meet the water quality protection requirements set forth in this subsection. For the purposes of this subsection, the site may include multiple projects or properties that are adjacent to one another or lie within the same drainage area where a single best management practice will be utilized by those projects to satisfy water quality protection requirements;

(2) Compliance with a locally adopted Regional Stormwater Management Program, which may include a Virginia Pollution Discharge Elimination System (VPDES) permit issued by the Commonwealth of Virginia to the City for its municipally-owned separate storm sewer system discharges, that is reviewed and found by the Commonwealth to achieve water quality protection equivalent to that required by this subsection; and

(3) Compliance with a site-specific VPDES permit issued by the Commonwealth of Virginia, provided that the City specifically determines that the permit requires measures that collectively achieve water quality protection equivalent to that required by this subsection.

(b) Any maintenance, alteration, use or improvement to an existing structure that does not degrade the quality of surface water discharge, as determined by the City, may be exempted from the requirements of this subsection.

(c) Stormwater management criteria for redevelopment shall apply to any redevelopment, whether or not it is located within an intensely developed area designated by the City.

(8) Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this article, provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the January 1997 edition of "Forestry Best Management Practices for Water Quality in Virginia Technical Guide." The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas.

(9) The City shall require evidence of all wetlands permits and delineation approvals required by law prior to authorizing grading or other on-site activities to begin.

(10) A Chesapeake Bay Site Plan shall be required for any land disturbance, development or redevelopment within a designated Chesapeake Bay Preservation Area. No Richmond Erosion and Stormwater Management Program Permit, building permit, or land-disturbing permit issued pursuant to Article V of this chapter shall be issued for any activity until the City has approved a Chesapeake Bay Site Plan in accordance with the requirements of this section and Section 14-264.

(11) On-site sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System permit shall, for new construction, provide a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site. This reserve sewage disposal site requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if the lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local Health Department. Building shall be prohibited on the area of all sewage disposal sites until the structure is served by public sewer or an on-site sewage treatment system which operates under a permit issued by the State Water Control Board. All sewage disposal site records shall be administered to provide adequate notice and enforcement.

(12) On-site sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System permit shall be pumped and maintained at least once every five years. Such pumping and maintenance shall be performed in a manner approved by the District Health Department. Immediately upon having the sewage treatment system pumped and maintained, the owner of a sewage treatment system shall certify on a form approved by the District Health Department or an on-site service professional that such pumping and maintenance was performed. The pumping and maintenance required by this section shall be performed only by an individual or entity approved by the District Health Director or licensed by the Virginia Department of Professional and Occupational Regulation. However, in lieu of the mandatory pump-out, the District Health Department shall, consistent with 9VAC25-830-130(7)(a), allow (i) installation and maintenance of a plastic filter in the sewage treatment system tank outflow pipe or (ii) documentation every five years, certified by an operator or on-site soil evaluator licensed or certified under Code of Virginia, Title 54.1, Ch. 23 (Code of Virginia, § 54.1-2300 et seq.) as being qualified to operate, maintain, or design on-site sewage systems, demonstrating that the sewage treatment system has been inspected and maintained, that the sewage treatment system is functioning properly, and that the tank does not require pumping.

(Code 2004, § 50-331; Code 2015, § 14-263; Ord. No. 2014-116-89, § 2, 5-27-2014; Ord. No. 2018-025, § 1, 2-26-2018; Ord. No. 2024-176, § 2, 7-22-2024)

Sec. 14-264. Development criteria for resource protection areas.

In addition to the general performance criteria set forth in Section 14-263, the criteria in this section are applicable in resource protection areas.

(1) *Approval required.*

a. Land development may be allowed in the resource protection area, subject to approval by the City, only if it:

1. Is water-dependent;

2. Constitutes redevelopment;

3. Constitutes development or redevelopment within a designated intensely developed area;

4. Is a new use established pursuant to subsection (1)e.1 of this section;

5. Is a road or driveway crossing satisfying the conditions set forth in subsection (1)e.4 of this section; or

6. Is a flood control or stormwater management facility satisfying the conditions set forth in subsection (5) of this section.

b. A water quality impact assessment in accordance with subsection (6) of this section shall be required for any proposed land disturbance.

c. A new or expanded water-dependent facility may be allowed, provided that the following criteria are met:

1. It does not conflict with the comprehensive plan;

2. It complies with the performance criteria set forth in Section 14-263;

3. Any nonwatery-dependent component is located outside of resource protection areas; and

4. Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.

d. Redevelopment, outside designated intensely developed areas, shall be permitted in the resource protection area only if there is no increase in the amount of impervious cover and no further encroachment within the resource protection area, and it shall conform to applicable erosion and sediment control and stormwater management criteria set forth in subsections (6) and (7) of this section, respectively, of Section 14-263, as well as all applicable stormwater management requirements of other State and Federal agencies.

e. Roads and driveways not exempt under Section 14-292(b)(1) and which, therefore, must comply with the provisions of this article, may be constructed in or across resource protection areas if each of the following conditions is met:

1. The City makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the resource protection area;

2. The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize:

(i) Encroachment in the resource protection area; and

(ii) Adverse effects on water quality;

3. The design and construction of the road or driveway satisfy all applicable criteria of this article, including submission of a water quality impact assessment; and

4. The City reviews the plan for the road or driveway proposed in or across the resource protection area in coordination with the City's site plan, subdivision and plan of development approvals.

f. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in resource protection areas, provided that:

1. The City has conclusively established that location of the facility within the resource protection area is the optimum location;

2. The size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both;

3. The facility must be consistent with a comprehensive stormwater management plan developed and that has been approved in accordance with 9VAC25-870-92 of the Virginia Stormwater Management Program regulations;

4. All applicable permits for construction in State or Federal waters must be obtained from the appropriate State and Federal agencies, such as the United States Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission;

5. Approval must be received from the City prior to construction; and

6. Routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed.

It is not the intent of this subsection to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a resource protection area.

(2) *Exemptions in resource protection areas.*

a. The following land disturbances in resource protection areas may be exempt from the criteria of this division provided that they comply with subsections (2)b and (2)c of this section:

1. Water wells;

2. Passive recreation facilities, such as boardwalks, trails and pathways; and

3. Historic preservation and archaeological activities.

b. The City shall establish administrative procedures to review such exemptions.

c. Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control criteria in Section 14-263(6).

(3) *Buffer area requirements.* The 100-foot-wide buffer area shall be the landward component of the resource protection area as set forth in Section 14-231(b)(5). Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot-wide buffer area is not reduced in width. To minimize the adverse effects of human activities on the other components of the resource protection area, State waters, and aquatic life, a 100-foot-wide 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.

a. The 100-foot-wide buffer area shall be deemed to achieve a 75-percent reduction of sediments and a 40-percent reduction of nutrients.

b. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot-wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions set forth in this article.

(4) *Permitted encroachments into the buffer area.*

a. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be allowed through an administrative process, in accordance with the following criteria:

1. Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.

2. Where practicable, a vegetated area 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 shall be established elsewhere on the lot or parcel.

3. The encroachment may not extend into the seaward 50 feet of the buffer area.

b. 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 March 1, 2002, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

1. The lot or parcel was created as a result of a legal process conducted in conformity with the City's subdivision regulations;

2. Conditions or mitigation measures imposed through a previously approved exception shall be met;

3. If the use of a best management practice was previously required, the best management practice shall be evaluated to determine if it continues to function effectively and, if necessary, the best management practice shall be reestablished or repaired and maintained as required; and

4. The criteria in subsection (4)a of this section shall be met.

(5) *Permitted modifications of the buffer area.* In order to maintain the functional value of the buffer area, existing vegetation may be removed, subject to approval by the City, 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:

a. Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that, where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff as specified in the Riparian Buffer Modification & Mitigation Guidance Manual, 2003, published by the Chesapeake Bay Local Assistance Division of the Department of Conservation and Recreation and as may be amended by the State from time to time.

b. Any path shall be constructed and surfaced so as to effectively control erosion.

c. Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be allowed, pursuant to sound horticultural practices.

d. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.

(6) *Water quality impact assessment.* A water quality impact assessment shall be required for any proposed development within the resource protection area consistent with this division and for any other development in Chesapeake Bay Preservation Areas that the Administrator determines may warrant such assessment because of the unique characteristics of the site or intensity of the proposed use or development.

a. The purpose of the water quality impact assessment is to identify the impacts of proposed development on water quality and lands in the resource protection areas consistent with the goals and objectives of the Act, this article, and the City's programs, and to determine specific measures for mitigation of those impacts. An approved water quality impact assessment shall demonstrate the following:

1. The absence of significant adverse impacts of nonpoint source pollution on topography, soils, environmentally sensitive areas, hydrology, and the quality of State waters; or

2. That any such adverse impacts are mitigated. Calculations shall be performed in accordance with guidelines developed by the City pursuant to Section 14-263 or in accordance with generally accepted engineering methods approved by the City.

b. The water quality impact assessment shall be of sufficient specificity to demonstrate compliance with the criteria of the City's program.

(7) *Buffer area requirements for intensely developed areas.* In intensely developed areas, the City may exercise discretion regarding whether to require establishment of vegetation in the 100-foot-wide buffer area. However, while the immediate establishment of vegetation in the buffer area may be impractical, the City shall give consideration to implementing measures that would establish vegetation in the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation. Where buffers are to be established, they shall be designed in accordance with the standards established in the Riparian Buffer Modification & Mitigation Guidance Manual, 2003, prepared by the Chesapeake Bay Local Assistance Division of the Department of Conservation and Recreation and as may be amended by the Commonwealth of Virginia from time to time.

(Code 2004, § 50-332; Code 2015, § 14-264; Ord. No. 2014-116-89, § 2, 5-27-2014)

Secs. 14-265—14-291. Reserved.

#### DIVISION 5. ADMINISTRATION AND ENFORCEMENT

Sec. 14-292. Nonconformities, exemptions, and exceptions.

(a) *Nonconforming uses and noncomplying structures.*

(1) The City may permit the continued use, but not necessarily the expansion, of any structure in existence on November 11, 1991, or which exists at the time of any amendment to this article. The City shall use the administrative review procedure to waive or modify the criteria of this article for structures on legal nonconforming lots or parcels, provided that there will be no net increase in nonpoint source pollutant load. Any development or land disturbance exceeding an area of 2,500 square feet shall comply with all erosion and sediment control requirements of this article.

(2) A nonconforming use and development waiver shall become null and void 12 months from the date of issuance if the Administrator documents that no substantial work has commenced. The Administrator shall notify the permittee of the revocation of the waiver.

(3) This article shall not be interpreted or construed to prevent the reconstruction of pre-existing structures within Chesapeake Bay Preservation Areas from occurring as a result of casualty loss unless otherwise restricted by other City ordinances.

(b) *Public utilities, railroads, public roads, and facilities exemptions.*

(1) a. Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with:

1. Regulations promulgated pursuant to 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.);

2. An erosion and sediment control plan and a stormwater management plan approved by the City or State, where required; or

3. Local water quality protection criteria at least as stringent as the above State requirements;

will be deemed to constitute compliance with this article.

b. The exemption of public roads is further conditioned on the following:

1. Optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize:

(i) Encroachment in the resource protection area; and

(ii) Adverse effects on water quality; and

2. Public roads, as defined in Section 14-181, that are found to be in compliance with this division are deemed to be exempt.

(2) 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 shall be exempt from the criteria in this division, provided that:

a. To the degree possible, the location of such utilities and facilities should be outside resource protection areas;

b. No more land shall be disturbed than is necessary to provide for the proposed utility installation;

c. All such 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

d. Any land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this part.

(c) *Exceptions.*

(1) Exceptions to the requirements of Sections 14-263 and 14-264 may be granted, provided that a finding is made that:

a. The requested exception to the criteria is the minimum necessary to afford relief;

b. Granting the exception will not confer upon the applicant any special privileges that are denied by this division to other property owners who are subject to its provisions and who are similarly situated;

c. The exception is in harmony with the purpose and intent of this division and is not of substantial detriment to water quality;

d. The exception request is not based upon conditions or circumstances that are self-created or self-imposed;

e. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality; and

f. Other findings, as appropriate and required by the City, are met.

(2) The Administrator may approve, deny or approve with conditions individual exception requests to Section 14-263, provided that the applicant meets the criteria of subsection (c)(1) of this section.

(3) The process to be used for exceptions to Section 14-264 shall include, but not be limited to, the following provisions:

a. An exception may be considered and acted upon only by the Planning Commission.

b. No exception shall be authorized except after notice and a hearing, as required by Code of Virginia, § 15.2-2204, except that only one hearing shall be required. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the notice may be given by first class mail rather than by registered or certified mail.

(4) Exceptions to other provisions of this section may be granted, provided that:

a. Exceptions to the criteria shall be the minimum necessary to afford relief; and

b. Reasonable and appropriate conditions upon any exception granted shall be imposed, as necessary, so that the purpose and intent of the Act is preserved.

(5) Notwithstanding the provisions of subsection (c)(3) of this section, additions and modifications to existing legal principal structures may be processed through the administrative review process specified in subsection (c)(2) of this section, as allowed by subsection (a) of this section, subject to the findings required by subsection (c)(1) of this section but without a requirement for a public hearing. This provision shall not apply to accessory structures.

(Code 2004, § 50-340; Code 2015, § 14-292; Ord. No. 2014-116-89, § 2, 5-27-2014)

Sec. 14-293. Procedures.

Procedures for the processing and review of Chesapeake Bay Site Plans and the administrative review process, required by this article, shall be established by the Director. Such procedures shall be in written form and made available to all applicants.

(Code 2004, § 50-341; Code 2015, § 14-293; Ord. No. 2004-331-321, § 1, 12-13-2004)

Sec. 14-294. Appeals of Administrator's decisions.

(a) *Right of appeal.* Any applicant who is aggrieved by any action of the City in disapproving a request for use or development within a Chesapeake Bay Preservation Area as described on the submitted Chesapeake Bay Site Plan shall have the right to file an appeal of such action with the Director. Such appeal must be filed within 30 days from the date of the action appealed and must be accompanied by a fee of $50.00 to be paid into the City treasury.

(b) *Scheduling of hearing.* Within 15 days of the date on which the applicant files the appeal in the Office of the Director, the Director shall schedule a hearing thereon at which both the applicant and the City representative may be heard. Such hearing shall be scheduled no sooner than 30 days after the Director furnishes the applicant and the City representative with written notice of the date, time and location of the hearing.

(c) *Review and decision.* The Director shall review the evidence and arguments by both the applicant and the City representative. Such evidence and arguments may be submitted in writing prior to the hearing or presented during the hearing. No later than 15 days after the hearing described in subsection (b) of this section, the Director shall issue to the applicant and the Administrator a written decision affirming, reversing or modifying the action of the Administrator.

(d) *Judicial review.* The decision of the Director shall be final, unless the applicant appeals such decision to the Circuit Court of the City of Richmond within 30 days of the date on which the Director issues such decision.

(e) *Administrative procedures.* The Director shall develop procedures not inconsistent with this section for the administration of the appeals process set forth in this section.

(Code 2004, § 50-342; Code 2015, § 14-294; Ord. No. 2014-116-89, § 2, 5-27-2014)

Sec. 14-295. Enforcement.

(a) In order to ensure compliance with this article, the City may elect to pursue any and all enforcement actions in accordance with this article, with Article V of this chapter, and with Chapters 5, 25, and 30.

(b) Without limiting the remedies available under this article, any person who violates any provision of this article or who violates or fails, neglects, or refuses to obey any variance or permit condition authorized under this article shall, upon such a finding thereof by the Circuit Court of the City of Richmond, be assessed a civil penalty not to exceed $5,000.00 for each day of violation. Such penalties may, at the discretion of the court, be directed to be paid into the treasury of the City for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas within the City, in such a manner as the court may direct by order, except that, in the event the City or its agent is the violator, the court shall direct the civil penalty to be paid into the treasury of the Commonwealth as provided in Code of Virginia, § 62.1-44.15:74(E).

(c) Without limiting the remedies available under this article, and with the consent of any person who has violated any provision of this article, or who has violated or failed, neglected, or refused to obey any variance or permit condition authorized under this article, the Director may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed $10,000.00 for each violation. Such civil charges shall be paid into the treasury of the City for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas within the City, except that in the event the City or its agent is the violator, the civil charges shall be paid into the treasury of the Commonwealth as provided in Code of Virginia, § 62.1-44.15:74(E). All civil charges shall be in lieu of any civil penalty that could be imposed under subsection (a) of this section. Civil charges shall be in addition to the cost of any restoration required by the Director.

(Code 2015, § 14-295; Ord. No. 2018-025, § 2, 2-26-2018; Ord. No. 2024-176, § 2, 7-22-2024)

Secs. 14-296—14-321. Reserved.

### ARTICLE V. RICHMOND EROSION AND STORMWATER MANAGEMENT PROGRAM[[5]](#footnote-5)

Sec. 14-322. Title, purpose, and authority.

This article shall be known as the "Richmond Erosion and Stormwater Management Program Ordinance." The purpose of this article is to integrate the City's stormwater management, floodplain management, erosion and sediment control, and Chesapeake Bay Preservation Area requirements into a unified City program intended to administer, implement and enforce the Virginia Erosion and Stormwater Management Regulation. This article provides the procedures for the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities with the goals of improving water quality, encouraging innovative solutions to stormwater management, and reducing flooding and erosion. This article is authorized by Code of Virginia, Title 62.1, Ch. 3.1 (Code of Virginia, § 62.1-44.15:27.).

(Code 2004, § 50-401; Code 2015, § 14-322; Ord. No. 2014-116-89, § 3, 5-27-2014; Ord. No. 2015-49-59, § 1, 3-23-2015; Ord. No. 2024-176, § 3, 7-22-2024)

Sec. 14-323. Definitions.

The following words and terms used in this article have the following meanings, unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined at 9VAC25-875-20 of the Virginia Erosion and Stormwater Management Regulations, as amended, and are incorporated herein by reference.

*Administrator* means the Director of Public Utilities or his or her designee.

*Agreement in lieu of a soil erosion control and stormwater management plan* means an executed agreement in lieu of a soil erosion control and stormwater management plan, which shall be a contract between the City and a Richmond Erosion and Stormwater Management Program Permittee, that is on a form approved by the Administrator, and that specifies methods that the Permittee shall implement to comply with the Richmond Erosion and Stormwater Management Program requirements for the construction of a (i) detached, separately constructed, single-family residence or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent.

*Applicant* means any person submitting an application for a permit under this article.

*Best management practice or BMP* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the pollution of surface water and groundwater systems from the impacts of land-disturbing activities.

*Board* means the State Water Control Board.

*Channel* means a natural stream or manmade waterway.

*Chesapeake Bay Preservation Act* means Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

*Chesapeake Bay Preservation Area* means any land designated by a local government pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area Designation and Management Regulations and § 62.1-44.15:74 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area as defined in the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

*Chesapeake Bay Preservation Act land-disturbing activity* means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet and less than one acre in areas of the City designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation Act, Code of Virginia, § 62.1-44.15:67 et seq.

*Clean Water Act* means the Federal Clean Water Act (33 USC § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

*Common plan of development or sale* means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.

*Comprehensive stormwater management plan* means a plan, which may be integrated with other land use plans or regulations that specifies how the water quality components, quantity components, or both of stormwater are to be managed on the basis of an entire watershed or a portion thereof. The plan may also provide for the remediation of erosion, flooding, and water quality and quantity problems caused by prior development.

*Construction activity* means any clearing, grading, or excavation associated with large construction activity or associated with small construction activity.

*Control measure* means any best management practice or stormwater facility, or other method used to minimize the discharge of pollutants to State waters.

*Dam* means a barrier to confine or raise water for storage or diversion, to create a hydraulic head, to prevent gully erosion, or to retain soil, rock or other debris.

*Denuded* means a term applied to land that has been physically disturbed and no longer supports vegetative cover.

*Department of Environmental Quality* means the Virginia Department of Environmental Quality.

*Development* means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities, or structures, or the clearing of land for non-agricultural or non-silvicultural purposes.

*Dike* means an earthen embankment constructed to confine or control water, especially one built along the banks of a river to prevent overflow of lowlands; levee.

*Discharge* when used without qualification, means the discharge of a pollutant.

*Discharge of a pollutant* means (1) any addition of any pollutant or combination of pollutants to state waters from any point source; or (2) any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

*Diversion* means a channel with a supporting ridge on the lower side constructed across or at the bottom of a slope for the purpose of intercepting surface runoff.

*Drainage area* means a land area, water area, or both from which runoff flows to a common point.

*Energy dissipator* means a non-erodible structure which reduces the velocity of concentrated flow to reduce its erosive effects.

*Environmental Protection Agency or EPA* means the United States Environmental Protection Agency.

*Erosion and sediment control plan* means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

*Erosion impact area* means an area of land that is not associated with a current land-disturbing activity but is subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

*ESC* means erosion and sediment control.

*ESM plan* means a soil erosion control and stormwater management plan, commonly referred to as the erosion control and stormwater management plan.

*Farm building or structure* means the same as that term is defined in § 36-97 of the Code of Virginia and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400 of the Code of Virginia, and any related impervious services including roads, driveways, and parking areas.

*Flood fringe* means the portion of the floodplain outside the floodway that is usually covered with water from the 100-year flood or storm event. This includes the flood or floodway fringe designated by the Federal Emergency Management Agency.

*Flooding* means a volume of water that is too great to be confined within the banks or walls of the stream, water body, or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

*Floodplain* means the area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes the floodplain designated by the Federal Emergency Management Agency.

*Flood-prone area* means the component of a natural or restored stormwater conveyance system that is outside the main channel. Flood-prone areas may include the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

*Floodway* means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the 100-year flood or storm event without cumulatively increasing the water surface elevation more than one foot. This includes the floodway designated by the Federal Emergency Management Agency.

*General permit* means a permit authorizing a category of discharges under the Clean Water Act and the VESMA within a geographical area.

*Impervious cover* means a surface composed of material that significantly impedes or prevents natural infiltration of water into soil.

*Inspection* means an on-site review of the project's compliance with any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation or enforcement of the VESMA and applicable regulations.

*Karst area* means any land area predominantly underlain at the surface or shallow subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface karst features.

*Karst features* means sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

*Land disturbance or land-disturbing activity* means, for the purpose of this article, a manmade change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including clearing, grading, or excavation, except that the term shall not include the exemptions included in Section 14-324.

*Large construction activity* means construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

*Layout* means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

*Linear development project* means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; (iii) highway construction projects; (iv) construction of stormwater channels and stream restoration activities; and (v) water and sewer lines. Private subdivision roads or streets shall not be considered linear development projects.

*Localized flooding* means smaller scale flooding that may occur outside of a stormwater conveyance system. This may include high water, ponding, or standing water from stormwater runoff, which is likely to cause property damage or unsafe conditions.

*Main channel* means the portion of the stormwater conveyance system that contains the base flow and small frequent storm events.

*Minimize* means to reduce or eliminate the discharge of pollutants to the extent achievable using stormwater controls that are technologically available and economically practicable.

*Minor modification* means amendment modifications and amendments to an existing permit before its expiration, not requiring extensive review and evaluation and including, but not limited to, changes in test protocols promulgated by the U.S. Environmental Protection Agency, increased monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of an operation, or reduce the capacity of a facility to protect human health or the environment.

*Natural channel design concepts* means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

*Natural stream* means a tidal or nontidal watercourse that is part of the natural topography. It usually maintains a continuous or seasonal flow during the year and is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams; however, channels designed utilizing natural channel design concepts may be considered natural streams.

*Nonpoint source pollution* means pollution such as sediment, nitrogen, phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater.

*Operator* means the owner or operator of any facility or activity subject to regulation pursuant to this article. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit or Richmond Erosion and Stormwater Management Program Permit authority permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions).

*Owner* means the same as that term is defined in § 62.1-44.3 of the Code of Virginia. For a regulated land-disturbing activity that does not require a permit, *owner* also means the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

*Permit or Richmond Erosion and Stormwater Management Program Permit* means an approval to conduct a land-disturbing activity, issued by the Administrator after the Administrator has confirmed, if applicable, general permit coverage with the Department of Environmental Quality.

*Permittee* means the person to whom a Richmond Erosion and Stormwater Management Program Permit is issued.

*Person* means any individual, corporation, partnership, association, state, municipality, commission, political subdivision of a state, governmental body (including Federal, State, or local entity, as applicable), interstate body, or any other legal entity.

*Point of discharge* means a location at which concentrated stormwater runoff is released.

*Point source* means any discernible, confined, and discrete conveyance including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

*Pollutant discharge* means the average amount of a particular pollutant measured in pounds per year or other standard reportable unit as appropriate, delivered by stormwater runoff.

*Pollution* means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are *pollution* for the terms and purposes of this ordinance.

*Post-development* refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

*Predevelopment* refers to the conditions that exist at the time that plans for the land-disturbing activity are submitted to the City. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads, and utilities, etc.), the existing conditions at the time prior to the commencement of land-disturbing activity shall establish predevelopment conditions.

*Prior developed lands* means land that has been previously utilized for residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures, and that will have the impervious areas associated with those uses altered during a land-disturbing activity.

*Qualified personnel* means a person knowledgeable in the principles and practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity.

*Regulations* means the Virginia Stormwater Management Program Permit Regulations, 9VAC25-875-10 et seq., as amended.

*Responsible land disturber or RLD* means an individual holding a certificate issued by the department who is responsible for carrying out the land-disturbing activity in accordance with the approved erosion and sediment control plan or ESM plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the erosion and sediment control plan, ESM plan, or permit as defined in this ordinance as a prerequisite for engaging in land disturbance.

*Runoff or stormwater runoff means* that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

*Runoff characteristics* includes maximum velocity, peak flow rate, volume, and flow duration.

*Runoff volume* means the volume of water that runs off the land development project from a prescribed storm event.

*Sediment basin* means a temporary impoundment built to retain sediment and debris with a controlled stormwater release structure.

*Sheet flow* (also called overland flow) means shallow, unconcentrated and irregular flow down a slope. The length of strip for overland flow usually does not exceed 100 feet under natural conditions.

*Site* means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

*Small construction activity* means:

(1) Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The department may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on an approved "total maximum daily load" (TMDL) that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutants of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator shall certify to the department that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or provide an equivalent analysis. As of the start date in Table 1 of 9VAC25-31-1020, all certifications submitted in support of the waiver shall be submitted electronically by the owner or operator to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to report electronically if specified by a particular permit.

(2) Any other construction activity designated by either the department or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

*Soil erosion* means the movement of soil by wind or water into state waters or onto lands in the Commonwealth.

*Soil erosion control and stormwater management plan,* commonly referred to as the *erosion control and stormwater management plan,* or *ESM plan* means a document describing methods for controlling soil erosion and managing stormwater in accordance with the requirements adopted pursuant to the VESMA. The ESM plan may consist of aspects of the erosion and sediment control plan and the stormwater management plan as each is described in this ordinance.

*State* means the Commonwealth of Virginia.

*State permit* means an approval to conduct a land-disturbing activity issued by the State Water Control Board in the form of a State stormwater individual permit or coverage issued under a State general permit, or an approval issued by the State Water Control Board for stormwater discharges from a municipal separate storm sewer system. The State imposes and enforces requirements pursuant to the Clean Water Act and regulations, the Virginia Stormwater Management Act, and the Regulations through the use of State permits.

*State Water Control Board* means the Virginia State Water Control Board.

*State Water Control Law* means Code of Virginia, Title 62.1, Ch. 3.1 (Code of Virginia, § 62.1-44.2 et seq.).

*State waters* means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth, or within its jurisdiction, including wetlands.

*Storm sewer inlet* means a structure through which stormwater is introduced into an underground conveyance system.

*Stormwater* means precipitation that is discharged across the land surface or through conveyances to one or more waterways and may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

*Stormwater conveyance system* means a combination of drainage components that are used to convey stormwater discharge, either within or downstream of the land-disturbing activity. This includes:

(1) *Manmade stormwater conveyance system* means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems;

(2) *Natural stormwater conveyance system* means the main channel of a natural stream and the flood-prone area adjacent to the main channel; or

(3) *Restored stormwater conveyance system* means a stormwater conveyance system that has been designed and constructed using natural channel design concepts. Restored stormwater conveyance systems include the main channel and the flood-prone area adjacent to the main channel.

*Stormwater detention* means the process of temporarily impounding runoff and discharging it through a hydraulic outlet structure to a downstream conveyance system.

*Stormwater management facility* means a control measure that controls stormwater runoff and changes the characteristics of that runoff including the quantity and quality, the period of release or the velocity of flow.

*Stormwater management plan* means a document containing material that describes methods for complying with the requirements of this article.

*Stormwater pollution prevention plan* means a document that is prepared in accordance with good engineering practices, that identifies potential sources of pollutants that reasonably may be expected to adversely affect the quality of stormwater discharges from a construction site, and that otherwise meets the requirements of this chapter. In addition, a stormwater pollution prevention plan shall identify and require the implementation of control measures, and shall include, but not be limited to, the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

*Subdivision* means a division, subdivision, or resubdivision of a lot, tract, or parcel of land situated wholly or partly within the corporate City limits into three or more lots, tracts, or parcels of land for the purpose, whether immediate or in the future, of transferring ownership of any one or more of such lots, tracts, or parcels of land or for the purpose of the erection of buildings or other structures on any one or more of such lots, tracts, or parcels of land. The term "subdivision" shall not include a division of land for agricultural purposes in parcels of one acre or more, the average width of which is not less than 150 feet, when such division:

(1) Does not require the opening of any new street or the use of any new public easement of access;

(2) Does not obstruct, and is not likely to obstruct, natural drainage;

(3) Does not adversely affect, and is not likely to adversely affect, the establishment of any expressway, major street, primary highway, or toll road; and

(4) Does not adversely affect the execution or development of any plat or subdivision approved by the City Planning Commission or otherwise adversely affect the orderly subdivision of contiguous property.

*Surface waters* means:

(1) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(2) All interstate waters, including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(a) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(b) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(c) That are used or could be used for industrial purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as surface waters under this definition;

(5) Tributaries of waters identified in subdivisions 1 through 4 of this definition;

(6) The territorial sea; and

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA jurisdiction remains with the EPA.

*SWM* means stormwater management.

*Ten-year storm* means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as an exceedance probability with a 10% chance of being equaled or exceeded in any given year.

*Total maximum daily load (TMDL)* means the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. Total maximum daily loads can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The total maximum daily load process provides for point versus nonpoint source trade-offs.

*Virginia Erosion and Stormwater Management Act (VESMA)* means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1, State Water Control Law, of Title 62.1 of the Code of Virginia.

*Virginia Erosion and Stormwater Management Program or (VESMP)* means a program established by the City for the effective control of soil erosion and sediment deposition and the management of the quality and quantity of runoff resulting from land-disturbing activities to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. The program shall include such items as local ordinances, rules, requirements for permits and land-disturbance approvals, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement consistent with the requirements of the VESMA.

*Virginia Pollutant Discharge Elimination System (VPDES)* permit means a document issued by the department pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

*Virginia Stormwater Best Management Practice Clearinghouse Website* means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act (Code of Virginia, § 62.1-44.15:24 et seq.) and associated regulations.

*Wasteload allocation* means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. Wasteload allocations are a type of water quality-based effluent limitation.

*Watershed* means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which water drains may be considered the single outlet for the watershed.

*Wetlands* means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(Code 2004, § 50-402; Code 2015, § 14-323; Ord. No. 2014-116-89, § 3, 5-27-2014; Ord. No. 2024-176, § 3, 7-22-2024)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 14-323.1. Regulated land-disturbing activities.

(a) Land-disturbing activity that meetings one of the criteria below are regulated as follows:

(1) Land-disturbing activity that disturbs 4,000 square feet or more, is less than one acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and not part of a common plan of development or sale, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V of the Virginia Erosion and Stormwater Management Regulation (Regulation).

(2) Land-disturbing activity that disturbs 2,500 square feet or more, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of the Regulation is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

(3) Land-disturbing activity that disturbs less than one acre, but is part of a larger common plan of development or sale that disturbs one acre or more, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-874-670 et seq.) of Part V of the Regulation is applicable, as determined in accordance with 9VAC25-875-490.

(4) Land-disturbing activity that disturbs one acre or more is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

(b) Land-disturbing activities exempt per 9VAC25-875-90 are not required to comply with the requirements of the VESMA unless otherwise required by federal law.

(Ord. No. 2024-176, § 4, 7-22-2024)

Sec. 14-324. Permit requirement; exemptions.

(a) Except as provided herein, no person may engage in any land-disturbing activity in the City until the Administrator has issued a Richmond Erosion and Stormwater Management Program Permit in accordance with this article.

(b) A Chesapeake Bay Preservation Act land-disturbing activity does not require completion of a registration statement or require coverage under the general permit, but shall be subject to the following technical criteria and program and administrative requirements: an erosion and sediment control plan consistent with the requirements of Article III of this chapter; a stormwater management plan consistent with the requirements of Section 14-327; exceptions which may be requested pursuant to 9VAC25-870-57; the technical and administrative requirements of Section 14-330; the long-term maintenance requirements for permanent stormwater facilities in Section 14-331, and the requirements for channel protection and flood protection, the availability of off-site compliance options, and requirements for design storm and hydrologic methods, linear development controls, and criteria associated with stormwater impoundment structures or facilities found at 9VAC25-870-51.

(c) The following exemptions apply to the Richmond Erosion and Stormwater Management Program Permit requirements set forth in subsection (a) of this section:

(1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions Code of Virginia, Title 45.1 (Code of Virginia, § 45.1-161.1 et seq.);

(2) Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth in State regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops, unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Code of Virginia, Title 10.1, Ch. 11 (Code of Virginia, § 10.1-1100 et seq.), or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, § 10.1-1163(B);

(3) Single-family residences separately built, and additions or modifications to such existing single-family residential structures, disturbing less than one acre, or less than 2,500 square feet if located in an area delineated by the City as a Chesapeake Bay Preservation Area pursuant to Article IV of this chapter, and not part of a larger common plan of development or sale;

(4) Land-disturbing activities that disturb less than one acre, or less than 2,500 square feet if located in an area delineated by the City as a Chesapeake Bay Preservation Area pursuant to Article IV of this chapter, and not part of a larger common plan of development or sale;

(5) Discharges to a sanitary sewer or a combined sewer system that are not from land-disturbing activity;

(6) Reserved.

(7) Reserved.

(8) Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Administrator shall be advised of the disturbance within seven days following commencement of the land-disturbing activity. Compliance with the administrative requirements of this chapter is required within 30 days of commencing the land-disturbing activity.

(d) Notwithstanding this ordinance and in accordance with the Virginia Erosion and Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, the following activities are required to comply with the soil erosion control requirements but are not required to comply with the water quantity and water quality technical criteria, unless otherwise required by federal law:

(1) Activities under a State or Federal reclamation program to return an abandoned property to agricultural or open land use;

(2) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and

(3) Discharges from a land-disturbing activity to a sanitary sewer or a combined sewer system.

(Code 2004, § 50-403; Code 2015, § 14-324; Ord. No. 2014-116-89, § 3, 5-27-2014; Ord. No. 2024-176, § 3, 7-22-2024)

Sec. 14-325. Plan submission and approval; prohibitions.

Pursuant to Code of Virginia, § 62.1-44.15:27, the City hereby establishes a Richmond Erosion and Stormwater Management Program for land-disturbing activities and adopts the applicable standards and specifications for Virginia Erosion and Stormwater Management Programs promulgated by the State Water Control Board for the purposes set out in Section 14-322. The Director of Public Utilities is hereby designated as the Administrator of the Richmond Stormwater Management Program.

(1) Any person who plans to conduct a land-disturbing activity in the City shall first submit the following to the Administrator:

(a) An application for a permit on the most current City-approved form, including a general permit registration if required;

(b) An erosion and sediment control plan to be reviewed for approval in accordance with Section 13-329.1, with certification by the applicant that the plan will be followed;

(c) A stormwater management plan that meets the requirements of Section 14-327, or, if authorized by State law, an agreement in lieu of a stormwater management plan; and

(d) All applicable fees and a performance bond as required by Sections 14-336 and 14-337.

(2) a. No person shall begin to conduct any land-disturbing activity in the City until the City has received all of the items listed in subsection (1) of this section and has issued a Richmond Erosion and Stormwater Management Program Permit to the applicant. Additionally, no person shall begin to conduct any land-disturbing activity in the City without first having obtained a General Virginia Pollution Discharge Elimination System Permit for Discharges of Stormwater from Construction Activities as set forth in 9VAC25-880-70, as amended from time to time, for the proposed activity. The Administrator shall not issue a Richmond Erosion and Stormwater Management Program Permit until after the Administrator has received evidence of such general permit authority from the Virginia Department of Environmental Quality. All land clearing, construction, disturbance, land development and drainage must be performed in accordance with the terms of the Richmond Stormwater Management Program Permit. Failure to comply may result in enforcement by the City pursuant to Section 14-336.

b. Every permit applicant shall furnish, when requested by the Administrator, such application materials, plans, specifications, and other pertinent information as the Administrator may determine necessary to determine the effect of the discharge from the land-disturbing activity on the quality of State waters, or such other information as the Administrator may determine necessary to accomplish the purposes of this chapter.

(3) Issuance of a Richmond Erosion and Stormwater Management Program Permit does not relieve the applicant of having to obtain any other permits, including any City-issued permits that are required prior to beginning a land-disturbing activity. The City will not issue any other grading, building, or other local permit until the Administrator has approved a Richmond Erosion and Stormwater Management Program Permit for the property.

(Code 2004, § 50-404; Code 2015, § 14-325; Ord. No. 2014-116-89, § 3, 5-27-2014; Ord. No. 2015-49-59, § 1, 3-23-2015; Ord. No. 2024-176, § 3, 7-22-2024)

Sec. 14-326. Stormwater pollution prevention plan; contents of plans.

(a) The operator shall maintain a stormwater pollution prevention plan throughout the period of permit coverage that is consistent with the requirements of 9VAC875-500 and 9VAC25-880-70. The stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan (as approved by the City, or by the State pursuant to the general permit issued July 1, 2009) or an agreement in lieu of a stormwater management plan as provided in Section 14-325, a pollution prevention plan, and a description of any additional control measures necessary to address a total maximum daily load if a specific wasteload allocation for a pollutant has been established in a total maximum daily load and is assigned to stormwater discharges from construction. In addition, the stormwater pollution prevention plan shall include any information required by Section II (stormwater pollution prevention plan) of the general permit.

(b) The stormwater pollution prevention plan shall meet the following requirements:

(1) Control stormwater volume and velocity within the site to minimize soil erosion;

(2) Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;

(3) Minimize the amount of soil exposed during construction;

(4) Minimize the disturbance of steep slopes;

(5) Minimize sediment discharges from the site. The design, installation, and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;

(6) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible;

(7) Minimize soil compaction and, unless infeasible, preserve topsoil;

(8) Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have ceased permanently on any portion of the site, or have ceased temporarily on any portion of the site and will not resume for a period exceeding 14 calendar days. The stormwater pollution prevention plan shall require that stabilization be completed within a period of time determined by the City. In arid, semi-arid, and drought-stricken areas where immediately initiating vegetative stabilization measures is infeasible, the stormwater pollution prevention plan shall require that alternative stabilization measures be employed as specified by the; and

(9) Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.

(c) The permittee shall maintain the stormwater pollution prevention plan at a central location on the site of the land-disturbing activity for as long as land-disturbing activities are occurring on the site. If an on-site location is unavailable, the operator shall post notice of the stormwater pollution prevention plan's location near the main entrance to the site. The permittee shall make the stormwater pollution prevention plan available for public review in accordance with the terms of the general permit, either electronically or in hard copy.

(d) The permittee's stormwater pollution prevention plan shall be written in compliance with the Regulations, the terms of the general permit, and this article. The permittee shall amend the stormwater pollution prevention plan in a timely fashion to incorporate any change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to State waters.

(Code 2004, § 50-405; Code 2015, § 14-326; Ord. No. 2014-116-89, § 3, 5-27-2014; Ord. No. 2024-176, § 3, 7-22-2024)

Sec. 14-327. Stormwater management plan; contents of plans.

(a) The permittee's stormwater management plan, referenced at Section 14-325, shall be written in compliance with the stormwater management technical criteria set forth in Section 14-330 for the entire common plan of development or sale, where applicable, and shall consider all sources of surface and subsurface runoff and groundwater flows converted to surface flows. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activities.

(b) The permittee shall include the following items in the stormwater management plan:

(1) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged, including surface waters or karst features, if present, and the pre-development and post-development drainage areas;

(2) Contact information, including the name, address, telephone number, and email address of the owner and the tax reference number and parcel number of the property or properties affected;

(3) A narrative that includes a description of current (pre-land disturbance) site conditions and final (post-land disturbance) site conditions;

(4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;

(5) Information on the proposed stormwater management facilities, including:

a. A detailed narrative on the conversion to a long-term stormwater management facility if the facility was used as a temporary ESC measure;

b. The types of facilities;

c. The location of the facilities, including geographic coordinates;

d. The acreage treated; and

e. The surface water or karst features, if present, into which the facilities will discharge;

(6) Hydrologic and hydraulic computations, including runoff characteristics;

(7) Documentation and calculations verifying compliance with the water quality and water quantity requirements of Section 14-330;

(8) A map or maps of the site that depicts the site topography and includes:

a. All existing contributing drainage areas;

b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;

c. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;

d. Current land use, including existing structures, roads, and locations of known utilities and easements;

e. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;

f. The limits of clearing and grading, and the proposed drainage patterns on the site;

g. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and

h. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including, but not limited to, planned locations of utilities, roads, and easements.

(c) If a permittee or operator intends to meet the water quality and quantity requirements set forth in this article through the use of off-site compliance options, where applicable and available, then a letter of availability from the off-site provider must be included in the stormwater management plan. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of land-disturbing activities except as allowed by State law.

(d) Elements of the stormwater management plan that include activities regulated under Code of Virginia, Title 54.1, Ch. 4 (Code of Virginia, § 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Code of Virginia, Title 54.1, Ch. 4, Art. 1 (Code of Virginia, § 54.1-400 et seq.).

(e) A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

(Code 2004, § 50-406; Code 2015, § 14-327; Ord. No. 2014-116-89, § 3, 5-27-2014; Ord. No. 2015-49-59, § 1, 3-23-2015; Ord. No. 2024-176, § 3, 7-22-2024)

Sec. 14-328. Pollution prevention plan; contents of plans.

(a) The permittee shall develop, implement and update, as necessary, a pollution prevention plan detailing the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, these measures shall be designed, installed, implemented, and maintained to:

(1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

(3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

(b) The pollution prevention plan shall include effective BMPs to prohibit the following discharges:

(1) Wastewater from washout of concrete, unless managed by an appropriate control;

(2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

(3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

(4) Soaps or solvents used in vehicle and equipment washing.

(c) The pollution prevention plan shall prohibit discharges from dewatering activities, including discharges from dewatering of trenches and excavations, unless managed by appropriate controls in accordance with 40 CFR 450.21(c).

(Code 2004, § 50-407; Code 2015, § 14-328; Ord. No. 2014-116-89, § 3, 5-27-2014; Ord. No. 2024-176, § 3, 7-22-2024)

Sec. 14-329. Review of soil erosion control and stormwater management plan.

(a) The applicant shall submit the soil erosion control and stormwater management plan referenced in this article a minimum of 75 days prior to the anticipated commencement of a land-disturbing activity to allow for timely review by the Administrator. The following timeframes for review and approval or disapproval shall apply:

(1) The Administrator shall determine the completeness of the application, and shall notify the applicant in writing of the determination within 15 calendar days of receipt. If deemed incomplete, the written notification shall explain the reasons the Administrator has deemed the plan incomplete. Where available to the applicant, electronic communication shall be considered communication in writing;

(2) The Administrator shall have an additional 60 calendar days from the date of communicating to the applicant that the plan is complete to review the ESM plan, except that if a determination of completeness is not made within the time prescribed in subsection (a)(1) of this section, then the ESM plan shall be deemed complete and the Administrator shall have 60 calendar days from the date of submission to review the ESM plan.

(b) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the applicant or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this article. If a plan meeting all requirements of this article is submitted and no action is taken within the timeframe above, the plan shall be deemed approved.

(c) If the ESM plan is disapproved, the Administrator shall review a revised plan within 15 calendar days of the resubmission and shall act on the resubmitted application within 45 days after receipt.

(d) Once the Administrator has approved a plan, the permittee shall modify the plan only under the following terms:

(1) After review and written approval by the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.

(2) When required by the Administrator, and within a time prescribed by the Administrator, to address any deficiencies noted during inspection.

(e) The permittee shall submit a construction record drawing for permanent stormwater management facilities, unless waived by the Administrator pursuant to law.

(Code 2004, § 50-408; Code 2015, § 14-329; Ord. No. 2014-116-89, § 3, 5-27-2014; Ord. No. 2015-49-59, § 1, 3-23-2015; Ord. No. 2024-176, § 3, 7-22-2024)

Sec. 14-329.1. Erosion and sediment control plan; contents of plans.

(a) An erosion and sediment control plan, which is a component of the ESM plan, shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objects in 9VAC25-875-560. The erosion and sediment control plan may include:

(1) Appropriate maps;

(2) An appropriate soil and water plan inventory and management information with needed interpretations; and

(3) A record of decisions contributing to conservation treatment.

(b) The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity to the Administrator. The Administrator may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan in accordance with State law.

(c) If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan or an "Agreement in Lieu of a Plan" signed by the property owner.

(d) Land disturbing activities of less than 4,000 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the VESMA if the total land-disturbing activity in the development is equal to or greater than 4,000 square feet.

(Ord. No. 2024-176, § 4, 7-22-2024)

Sec. 14-330. Technical criteria for land-disturbing activities.

(a) To protect the quality and quantity of State water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the City hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part V of 9VAC25-875 expressly to include 9VAC25-875-570 (applicability); 9VAC25-875-580 (water quality design criteria requirements); 9VAC25-875-590 (water quality compliance); 9VAC25-875-600 (water quantity); 9VAC25-875-610 (off-site compliance options); 9VAC25-875-620 (design storms and hydrologic methods); 9VAC25-875-630 (stormwater harvesting); 9VAC25-875-640 (linear development project); 9VAC25-875-650 (stormwater management impoundment structures or facilities) and 9VAC25-875-660 (comprehensive stormwater management plans), which shall apply to all land-disturbing activities, including all Chesapeake Bay Preservation Act land-disturbing activities, regulated pursuant to this chapter, except as expressly set forth in subsection (b) of this section.

(b) Land-disturbing activities, including all Chesapeake Bay Preservation Act land-disturbing activities, that have obtained initial general permit coverage, or that commence land disturbance, prior to July 1, 2014, shall be conducted in accordance with the technical criteria for regulated land-disturbing activities set forth in Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation expressly to include 9VAC25-875-670 (definitions); 9VAC25-875-680 (applicability); 9VAC25-875-690 (general); 9VAC25-875-700 (water quality); 9VAC25-875-710 (stream channel erosion); 9VAC25-875-720 (flooding); and 9VAC25-875-730 (regional (watershed-wide) stormwater management plans). Such projects shall remain subject to the Part V technical criteria for an additional two general permit cycles. After such time, portions of the project that come under construction shall become subject to any new technical criteria adopted by the Department of Environmental Quality.

(c) Land-disturbing activities that obtain general permit coverage on or after July 1, 2014, shall be conducted in accordance with the Part V technical criteria of the Regulations. Such projects shall remain subject to the Part V technical criteria for an additional one general permit cycles, except as provided for in subsection D of 9VAC25-875-490. After such time, portions of the project that come under construction shall become subject to any new technical criteria adopted by the Department of Environmental Quality.

(d) Any land-disturbing activity shall be considered grandfathered and shall be subject to the Part V technical criteria of the Regulations, provided that:

(1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the City to be equivalent thereto:

a. Was approved by the City prior to July 1, 2012;

b. Provided a layout as defined in 9VAC25-875-10;

c. Will comply with the Part V technical criteria of the Regulations; and

d. Has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;

(2) State permit coverage has not been obtained prior to July 1, 2014; and

(3) Land disturbance did not commence prior to July 1, 2014.

(e) Local, State, and Federal projects shall be considered grandfathered by the City and shall be subject to Part V technical criteria of the Regulations, provided that:

(1) There has been an obligation of local, State, or Federal funding, in whole or in part, prior to July 1, 2012, or the Department of Environmental Quality has approved a stormwater management plan prior to July 1, 2012;

(2) State permit coverage has not been obtained prior to July 1, 2014; and

(3) Land disturbance did not commence prior to July 1, 2014.

(f) Land-disturbing activities grandfathered under subsections (d) and (e) of this section shall remain subject to the Part V technical criteria of the Regulations for one additional State permit cycle. After such time, portions of the project coming under construction shall become subject to any new technical criteria adopted by the Department of Environmental Quality.

(g) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Part V of the Regulations.

(h) Nothing in this section shall preclude an operator from constructing to a more stringent standard at the operator's discretion.

(i) (1) The Administrator may grant exceptions to the technical requirements of Part V of the Regulations, provided that:

a. The exception is the minimum necessary to afford relief;

b. Reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this article are preserved;

c. Granting the exception will not confer any special privileges that are denied in other similar circumstances; and

d. Exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

(2) Economic hardship alone is not sufficient reason to grant an exception from the requirements of this section.

a. Exceptions to the requirement that the land-disturbing activity obtain a required permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, except where allowed under Part V of the Regulations, or otherwise by State law.

b. Exceptions to requirements for phosphorus reductions shall not be allowed unless off-site options otherwise permitted pursuant to 9VAC25-875-610-69 have been considered and found not available.

(Code 2004, § 50-409; Code 2015, § 14-330; Ord. No. 2014-116-89, § 3, 5-27-2014; Ord. No. 2024-176, § 3, 7-22-2024)

Sec. 14-331. Long-term maintenance of permanent stormwater facilities.

(a) All stormwater management facilities, including BMPs and other techniques specified to manage the quality and quantity of runoff, shall be maintained for their full lifespan. In order to ensure this result, the permittee shall sign and record in the local land records an instrument obligating the permittee to maintain all stormwater management facilities for their full lifespan. The instrument shall be on the most recent form approved by the Administrator. If the permittee will not be the owner of the stormwater management facilities once they are fully constructed, the permittee shall obtain the document from the future owner. The Administrator shall not issue a final approval of a stormwater management plan until the recorded document is received and is deemed acceptable to the City. At a minimum, the instrument shall:

(1) Be submitted to the Administrator for review and approval during the review period for the stormwater management plan;

(2) Run with the land;

(3) Provide access to the property for maintenance and regulatory inspection purposes;

(4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator; and

(5) Be enforceable by all appropriate governmental parties.

(b) At the Administrator's discretion, such recorded instruments need not be provided for stormwater management facilities, including BMPs and other techniques specified to manage the quality and quantity of runoff, designed to treat stormwater runoff primarily from an individual residential lot, provided future maintenance of such facilities will be addressed through an enforceable mechanism acceptable to the Administrator. Facilities that are exempted from subsection (a) of this section pursuant to this subsection shall not be subject to the requirement for an inspection conducted by the Administrator.

(c) If a recorded instrument is not required pursuant to subsection (b) of this section, the Administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other methods targeted at promoting the long-term maintenance of such facilities. Facilities that are exempted pursuant to subsection (b) of this section must comply with any requirements as required by the Administrator as a part of this overall strategy.

(Code 2004, § 50-410; Code 2015, § 14-331; Ord. No. 2014-116-89, § 3, 5-27-2014; Ord. No. 2024-176, § 3, 7-22-2024)

Sec. 14-332. Monitoring and inspections.

(a) The Administrator is authorized to inspect any land-disturbing activity in the City for:

(1) Compliance with the approved erosion and sediment control plan;

(2) Compliance with the approved stormwater management plan or the agreement in lieu of a stormwater management plan;

(3) Development, updating, and implementation of a pollution prevention plan; and

(4) Development and implementation of any additional control measures necessary to address a TMDL.

The permittee or operator of a land-disturbing activity shall permit the Administrator to conduct such an inspection at reasonable times and under reasonable circumstances.

(b) The Administrator is authorized to enter any establishment or upon any property, public or private, in order to conduct surveys or investigations necessary to ensure that stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities, to enforce this article or, when permitted by appropriate legal arrangement, including, but not limited to, a performance bond with surety, cash escrow, or letter of credit, for the purpose of taking appropriate corrective actions required by permit when a permittee, after proper notice, has failed to take acceptable action within the time specified. The operator of any such property shall permit the Administrator to conduct such an inspection, survey or investigation at reasonable times and under reasonable circumstances. The terms of the legal documentation referenced above will govern the terms of the Administrator's actions with regard to taking corrective actions.

(c) The Administrator is authorized to require, and a permittee shall furnish, when requested, any application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of the discharge on the quality of State waters, or such other information as may be necessary to accomplish the purposes of this chapter.

(d) The Administrator is authorized to conduct post-construction inspections of stormwater management facilities pursuant to the City's approved inspection program. The Administrator shall conduct an inspection of each facility, at a minimum, at least once every five years, except as may otherwise be provided for in Section 14-331.

(Code 2004, § 50-411; Code 2015, § 14-332; Ord. No. 2014-116-89, § 3, 5-27-2014; Ord. No. 2024-176, § 3, 7-22-2024)

Sec. 14-333. Hearings.

To the extent a hearing is required by law, hearings held under this section shall be conducted by the Administrator in accordance with such procedures established by the Administrator by regulation pursuant to Section 28-26, which shall include, at a minimum, an opportunity for the applicant or permittee to be heard on pertinent matters and based upon procedures required by State law, as applicable.

(Code 2004, § 50-412; Code 2015, § 14-333; Ord. No. 2014-116-89, § 3, 5-27-2014; Ord. No. 2024-176, § 3, 7-22-2024)

Sec. 14-334. Appeals.

Any permit applicant, permittee or any other person subject to the requirements of this article, who is aggrieved by the issuance or non-issuance of a permit or an enforcement decision by the Administrator, may appeal the decision to the Richmond Circuit Court, if allowed by State law.

(Code 2004, § 50-413; Code 2015, § 14-334; Ord. No. 2014-116-89, § 3, 5-27-2014)

Sec. 14-335. Enforcement.

(a) If the Administrator determines that there is a failure to comply with the permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee, operator or other person responsible for carrying out the permit conditions by any of the following: verbal warnings and inspection reports, notices of corrective action, special orders, and notices to comply. Written notices shall be served by registered or certified mail to the address specified in the permit application, or by delivery at the site of the development activities to the agent or employee supervising such activities.

(1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. If the person served with such notice fails to comply or ensure that a responsible party complies within the time specified, the Administrator is authorized to issue a stop work order or to revoke the permit. The Administrator is also authorized to pursue additional enforcement measures listed below.

(2) If the Administrator issues a stop work order, the person to which such order has been issued shall cease or ensure that all land-disturbing activities cease until the Administrator confirms in writing that the permit violation has ceased, and/or that an approved plan and required permits have been obtained, or that specified corrective measures have been completed.

(3) Stop work orders shall be issued in accordance with City-issued procedures, and shall become effective upon service on the permittee or other appropriate person by certified mail, return receipt requested, sent to such person's address specified in the land records of the locality, or by personal delivery by an agent of the Administrator.

(4) The Administrator is authorized if, in the Administrator's discretion, any violation is adversely affecting, or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within, the watersheds of the Commonwealth, or otherwise is causing a substantial adverse impact to water quality, to issue the permittee or other appropriate person, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site. The Administrator shall provide an opportunity for a hearing, after reasonable notice, as to the time and place thereof, to a permittee, in order to determine whether to affirm, modify, amend, or cancel such emergency order.

(b) In addition to any other remedy provided by this chapter, if the Administrator determines that there is a failure to comply with the provisions of this chapter, the Administrator may initiate such informal or formal administrative enforcement procedures in a manner authorized by this chapter and any applicable City requirements. Such measures include, but are not limited to:

(1) With the consent of any person subject to a Richmond Erosion and Stormwater Management Program Permit who has violated the Richmond Erosion and Stormwater Management Program Permit; who has failed to comply with any decision of the Administrator or City; or who has violated the terms of any order issued by the Administrator or the City, a consent special order issued pursuant to Code of Virginia, § 62.1-44.15:48. A consent special order shall order the person to comply with the terms of the order, as well as any provision of this article or decision by the Administrator or the City. Such special orders shall be issued in accordance with City-issued requirements, including requirements for public notice and comment, unless issued as an emergency order consistent with subsection (a)(4) of this section. Special orders may include a civil charge for violations of the requirements listed above, instead of civil penalties that could be imposed pursuant to this section. The provisions of this subsection notwithstanding, the City, in its discretion, may proceed directly with other enforcement measures authorized by this article.

(2) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, or any permit condition issued by the Administrator or any provisions of this chapter may be compelled in a proceeding instituted by the City in any appropriate court to obey such rule, regulation, ordinance, order, or permit condition and to comply therewith, by injunction, mandamus or other appropriate remedy.

(3) Any person who violates any provision of this chapter or who fails, neglects or refuses to comply with any order of the Administrator or City, shall be subject to a civil penalty not to exceed $32,500.00 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. The City may issue a summons for the collection of the civil penalty and the action may be prosecuted in the appropriate court. Violations for which a penalty may be imposed shall include, but not be limited to:

a. No State permit registration;

b. No stormwater pollution prevention plan;

c. Incomplete stormwater pollution prevention plan;

d. Stormwater pollution prevention plan not available for review;

e. No approved erosion and sediment control plan;

f. Failure to install best management practices or erosion and sediment controls;

g. Best management practices or erosion and sediment controls improperly installed or maintained;

h. Operational deficiencies;

i. Failure to conduct required inspections;

j. Incomplete, improper, or missed inspections; and

k. Discharges not in compliance with the requirements of the general permit.

(4) Notwithstanding any other civil or equitable remedy provided by this section or otherwise by law, any person who willfully or negligently violates any provision of this article, any order of the Administrator, any condition of a permit, or any order of a court pertaining to this article, shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than $2,500.00 nor more than $32,500.00, or both.

(Code 2004, § 50-414; Code 2015, § 14-335; Ord. No. 2014-116-89, § 3, 5-27-2014; Ord. No. 2018-025, § 1, 2-26-2018; Ord. No. 2024-176, § 3, 7-22-2024)

Sec. 14-336. Fees.

Fees to cover costs associated with implementation of the Richmond Erosion and Stormwater Management Program in this article shall be imposed in accordance with this section.

(1) The fees provided in this subsection apply:

a. To any operator seeking coverage under the July 1, 2014, General Permit for Discharges of Stormwater from Construction Activities; or

b. On or after July 1, 2014, to any operator seeking coverage under a General Permit for Discharges of Stormwater from Construction Activities, a State or Federal agency that does not file annual standards and specifications or an individual permit issued by the Board.

c. The fees described in this subsection (1) shall be as follows:

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| Fee to cover cost associated with VESMP implementation. Fee for any operator seeking coverage under a RESMP Authority permit | |
| Chesapeake Bay Preservation Act Land-Disturbing Activity (Not subject to general permit coverage; sites within the City with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre) ($0.00 paid to the Virginia Department of Environmental Quality) | $290.00 |
| General/Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance equal to or greater than one acre and less than five acres) ($756.00 paid to the Virginia Department of Environmental Quality, based upon 28 percent of total fee paid) | $2,700.00 |
| Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than five acres and less than ten acres) ($952.00 paid to the Virginia Department of Environmental Quality, based upon 28 percent of total fee paid) | $3,400.00 |
| General/Stormwater Management - Small Construction Activity/Land Clearing (For single-family detached residential structures within or outside of a common plan of development of sale with land disturbance acreage less than five acres) ($0.00 paid to the Virginia Department of Environmental Quality) | $209.00 |
| General/Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than one acre, except for single-family detached residential structures) ($81.00 paid to the Virginia Department of Environmental Quality based upon 28 percent of total fee paid) | $290.00 |
| General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than ten acres and less than 50 acres) ($1,260.00 paid to the Virginia Department of Environmental Quality, based upon 28 percent of total fee paid) | $4,500.00 |
| General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres) ($1,708.00 paid to the Virginia Department of Environmental Quality, based upon 28 percent of total fee paid) | $6,100.00 |
| General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres) ($2,688.00 paid to the Virginia Department of Environmental Quality, based upon 28 percent of total fee paid) | $9,600.00 |

d. An applicant shall pay the fees provided in this subsection (1) for initial issuance of general permit coverage and for a Richmond Erosion and Stormwater Management Program Permit. No more than 50 percent of the total fee to be paid by the applicant shall be due at the time that a stormwater management plan or an initial stormwater management plan is submitted to the City for review. The applicant shall pay the balance of the fee prior to the issuance of coverage under the general permit. When a site or sites are purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees in accordance with the disturbed acreage of their site or sites as set forth in this subsection.

(2) A permittee who wishes to modify or transfer registration under the general permit shall pay the fees provided in this subsection under the terms included therein.

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| Fee for modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities issued by the State Water Control Board. If the State permit modifications result in changes to stormwater management plans that require additional review by the City, such reviews shall be subject to the fees set out in this section. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the State permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial State permit fee paid and the State permit fee that would have applied for the total disturbed acreage as stated above for initial coverage | |
| General/Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than one acre) | $20.00 |
| General/Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than one acre and less than five acres) | $200.00 |
| General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than five acres and less than ten acres) | $250.00 |
| General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than ten acres and less than 50 acres) | $300.00 |
| General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres) | $450.00 |
| General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres) | $700.00 |
| Individual Permit for Discharges of Stormwater from Construction Activities | $5,000.00 |

(3) Each permittee shall pay the fees provided in this subsection for annual permit maintenance, including fees imposed on expired permits that have been administratively continued. With respect to the general permit, the fees shall apply until the permit coverage is terminated. The permittee shall pay the applicable annual maintenance fees to the City by the anniversary date of the general permit coverage. No permit will be reissued or automatically continued without payment of the required fee.

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| Annual Fee For Permit Maintenance | |
| Chesapeake Bay Preservation Act Land-Disturbing Activity (Not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Preservation Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre) | $50.00 |
| General/Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than one acre) | $50.00 |
| General/Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance equal to or greater than one acre and less than five acres) | $400.00 |
| General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than five acres and less than ten acres) | $500.00 |
| General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than ten acres and less than 50 acres) | $650.00 |
| General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres) | $900.00 |
| General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres) | $1,400.00 |

(4) Permit and permit coverage maintenance fees provided in this section may apply to each permittee with general permit coverage. No general permit application fees will be assessed to:

a. Permittees who request minor modifications, as defined in this article, to general permit coverage. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the Administrator shall not be exempt.

b. Permittees whose general permit coverage requirements are modified or amended at the initiative of the Department of Environmental Quality, excluding errors in the registration statement identified by the Administrator or errors related to the acreage of the site.

c. All incomplete payments will be deemed as nonpayments, and the Administrator shall notify the applicant of any incomplete payments. Interest may be charged for late payments at the rate and in the manner set forth in this Code. A ten percent late payment fee shall be charged to any delinquent account (over 90 days past due). The City shall be entitled to all remedies available under the Code of Virginia or other applicable law in collecting any past due amount.

(5) Each applicant whose application for a permit is withdrawn or rejected and each permittee whose permit is withdrawn after issuance shall pay an administrative fee and, if a plans review has been undertaken, a plans review fee. The administrative fee and plans review fee shall each be five percent of the initial permit fee or $25.00, whichever is greater.

(6) Each permittee whose plans are revised after the permit is issued shall pay a revised plans fee often percent of the initial permit fee or $50.00, whichever is greater.

(7) Any excess fee greater than $2.00 shall be returned to the permit holder upon written request.

(Code 2004, § 50-415; Code 2015, § 14-336; Ord. No. 2014-116-89, §§ 3, 4, 5-27-2014; Ord. No. 2015-49-59, § 1, 3-23-2015; Ord. No. 2018-085, §§ 1, 2, 5-14-2018; Ord. No. 2024-176, § 3, 7-22-2024)

Sec. 14-337. Performance bond.

(a) Prior to issuance of any permit, the applicant shall be required to submit to the City a reasonable performance bond with surety, a cash escrow, a letter of credit, or any combination thereof, or such other legal arrangement acceptable to the City, to ensure, if the permit is issued to the applicant, that the City could take measures at the permittee's expense if the permittee fails, after proper notice, and within the time specified by the Administrator, to initiate or maintain appropriate actions which are required of the applicant by the permit conditions, by materials submitted in support of the permit application, or otherwise by this article. If the City takes such action upon such failure by the permittee, the City also may collect from the permittee the difference between the actual, reasonable cost of the City's action and the amount of security if the actual, reasonable cost of the City's action exceeds the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or un-obligated portion thereof, shall be refunded to the applicant or terminated.

(b) For the purpose of establishing the portion of the bond or other security associated with erosion and sediment control obligations, the amount shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on the unit price for new public or private sector construction in the City and a reasonable allowance for estimated administrative costs and inflation. The allowance for estimated administrative costs and inflation shall not exceed 25 percent of the cost of the conservation action.

(c) Within 60 days of adequate stabilization of erosion and sediment control measures, but only when at least 80 percent of the vegetation on the project or a project section is established as determined by the Administrator in any project or section of a project, the bond, cash escrow or letter of credit, or the unexpended or un-obligated portion thereof, relating to erosion and sediment control obligations for the project or project sector either shall be refunded to the permittee or terminated.

(Code 2004, § 50-416; Code 2015, § 14-337; Ord. No. 2014-116-89, § 3, 5-27-2014)

Sec. 14-338. Notice of termination.

(a) The Administrator shall recommend that the Department of Environmental Quality terminate coverage under the general permit within 60 days of receiving a complete notice of termination from the operator of the construction activity.

(b) Coverage under the general permit shall be deemed to be terminated 90 days after the receipt by the Administrator of a complete notice of termination from the operator of the construction activity.

(c) If the Administrator receives a notice of termination of a general permit that he or she determines to be incomplete, the Administrator shall, within a reasonable time, inform the operator of such incompleteness and provide the operator with a detailed list itemizing the elements of information that are missing from the notice of termination of the construction activity.

(Code 2015, § 14-338; Ord. No. 2018-150, § 1, 5-29-2018)

1. Cross reference(s)—Department of Planning and Development Services, § 2-455 et seq.; buildings and building regulations, Ch. 5; environment, Ch. 11; subdivision of land, Ch. 25; utilities, Ch. 28; zoning, Ch. 30.

   State law reference(s)—Flood Damage Reduction Act, Code of Virginia, § 10.1-600 et seq. [↑](#footnote-ref-1)
2. State law reference(s)—Flood protection and dam safety, Code of Virginia, § 10.1-600 et seq. [↑](#footnote-ref-2)
3. Editor's note(s)—Ord. No. 2024-176, § 1, adopted July 22, 2024, repealed art. III, §§ 14-147—14-155, which pertained to erosion and sediment control and derived from Code 2004, § 50-191—50-199; Ord. No. 2008-106-85, § 3, adopted May 12, 2008; Ord. No. 2014-116-89, §§ 1, 4, adopted May 27, 2014; Code 2015, § 14-147—14-155; Ord. No. 2019-066, § 1, adopted May 13, 2019. [↑](#footnote-ref-3)
4. Cross reference(s)—Building permits within Chesapeake Bay preservation areas, § 5-13; maintenance of sewage treatments systems in Chesapeake Bay preservation areas, § 15-130.

   State law reference(s)—Chesapeake Bay Preservation Act, Code of Virginia, § 62.1-44.15:67 et seq.; local ordinances, Code of Virginia, § 62.1-44.15:74. [↑](#footnote-ref-4)
5. Editor's note(s)—Ord. No. 2024-176, § 3, adopted July 22, 2024, changed the title of art. V from Richmond Stormwater Management Program to read as herein set out.

   State law reference(s)—Stormwater Management Act, Code of Virginia, § 62.1-44.15:24 et seq. [↑](#footnote-ref-5)