

**Code of Ordinances, City of Fairfax, Virginia  
Abstracted July 2018**

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Subdivision Ordinance

<http://www.fairfaxva.gov/home/showdocument?id=7893>

Zoning Ordinance

<http://www.fairfaxva.gov/home/showdocument?id=7891>

**Chapter 10 BUILDINGS AND BUILDING REGULATIONS**

**ARTICLE XI. BLIGHTED PROPERTIES**

**Sec. 10-701. Definitions.**

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:

*Excessive land coverage* means land development that overly restricts access to light and air, or has extensive impervious surface that creates stormwater runoff that regularly and detrimentally impacts adjacent properties, or that does not meet zoning requirements for open space and tree canopy.

(Code 1978, § 5-148)

Cross reference— Definitions generally, § 1-2.

**Chapter 38 ENVIRONMENT**

**ARTICLE III. PUBLIC HEALTH OR SAFETY MENACES**

**Sec. 38-31. Definitions.**

The following definitions shall apply to this article:

*Yard waste.* All materials derived from trees, shrubbery, leaves, fallen branches, lawn trimmings, and other woody waste.

(Ord. No. 2008-19, 9-23-2008; Ord. No. 2013-15, 6-25-2013; Ord. No. 2014-04, 3-25-2014)

**Chapter 54 OFFENSES AND MISCELLANEOUS PROVISIONS**

**ARTICLE III. OFFENSES AGAINST PROPERTY**

**DIVISION 1. GENERALLY**

**Sec. 54-67. Injuring properties or monuments.**

It shall be unlawful for any person to unlawfully destroy, deface, damage or remove without the intent to steal any property, real or personal, not his own, or break down, destroy, deface, damage, or remove without the intent to steal, any monument erected for the purpose of marking the site of any engagement fought during the War between the States, or for the purpose of designating the boundaries of the city, or any tract of land, or any tree marked for that purpose.

(Code 1978, § 14-22.2)

State Law reference— Similar provisions, Code of Virginia, § 18.2-137.

**Sec. 54-69. Destruction of trees, shrubs, etc.**

(a) It shall be unlawful for any person to pick, pull, pull up, tear, tear up, dig, dig up, cut, break, injure, burn or destroy, in whole or in part, any tree, shrub, vine, plant, flower or turf found, growing or being upon the land of another, or upon any land reserved, set aside or maintained by the commonwealth as a public park, or as a refuge or sanctuary for wild animals, birds or fish, or upon any land reserved, set aside or maintained as a public park, by a park authority created under the provisions of Code of Virginia, § 15.2-5702, without having previously obtained the permission in writing of such owner or his agent or of the superintendent or custodian of such park, refuge or sanctuary so to do, unless such actions are done under the personal direction of such owner, his agent, tenant or lessee or superintendent or custodian of such park, refuge or sanctuary.

(b) Any person violating this section shall be guilty of a class 3 misdemeanor; provided, however, that the approval of the owner, his agent, tenant or lessee, or the superintendent or custodian of such park or sanctuary afterwards given in writing or in open court shall be a bar to further prosecution or suit.

(Code 1978, § 14-22.1)

Cross reference— Vegetation, ch. 106.

State Law reference— Similar provisions, Code of Virginia, § 18.2-140.

**Chapter 86. SUBDIVISION ORDINANCE**

**Article 2. DESIGN AND IMPROVEMENTS**

**2.3 Pedestrian Facilities**

**2.3.4 Sidewalks**

**B. Placement**

1. Where sidewalks are required, sidewalks shall be provided according to one of the following placement alternatives as determined by the zoning administrator:

(a) Sidewalks shall be placed against the back of curb (urban street frontage); or

(b) Sidewalks shall be placed such that a minimum strip of green space (3 to 5 feet wide) is maintained between the back of curb and the inside edge of the sidewalk and have a minimum paved width of five feet for this placement (sub-urban street frontage); a minimum of three feet of green space shall be maintained adjacent to all tree pits.

(10-1-16)

**2.6 Drainage**

**2.6.4 Floodplain and RPA**

The final plat of every subdivision shall show any floodplain and resource protection area (RPA), and any proposed development shall conform to the floodplain and Chesapeake Bay protection requirements of chapter 110.

(10-1-16)

**2.10 Responsibility for Installation Costs**

**Required improvements**

Required site-related improvements shall include all infrastructure and public improvements needed to serve the development, including streets and alleys, including curb, gutter, street signs, traffic control devices, street lighting and any additional right-of-way necessary to the width required by the city and for streets adjoining the site; pedestrian and bicycle facilities; easements; water supply, including water mains and distribution lines; sanitary sewer lines; other utilities; storm drainage facilities, including

storm sewer lines and drainage structures, and curb returns; retaining walls and structures necessary to ensure stability of critical slopes; tree canopy, sodding and planting; surveys and monuments; site-related improvements for vehicular ingress and egress, for public access streets; and any other improvements to be dedicated for public use.

(10-1-16)

### **Article 3. ADMINISTRATION**

#### **3.3. Major Subdivisions**

##### **3.3.2 Preliminary plats**

###### **A. Application requirements**

1. All applications for preliminary plat review shall be submitted in accordance with §3.1.6, Application requirements. Each preliminary plat shall include plans for all property in the contiguous ownership or control of the applicant.

2. The application shall enumerate any requested variation(s) or exception(s) from the provisions of this chapter, and shall state with specificity the justification for each.

3. Each preliminary plat shall include the delineation of:

(a) Resource protection area and resource management area boundaries, if any, including notations of the following specific state requirements:

(1) To retain an undisturbed and vegetated 100-foot wide buffer area, as specified in subdivision 3 of 9VAC25-830-140;

(2) The permissibility of only water dependent facilities or redevelopment in resource protection areas, including the 100-foot wide buffer area;

(3) The delineation of the buildable areas that are allowed on each lot, based on the performance criteria specified in Part IV (9VAC25-830-120 et seq.); and  
(10-1-16)

##### **3.3.3 Final plats**

###### **A. Application requirements**

1. Final plats shall be submitted in accordance with §3.1.6, Application requirements.

2. The final subdivision plat submitted for approval and subsequent recording shall conform to the approved preliminary plat. Any departure from the approved preliminary plan shall be noted by a separate statement, and presented to the zoning administrator with the final plat.

3. Final plats shall be prepared by a certified professional engineer or land surveyor, who shall endorse upon the final plat a certificate signed by him setting forth the source of the title of the owner of the land subdivided, and the place of record of the last instrument in the chain of title. When the plat is of land acquired from more than one source of title, the outlines of the several tracts shall be indicated upon such plat.

4. Engineered construction plans shall be submitted for the required improvements.

5. Each final plat shall include the delineation of:

(a) Resource protection area and resource management area boundaries, if any, including notations of the following specific state requirements:

(1) To retain an undisturbed and vegetated 100-foot wide buffer area, as specified in subdivision 3 of 9VAC25-830-140;

(2) The permissibility of only water dependent facilities or redevelopment in resource protection areas, including the 100-foot wide buffer area;

(3) The delineation of the buildable areas that are allowed on each lot, based on the performance criteria specified in Part IV (9VAC25-830-120 et seq.); and  
(10-1-16)

### **DEFINITIONS**

**EROSION IMPACT AREA:** An area of land not associated with current land disturbing activity but 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.

**LAND DISTURBING ACTIVITY:** Any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the state, including, but not limited to, clearing, grading, excavating, transporting, and filling of land, except that the term shall not include: (1) Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work; (2) Individual service connections; (3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk provided the land disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced; (4) Septic tank lines or drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system; (5) Surface or deep mining; (6) Exploration or drilling for oil and gas including the well site, roads, feeder lines and off-site disposal areas; (7) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; 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, § 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); (8) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company; (9) Agricultural engineering operations including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (Code of Virginia, § 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; (10) Disturbed land areas of less than 10,000 square feet in size; however, the governing body may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply; (11) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles; (12) Shore erosion control projects on tidal waters when the projects are approved by local wetlands boards, the state marine resources commission or the United States Army Corps of Engineers; and (13) Emergency work to protect life, limb or property, and emergency repairs; however, if the land disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan-approving authority.

**OWNER:** The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

## **Chapter 94 TELECOMMUNICATIONS**

### **ARTICLE III. CABLE COMMUNICATIONS**

#### **DIVISION 7. SYSTEM OPERATIONS.**

##### **Sec. 94-93 Street occupancy; construction standards and procedures.**

...

(i) A grantee shall have the authority to trim trees and shrubs on public property at its own expense as may be necessary to protect its wires and facilities, subject to the regulation, supervision and/or direction of the city or other local government authority.

...

## **Chapter 102 UTILITIES**

### **ARTICLE III. WATER**

#### **DIVISION 3. WATER SUPPLY EMERGENCY**

Sec. 102-101. - Declaration of water shortage emergency.

(a) When the city council finds, based upon the recommendation of the city manager and in consultation with the director of utilities, that the city water supply is limited and that water conservation actions are necessary to conserve, extend or replenish the city water supply to protect the health, safety or welfare, the council may, by ordinance, declare that there exists a water shortage emergency. The council may authorize the city manager to implement, in whole or in part, Plan A-1, Plan A-2 or Plan A-3 as defined below:

(1) Plan A-1. As a goal, users of city water should voluntarily limit water consumption to 75 gallons per person per day. All water users shall inspect all plumbing and repair all leaks as soon as practicable after notification of the water shortage emergency. Use of water for the following purposes is prohibited:

a. Watering or irrigation of shrubbery, trees, lawns, grass, plants or other vegetation, except from a container not exceeding three gallons in capacity. This prohibition shall not apply to plant nurseries, golf course greens, and commercial agricultural activities;

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...

...

(Code 1978, § 24-46)

## **Chapter 110 ZONING**

### **Article III. ZONING DISTRICTS AND REGULATIONS**

#### **3.4 Use Regulations**

##### **3.4.1 Use Interpretation**

E. Public, civic and institutional use groups

2. Parks and open areas

Uses focusing on natural areas consisting mostly of open vegetation, passive or active outdoor recreation areas, or community gardens, and having few structures. Parks and open areas shall include the following: golf courses; clubhouses and grounds; swimming pools, public and community; tot lots and playgrounds; mini-parks; plazas; squares; greens; neighborhood parks; botanical gardens; nature preserves and recreation trails; or any similar use.

(10-1-16)

##### **3.5 Specific Use Standards**

###### **3.5.2 Public, civic and institutional use standards**

F. Nursery schools

2. Screening requirements

Privacy screening at least six feet tall shall be provided along play areas or parking lots abutting a residential lot. Such screening may be vegetative if it meets the height requirement. Play area may be required to be fenced or walled for the safety of

the children attending. These requirements shall not be construed to permit fences or walls, which may be prohibited by other sections of this chapter.

- H. Schools, elementary, middle or high
  - 2. Screening requirements

Privacy screening at least six feet tall may be required along play areas or parking lots abutting a residential lot. Such screening may be vegetative if it meets the height requirement. Play area may be required to be fenced or walled for the safety of the children attending. These requirements shall not be construed to permit fences or walls, which may be prohibited by other sections of this chapter.  
(10-1-16)

### **3.5 Specific Use Standards**

#### **3.5.2 Public, civic and institutional use standards**

- J. Telecommunication facilities
  - 9. Co-location

(b) The following order of preference in siting wireless communications antennas and towers shall apply:

(3) Using stealth designs involving mounting antennas within existing buildings or structures in the form of bell towers, clock towers, or other architectural modification of buildings, or by mounting antennas on artificial trees; and  
(10-1-16)

### **3.5 Specific Use Standards**

#### **3.5.3 Commercial use standards**

- D. Bed and breakfasts

Bed and breakfasts shall comply with the following standards:

- 4. Off-street parking

(b) The parking lot shall be screened from residential properties adjacent to the parcel or parcels upon which the bed and breakfast is located by an opaque wooden, stone, brick or vegetative screen that meets or exceeds the requirements of §4.5.5 for a transitional yard TY1 and approved by the zoning administrator.  
(10-1-16)

### **3.5 Specific Use Standards**

#### **3.5.5 Accessory use standards**

- B. Accessory structures in RL, RM and RH districts
  - 1. Applicability

Accessory structures shall be permitted in the RL, RM and RH districts, except as qualified below, but only in connection with, incidental to and on the same lot with, a single-family dwelling.

- (a) Allowed accessory structures

Accessory structures include, but are not limited to, the following structures:

(1) Play structures not to exceed 100 square feet in area, measured around the perimeter of such structure. For the purposes of this chapter, swing sets and tree houses shall not be subject to setback/minimum yard requirements.  
(10-1-16)

### **3.5 Specific Use Standards**

#### **3.5.6 Temporary use standards**

- C. General standards

7. The use shall not have a substantial adverse impact on the natural environment, including trees, ground cover and vegetation.

(10-1-16)

### **3.7. OVERLAY DISTRICTS**

#### **3.7.2 Historic overlay district**

- B. Old Town Fairfax Historic Overlay
  - 7. Street trees

The street tree requirements of 4.5.6.B shall not apply in the Old Town Fairfax Historic Overlay District.

### **3.8 PLANNED DEVELOPMENT DISTRICTS**

#### **3.8.2 General provisions**

- C. Master development plan

The development proposed in the master development plan shall be in substantial conformance with the comprehensive plan. A master development plan shall be filed by the applicant and approved by the city council as part of the approval of each planned development rezoning. After a master development plan has been submitted by an applicant and approved by the city council, development of the property that is the subject of that plan shall be in substantial conformance with the approved master development plan. In the event the owner of a property that has been approved for a planned development wishes to make any changes to the master development plan for that property, said owner may request that the city council approve an amendment to the master development plan. In the event the owner of a property that has been approved for a planned development wishes to abandon that planned development, said owner may apply for a rezoning to the same or a different zoning district. At a minimum, such required plan shall set forth the following:

2. A plan depicting the proposed development that includes, but is not limited to, the following:

- (a) An existing conditions plan, proposed layout plan with applicable dimensions, grading plan, conceptual utilities plan, tree survey, landscaping plan with tree coverage and impervious coverage, architectural elevations showing exterior building materials, site sections showing building heights, and recreation and open space plan;
- (b) A tabulation of land

(10-1-16)

### **3.8. PLANNED DEVELOPMENT DISTRICTS**

#### **3.8.7 Recreation and Open Space**

- A. General

1. Recreation and open space is an integral part of planned developments (residential, commercial, industrial and mixed use).

2. Where recreation and open space is included in a planned development in addition to the individual lots, such lands must be in one or more parcels dedicated to or otherwise protected as permanent (active or passive) recreation and open space.

3. Any city-accepted parks, schools and other public land dedication made as part of a planned development will be counted towards complying with the requirements of 3.8.7.

- B. Configuration and use

1. The location, size, character and shape of required recreation and open space in a planned development district must be appropriate for its intended use. Recreation and open space land must be useable for recreational purposes.

2. No more than 50 percent of any area otherwise containing development challenges, such as the presence of the 100-year floodplain, open water, jurisdictional wetlands, a slope greater than or equal to 25 percent grade or geological hazards, may be considered to comply with the recreation and open space requirement.



3. The minimum width for any required recreation and open space shall be 50 feet. The zoning administrator may grant exceptions for items such as trail easements and midblock crossings, when their purpose meets the intent of 3.8.7.

4. At least 60 percent of the required recreation and open space shall be contiguous. For the purposes of 3.8.7, the term contiguous shall include any recreation and open space bisected by a local street, provided that:

(a) A pedestrian crosswalk or underpass is constructed to provide safe and adequate access to the recreation and open space from both sides of the street;

(b) The right-of-way area is not included in the minimum recreation and open space calculation;

(c) The recreation and open space shall adjoin any neighboring recreation and open spaces, protected lands, and nonprotected natural lands that would be candidates for inclusion as part of future recreation and open spaces or protected lands;

(d) Adopted city plans shall be taken into consideration when evaluating land use and development applications;

(e) Where appropriate, the required recreation and open space shall be directly accessible to the largest practicable number of lots within the planned development. Non-adjoining lots shall be provided with safe, convenient access to the recreation and open space (i.e. mid-block connections in logical locations);

(f) Access to the recreation and open space shall be provided either by an abutting street or easement. Any such easement shall be at least 30 feet wide for its entire length;

(g) Trails may be developed in recreation and open space; and

(h) At least 20 percent of the recreation and open space shall be improved in accordance with the options set forth below. The shape, topography and subsoil shall be appropriate to the improvements proposed.

#### RECREATION AND OPEN SPACE OPTIONS

**TOT LOT & PLAYGROUNDS (PRIVATE ONLY)** Playgrounds provide play areas for children as well as open shelter and benches. Playgrounds may be built within squares, greens, mini-parks and neighborhood parks or may stand alone within a residential block. Playgrounds shall be designed with commercial grade play equipment and may include picnic units and shelters. Minimum requirements include two park benches and one trash receptacle and one trash recycling receptacle. Must have a shock-absorbing surface with a maximum two percent slope. Playgrounds must meet all federal, state and local regulations and be compliant with the Americans with Disabilities Act.

**MINI-PARK (PRIVATE ONLY)** Mini-Parks provide active recreational facilities for the use by the residents of the immediate neighborhood within the development. Size is from 2,500 sq. ft. to one acre. May include: tennis courts, basketball courts, playgrounds and seating accommodations. Each mini-park shall be centrally located and easily accessible so that it can be conveniently and safely reached and used by those persons in the surrounding neighborhood it is designed to serve. Rear facing lots are allowed. Mini-parks shall be attractively landscaped and be provided with sufficient natural or man-made screening or transitional yard areas to minimize any negative impacts upon adjacent residences.

**PLAZA** Plazas are for passive recreation use adjacent to a civic or commercial building. Plazas are paved in brick or another type of impervious surface. Plazas shall be level, stepped or gently sloping. At no time shall a plaza's horizontal length or width be greater than three times the height of surrounding buildings. Size may range from 2,000 to 30,000 sq. ft.

**SQUARES** Squares are formal areas for passive recreation use bounded by roads or front facing lots. Squares shall be bounded by roads on a minimum of three sides or 75 percent of their perimeter and may be bounded by front facing lots on one side or 25 percent of their perimeter. No rear facing lots allowed adjacent to a square. Trees



plantings are encouraged parallel to the street. Geometrical tree planting layouts for internal plantings are encouraged. Size may range from 500 sq. ft. to one acre.

**GREEN** Greens are informal areas for passive use bounded by roads or front facing lots. A green shall be bounded by roads on a minimum of three sides or 75 percent of their perimeter and may be bounded by front facing lots on one side or 25 percent of their perimeter. No rear facing lots are allowed adjacent to a Green. Tree plantings can be informal and the topography irregular. Greens may be used to preserve specimen trees. Size may range from 500 sq. ft. to one acre.

**CLUBHOUSE/POOL AMENITY AREA** Clubhouse/pool areas can be found in a neighborhood park, mini-park or alone as an amenity area for the residents of a developed community. Clubhouse/pool areas can include: swimming pools, group activity room, gazebos, outdoor dining and service areas, and exercise stations. Pools should be a minimum size of 1,000 sq. ft. Clubhouses and swimming pools must meet all applicable building and health codes for the city and the Commonwealth of Virginia.

**NEIGHBORHOOD PARK** Neighborhood parks are designed for active or passive recreation use. Size may range from one to five acres, however park size can exceed five acres if the neighborhood park creates an open space that services an entire neighborhood or a group of neighborhoods; or incorporates physical features that are an asset to the community. Neighborhood parks shall be accessible via residential streets. Front facing lots are encouraged around the perimeter. Neighborhood parks shall include benches and walking paths. Neighborhood Parks may include but are not limited to: tennis courts, racquetball courts, basketball courts, volleyball courts, ball fields, swings, slides, playgrounds, dog parks, community gardens, restrooms, picnic units, shelters and parking lots

**GREENWAY** Greenways typically follow natural or constructed features such as streams or roads and are designed to incorporate natural settings such as creeks and significant stands of trees within neighborhoods, and are used for transportation, recreation, and environmental protection. Greenways differ from parks; plazas and squares in that their detailing is natural (i.e. informally planted) except along rights-of-way, and may contain irregular topography. Design of the greenway should incorporate conservation of existing mature tree canopy and landscape, protection of existing natural drainage ways and creeks. Improvements shall include paved walks/trails and benches, and trash and trash recycling receptacles.

C. Permitted uses of recreation and open space

Uses of recreation and open space may include the following:

1. Conservation areas for natural, archeological or historical resources;
2. Meadows, woodlands, wetlands, wildlife corridors, game preserves, or similar conservation-oriented areas;
3. Pedestrian or multipurpose trails;
4. Passive recreation areas;
5. Active recreation areas, provided that impervious surfaces are limited to no more than 50 percent of the total recreation and open space;
6. Above-ground utility rights-of-way, provided the area does not exceed 50 percent of the required recreation and open space;
7. Agriculture uses, provided that all applicable best management practices are used to minimize environmental impacts;
8. Landscaped stormwater management facilities;
9. Easements for drainage, access, and underground utility lines; and
10. Other conservation-oriented uses compatible with the purposes of this chapter.

D. Prohibited uses of recreation and open space

Recreation and open space shall not include roads (except for road crossings as expressly provided above) and parking lots.

## E. Ownership and management of recreation and open space

### 1. Ownership

Recreation and open space shall be accepted and owned by one of the following entities:

#### (a) City of Fairfax

For those areas that will be owned by the city and available for use by the public, the responsibility for maintaining the recreation and open space, and any facilities in those areas shall be borne by the city, subject to city council approval.

#### (b) Land conservancy or land trust

For those areas subject to a land conservancy or land trust, the responsibility for maintaining the recreation and open space and any facilities in those areas shall be borne by a land conservancy or land trust recognized by the laws of the Commonwealth of Virginia.

#### (c) Common interest community association or similar entity

For those areas that will be covered by the covenants of a common interest community association or similar entity, the responsibility for maintaining the recreation and open space, and any facilities in those areas shall be borne by a common interest community association or similar entity in accordance with the requirements of 4.13.

#### (d) Landowner

For those areas not covered by any of the entities described in paragraphs (a), (b), or (c), the responsibility for maintaining the recreation and open space and any facilities in those areas shall be borne by the landowner.

### 2. Management

Applicants shall submit as part of the proposed master development plan and record, upon approval of that master development plan, a plan for the management of recreation and open space and other common facilities that:

(a) Allocates responsibility and guidelines for the maintenance and operation of the recreation and open space, and any facilities located thereon, including provisions for ongoing maintenance and for long-term capital improvements;

(b) Estimates the costs and staffing requirements needed for maintenance and operation of, and insurance for, the recreation and open space and outlines the means by which such funding will be obtained or provided;

(c) Provides that any changes to the plan for the management of recreation and open space and other common facilities be approved by the city council as an amendment to the master development plan; and

(d) Provides for enforcement of the plan for the management of recreation and open space and other common facilities.

### 3. Maintenance

(a) Passive recreation and open space maintenance is limited to removal of litter, removal of dead tree and plant materials and brush, weeding, and mowing.

(b) No specific maintenance is required for agricultural uses.

(c) Active recreation and open space areas shall be accessible to all residents of the development. Maintenance is limited to ensuring that there exist no hazards, nuisances or unhealthy conditions.

## F. Legal instrument for permanent protection

1. All recreation and open space in planned development districts shall be protected in perpetuity by a binding legal instrument that is made a part of the master development plan and is recorded among the land records of Fairfax County. The instrument shall be one of the following:

(a) A permanent conservation easement in favor of:

(1) A land trust or similar conservation-oriented nonprofit organization with legal authority to accept such easements. The organization shall be bona fide and in perpetual existence and the conveyance instruments shall contain an appropriate provision for re-transfer in the event the organization becomes unable to carry out its functions;

(2) A governmental entity with an interest in pursuing goals compatible with the purposes of this chapter. If the entity accepting the easement is not the city, then a third party right of enforcement favoring the city shall be included in the master development plan and in the easement; or

(3) Another person or entity that meets with the approval of the city council.

(b) A permanent restrictive covenant for conservation purposes in favor of a governmental entity.

(c) An equivalent legal tool that provides permanent protection, if approved by the city attorney.

2. The instrument for permanent protection shall include clear restrictions on the use of the recreation and open space. These restrictions shall include all restrictions contained in this chapter, as well as any further restrictions the applicant chooses to place on the use of the recreation and open space as may be approved by the city council when it approves the master development plan.

#### G. Alternative compliance

Upon the request of the applicant in the master development plan, the city council may approve alternatives to the recreation and open space requirements of 3.8 based upon exceptional design or recreational amenities.

(10-1-16)

## **Article IV. SITE DEVELOPMENT STANDARDS**

### **4.2 Off-street Parking and Loading**

#### **4.2.6 Parking lot design**

##### B. Dimensions and access

3. All parking spaces and aisles shall comply with the following minimum requirements:

(a) Parking spaces (90 degrees only) that abut a landscape island may be reduced in length to 16 feet provided that the island is a minimum of four feet in depth and protected by wheel stops or curb. Plant material shall be a minimum of two feet from wheel stops or curb.

(10-1-16)

### **4.4 Pedestrian Facilities**

#### **4.4.4 Sidewalks**

##### B. Placement

1. Where sidewalks are required, sidewalks shall be provided according to one of the following placement alternatives as determined by the zoning administrator:

(b) Sidewalks shall be placed such that a minimum strip of green space (3 to 5 feet wide) is maintained between the back of curb and the inside edge of the sidewalk and have a minimum paved width of five feet for this placement (sub-urban street frontage); a minimum of three feet of green space shall be maintained adjacent to all tree pits.

(10-1-16)

### **4.5 LANDSCAPING**

#### **4.5.1 Purpose**

The purposes of 4.5 are to encourage the planting and proper care of vegetation and trees throughout the city, to replenish tree stock, and to provide for appropriate screening. These actions are intended to contribute to the health, safety and welfare of the city by enhancing pedestrian facilities, decreasing flooding, soil erosion, air pollution and noise, and improving aesthetics in accordance with the comprehensive plan and the requirements of the public facilities manual. The transitional yard requirements and the screening requirements are intended to improve compatibility of uses by providing privacy and enhancing the aesthetic transition between uses.

#### **4.5.2 Applicability**

A. The landscaping regulations of 4.5 apply as set forth in the individual sections of these regulations.

B. Unless specifically exempt, all existing and proposed development for which site plan approval is required (see 6.8) shall meet the provisions of 4.5.

#### **4.5.3 Exemptions**

A. Unless otherwise expressly stated, the landscaping regulations of 4.5 do not apply to the expansion of individual single-family detached, single-family attached or duplexes dwellings.

B. Driving lanes may traverse required landscaping in a perpendicular alignment to provide the necessary ingress and egress to the parking lots.

#### **4.5.4 General**

A. What is to be landscaped

All areas that are not impervious (see 1.5.7) shall be landscaped in accordance with the requirements of 4.5.

B. Landscape plan required

A landscape plan shall be submitted in conjunction with required site plans (see 6.8) in accordance with the requirements of 4.5. A landscape architect or other qualified professional shall prepare all landscape plans.

#### **4.5.5 Transitional yards**

A. Applicability

The transitional yard regulations of 4.5.5 apply along interior property lines in those instances identified in this chapter and only to the following activities:

1. The construction or installation of any new principal building or use; and

2. The expansion of any existing principal building or principal use that results in an increase in gross floor area or site area improvements by more than five percent or 1,000 square feet, whichever is greater. In the case of expansions that trigger compliance with transitional yard requirements, transitional yard landscaping is required only in proportion to the degree of expansion. The zoning administrator is authorized to allow the transitional yard to be established adjacent to the area of expansion or to disperse transition yard landscaping along the entire site transition area.

B. Transitional yard defined

A transitional yard is a specified land area, located parallel to and within the outer perimeter of a lot or project and extending to the lot line, together with fencing or walls on the lot line, and planting and landscaping required on the land. A transitional yard is not intended to be commensurate with the term "yard" or "setback."

C. Transitional yard types

There are three types of required transitional yards that may occur on any given parcel (for the specific width and plant material for each transitional yard classification see 4.5.5.D).

1. District boundary transitional yards

The following table shall be used to determine the required transitional yard classification between adjacent districts.

### PROPOSED DEVELOPMENT DISTRICT

			RL	RM	RH	RT-6	RT	RMF	CL	CO	CR
CU	CG	IL	IH								
		RL	--	--	--	--	--	--	--	--	--
--	--	--	--	--	--	--	--	--	--	--	--
		RM	--	--	--	--	--	--	--	--	--
--	--	--	--	--	--	--	--	--	--	--	--
		RH	--	--	--	--	--	--	--	--	--
--	--	--	--	--	--	--	--	--	--	--	--
		RT	TY1	TY1	TY1	--	--	--	--	--	--
--	--	--	--	--	--	--	--	--	--	--	--
		RMF	TY2	TY2	TY2	TY2	TY2	--	--	--	--
--	--	--	--	--	--	--	--	--	--	--	--
		CL	TY2	TY2	TY2	TY2	TY2	TY1	--	--	--
--	--	--	--	--	--	--	--	--	--	--	--
		CO	TY2	TY2	TY2	TY2	TY2	TY1	--	--	--
--	--	--	--	--	--	--	--	--	--	--	--
		CR	TY2	TY2	TY2	TY2	TY2	TY2	TY1	--	--
--	--	--	--	--	--	--	--	--	--	--	--
		CU	TY3	TY3	TY3	TY3	TY3	TY2	TY2	TY1	--
--	--	--	--	--	--	--	--	--	--	--	--
		CG	TY3	TY3	TY3	TY3	TY3	TY3	TY3	TY2	--
--	--	--	--	--	--	--	--	--	--	--	--
		IL	TY4	TY4	TY4	TY4	TY4	TY4	TY3	TY3	TY2
TY2	TY1	--	--	--	--	--	--	--	--	--	--
		IH	TY4	TY4	TY4	TY4	TY4	TY4	TY4	TY3	TY3
TY3	TY3	TY2	--	--	--	--	--	--	--	--	--

## 2. Project boundary transitional yards

Project boundary transitional yard requirements are established to mitigate the effect of planned developments on adjacent properties. The following shall be used to determine project boundary transitional yard requirements.

(a) No transitional yard is required where the width of the project's perimeter singlefamily detached residential lots is equal to or greater than the minimum lot width of the adjoining single-family detached development or the minimum lot width required by the respective single-family detached zoning district that applies to any adjoining undeveloped parcel.

(b) Except as provided in paragraph (a) above or unless modified by the city council in the approval of a master development plan, the following boundary transitional yards shall be provided along project boundaries in accordance with 4.5.5.D:

- (1) PD-R: TY2 transitional yards
- (2) PD-M: TY3 transitional yards
- (3) PD-C: TY3 transitional yards
- (4) PD-I: TY4 transitional yards

## 3. Use boundary transitional yards

(a) Where townhouse developments occur adjacent to single-family detached or duplex dwellings, TY1 transitional yards shall be provided in accordance with 4.5.5.D, below.

(b) Where multifamily developments occur adjacent to single-family detached, duplex or townhouse dwellings, TY2 transitional yards shall be provided in accordance with 4.5.5.D, below.

(c) Where commercial developments occur adjacent to single-family attached, singlefamily detached, duplex, townhouse, or multifamily dwellings, TY3 transitional yards shall be provided in accordance with 4.5.5.D, below.

(d) Where industrial developments occur adjacent to single-family attached, singlefamily detached, duplex, townhouse, or multifamily dwellings, TY4 transitional yards shall be provided in accordance with 4.5.5.D, below.

D. Transitional yard classifications

Four transitional yard classifications are established in recognition of the different contexts that may exist. They are as follows:

SPECIFICATIONS		TY1	TY2
TY3	TY4		
15	30	7.5	10
6	6	6	6
4		NA	3
5		4	3
4	5	NA	NA

[1] Yard widths calculated on the basis of average per 100 feet, provided that the yard width at any point may not be less than 50 percent of the minimums stated in the table. Required zoning district setbacks may be counted toward satisfying transitional yard widths.

[2] On or adjacent to the lot line. Additional understory trees or shrubs may be substituted for required fence or wall via alternative compliance (4.5.10).

E. Location of transitional yards

Transitional yards shall be located within the outer perimeter of a lot or parcel, parallel to and extending to the lot or parcel boundary line. Transitional yards shall not be located on any portion of an existing, dedicated or reserved public or private street or right-of-way.

F. Ownership of transitional yards

Transitional yards may remain in the ownership of the original applicant; they may be subjected to deed restrictions and subsequently be freely conveyed; or they may be transferred to any consenting grantees, such as the city, a land conservancy or land trust, or common interest community association (see 4.13). Any such conveyance shall guarantee the protection and maintenance of the transitional yard in accordance with the provisions of 4.5.

G. Landscape materials and design

Landscape materials used to satisfy the transitional yard requirements of 4.5.5 are subject to the regulations of 4.5.9.

**4.5.6 Tree requirements**

A. Tree canopy

The following 10-year minimum tree canopy requirements shall apply in the respective districts: (figure)

B. Street trees

In all general districts except the RL, RM, RH and CU districts, a minimum ten foot wide landscaped strip shall be provided along all streets. Street trees shall be required along all streets at the rate of one canopy tree for every 40 linear feet and spaced a maximum of 50 feet part.

1. All street trees shall be planted no less than three feet or more than 15 feet from the back of the curb or edge of pavement.

2. No tree shall be planted within a safe sight triangle (4.3.4) or closer than 10 feet from any fire hydrant.

C. Landscape materials and design

Landscape material used to satisfy the tree requirements of 4.5.6 are subject to the regulations of 4.5.9.

**4.5.7 Parking lot landscaping**

A. Applicability

1. 4.5.7 applies to:

(a) New on-site surface parking lots with more than 10 spaces; and  
(b) The expansion of any existing surface parking lot if the expansion results in 10 or more new parking spaces, in which case the requirements of 4.5.7 apply only to the expanded area.

2. For purposes of 4.5.7, multiple platted lots contained on a single site plan and any separate parking lots connected with drive aisles are considered a single parking lot.

B. Low impact development (LID)

Low impact development (LID) techniques that capitalize on and are consistent with natural resources and processes will be incorporated in parking lot landscaping whenever practicable, including but not limited to:

1. Rain catchment and harvesting for on-site irrigation purposes; and  
2. Rain gardens (shallow depressions or swales) that slow storm runoff and reduce the impact of what is found in stormwater as it enters storm drainage control systems.

C. Perimeter

1. The perimeter of all parking lots with frontage on any portion of a public right-of way shall be screened by a continuous landscaped hedge, a wall, or fence supported by masonry piers. Perimeter screening shall be at least 30 inches in height at the time of installation, and any planted screening shall reach a minimum height of 36 inches within two years of planting.

2. The perimeter of all parking lots adjacent to residentially zoned property shall provide a transitional yard TY3 (See 4.5.5).

D. Interior

1. Interior islands

An interior landscaped island shall be provided for every ten spaces. Each island shall contain a minimum of 200 square feet with a minimum width of eight feet inside the curb and include a minimum of one canopy tree; provided that, where an island includes a sidewalk, such islands shall contain a minimum of 400 square feet with a minimum of 15 feet inside the curb. Planting islands shall be evenly distributed throughout the parking lot; with no parking space located more than 50 feet from a planting island. Interior islands may be consolidated or intervals may be expanded in order to preserve existing trees, where approved by the zoning administrator.

2. Terminal islands

All rows of spaces shall terminate in a curbed landscaped island. Each island shall conform to the specifications described in 4.5.7.D.1, above.

3. Median islands

A median island with a minimum width of eight feet inside the curb shall be sited between every six single parking rows. Median intervals may be expanded in order to preserve existing trees, where approved by the zoning administrator.

E. Parking structures

1. General

Parking lot interior landscaping requirements shall not apply to parking structures.

2. Perimeter landscaping

Structured parking above finished grade shall comply with building setback requirements. Landscaping for parking structures shall be provided in all yards



pursuant to perimeter landscaping requirements for surface parking. However, where the location of such structure with respect to property boundary and adjacent structures will substantially inhibit the growth of the required trees, such trees may be located along another perimeter of the site in a manner approved by the zoning administrator.

F. Curbs and vehicle barriers

Landscaped areas in or abutting parking lots must be protected by concrete curbing, anchored wheel stops, or other durable barriers approved by the zoning administrator. Curbs protecting landscaped areas may be perforated, have gaps, or otherwise be designed to allow stormwater runoff to pass through them.

G. Landscape materials and design

Landscape material used to satisfy the parking lot landscaping requirements of 4.5.7 are subject to the regulations of 4.5.9.

#### **4.5.8 Screening**

A. Features to be screened

The following features must be screened from view of public rights-of-way, public open spaces and from lots used or zoned for residential purposes, as specified in 4.5.8.

1. Drive-through windows/facilities, subject to 4.5.8.B;
2. Ground-mounted mechanical equipment, subject to 4.5.8.C;
3. Outdoor storage of materials, supplies, vehicles and equipment, subject to 4.5.8.D;
4. Pick-up and drop-off containers and facilities, subject to 4.5.8.E;
5. Roof-mounted mechanical equipment, subject to 4.5.8.F; and
6. Trash receptacles and service areas, subject to 4.5.8.G.

B. Drive-through windows/facilities

Drive-through windows/facilities and lanes shall be subject to the following screening requirements:

1. Drive-through windows/facilities and lanes placed between the right-of-way and the associated building shall require landscape plantings installed and maintained along the entire length of the drive-through lane, located between the drive-through lane and the adjacent right-of-way.
2. Such screening shall be a compact evergreen hedge or other type of dense foliage. At the time of installation, such screening shall be at least 36 inches in height and shall reach a height of 48 inches within two years of planting.

C. Ground-mounted mechanical equipment

All ground-mounted mechanical equipment over 30 inches in height must be screened from view by a solid fence, solid wall, dense hedge, or combination of such features. The hedge, fence or wall must be tall enough to screen the equipment.

D. Outdoor storage of materials, supplies, vehicles and equipment

1. On nonresidential lots, all stored materials, supplies, merchandise, vehicles, commercial vehicles, boats (or similar), trailers, recreational vehicles, equipment, or other similar materials that are not on display for direct sale, rental or lease to the ultimate consumer or user must be screened by landscaping or solid fencing or wall, with a minimum height of six feet at the time of installation. (See also 4.10)

2. On residential lots, all stored materials, supplies, equipment, or other similar materials, including any vehicles, trailers, commercial vehicles, boats (or similar), recreational vehicles, or similar vehicles kept on an unsurfaced area, shall be located in the side or rear yard, screened from the view from the street and first story of any neighboring dwelling to the extent possible by landscaping or solid fencing or wall, and the total area for such outdoor storage shall not occupy more than 25 percent of the side and rear yards combined.

3. On residential lots, one commercial vehicle of a weight less than 9,000 pounds, one commercial trailer, or one noncommercial vehicle of a weight more than 9,000

pounds but less than 15,000 pounds may be kept in accordance with the provisions of City Code, Section 98-147(c). Screening shall not be required provided the vehicle or trailer is kept on a surfaced area.

4. On residential lots, boats (or similar) on trailers and noncommercial trailers may be kept without screening, provided the trailer is kept on a surfaced area.

5. On residential lots, screening shall not be required for firewood, outdoor furniture, portable grills, or similar items accessory to the residential use or for storage of materials and equipment related to a construction project for which a valid building permit is in effect and where the materials and equipment are maintained in an orderly condition and do not constitute a hazard.

E. Pick-up and drop-off containers and facilities

Pick-up and drop-off containers and facilities shall be screened from the first story window(s) of any neighboring dwellings by a solid fence, solid wall, dense hedge, or combination of such features. The hedge, fence or wall must be tall enough to screen the equipment.

F. Roof-mounted mechanical equipment

1. Roof-mounted mechanical equipment (e.g., air conditioning, heating, cooling, ventilation, exhaust and similar equipment, but not elevator shafts, solar panels, wind energy or similar renewable energy devices) over 30 inches in height must be screened from ground-level view at the property line in one of the following ways:

(a) A parapet wall;

(b) A solid screen, which shall be an integral part of the building's architectural design; or

(c) An equipment setback from roof edges that is at least three feet in depth for each one foot of equipment height.

2. Fire safety access shall be provided.

G. Trash receptacles and service areas

1. Trash receptacles and service areas (e.g., recycling containers, grease barrels, medical waste bins) must be screened from view of streets and all abutting lots with a solid wall or opaque fence, with doors or gates, at least six feet in height.

2. Trash receptacles and service areas may be located in parking lot but shall not reduce applicable parking requirements.

3. Trash receptacles and service areas may not be located in the required front or side (street) yard.

H. Landscape materials and design

Landscape material used to satisfy the screening requirements of 4.5.8 are subject to the regulations of 4.5.9.

**4.5.9 Landscape material and design**

A. Landscaping within required landscaped areas

Required landscaped areas must be covered with biodegradable mulch and/or ground cover plants.

B. Plant types

There are three plant types referred to in this section, and all shall require the use of locally adapted plants. They include canopy trees, understory trees and shrubs, defined as follows:

1. Canopy trees

Large deciduous shade trees with a mature height of 30 feet or greater and a mature spread of 30 feet or greater, with a mature height of 20 feet or greater.

2. Understory trees

(a) Small deciduous trees or large deciduous shrubs with a mature height of 10 to 30 feet, except under overhead utilities, where lower heights at maturity may be required; or

(b) Trees or large shrubs at least 10 feet tall at maturity that usually have green foliage throughout all seasons of the year.

### 3. Shrubs

Prostrate or upright woody plants, either evergreen or deciduous, with a mature height usually less than 10 feet. Evergreen shrubs usually have green foliage throughout all seasons of the year.

### C. Required fencing and walls

Fencing and walls used for required screening and in transitional yards shall:

1. Be constructed of high quality materials, such as decorative blocks, brick, stone, treated wood, or composite wood-like material complementary to the principal structure; Chain-link fences and barbed wire or concertina wire shall not be utilized for screening purposes;

2. Breaks in the fence or wall may be provided for pedestrian connections to adjacent properties; and

3. The maximum length of a continuous, unbroken and uninterrupted fence or wall plane shall be 100 feet; visual relief shall be provided at intervals not exceeding 100 feet through the use of masonry columns at reasonable intervals.

### D. Existing trees and vegetation

Existing non-invasive trees and shrubs count toward satisfying the landscaping regulations of 4.5 if they are located within the subject area and they comply with the plant height and size requirements of 4.5.9.

#### 1. Tree management plan

A tree management plan shall be required prior to the removal or destruction of existing trees that are at least five inches in diameter measured at breast height (DBH), including the following information, except as deemed necessary by the zoning administrator:

(a) The location, size, condition and species of all trees which are at least five inches in diameter to be preserved or removed;

(b) The location, size and species of all trees to be preserved or removed;

(c) Specifications for the removal of trees and protection of trees during construction;

(d) Proposed grade changes or other potentially injurious work adjacent to trees designated for preservation with specifications for maintaining ground drainage and aeration around such trees;

(e) The location, size and species of all trees to be planted; and

(f) Such other information that the zoning administrator deems essential.

#### 2. Tree protection during construction

(a) Existing trees specified on the landscape plan to remain on the site shall be protected from vehicular movement and material storage over their root spaces during construction. An undisturbed area with a porous surface shall be reserved around a tree, based on the drip line or as specified by an arborist or landscape architect.

(b) A temporary tree protection fence shall be installed along the drip line.

#### 3. Tree removal

(a) Diseased trees or trees weakened by age, storm, fire or other injury may be removed in accordance with this 4.5.9.D.3. Trees that are damaging or can be reasonably expected to damage buildings, streets, sidewalks or other infrastructure may be removed, subject to verification of site conditions by the zoning administrator. All other tree removal should be based on a consideration of the following:

(1) The effect of the proposed tree removal upon the stabilization of soil, lakes, ponds, streams and rivers;

(2) The intended use of the property and feasible alternatives which would preserve existing trees;

(3) The existing topography, proposed changes in the topography and proposed landscaping;

(4) The hardship imposed or the reasonable use denied to the applicant as a result of permit denial;

(5) Historical value of the trees;

(6) Good horticultural and forestry practices;

(7) The effect of the proposed tree removal on the deadening and absorption of sound;

(8) The likelihood that the proposed action will adversely affect the control of flooding or soil erosion;

(9) The impact of such action on surrounding property or persons; and

(10) The consistency of the proposed action with the purpose of 4.5.1.

(b) Trees that are approved by the zoning administrator for removal shall be replaced with new trees or large shrubs on the same property and in the same general location.

#### **4.5.10 Alternative compliance**

In order to encourage creativity in landscape and screening design and to allow for flexibility in addressing atypical, site-specific development/redevelopment challenges, the zoning administrator is authorized to approve alternative compliance landscape plans subject to the following findings:

A. The approved administrative alternate meets the intent of the landscaping regulations;

B. The approved administrative alternate complies with the comprehensive plan and adopted city plans; and

C. The approved administrative alternate is considered equal to or better than the standard.

(10-1-16)

## **4.6 Signs**

### **4.6.4 Prohibited signs**

#### **A. General**

Signs with the following general characteristics are prohibited in the city of Fairfax:

5. Signs painted on or attached to bike racks, bollards, hydrants, parking meters, public benches, refuse containers, sidewalks or walkways, street light poles, trees, utility poles and similar facilities;

(10-1-16)

## **4.15 Floodplain Regulations**

### **4.15.8 Approval criteria**

A. Permitted uses, activities or developments (including redevelopments) within the floodplain shall be permitted only when all available alternative locations not within the floodplain have been properly considered and it is not possible to accommodate reasonable development outside the floodplain boundaries. Each application for a floodplain permit, together with required supporting documentation, shall clearly demonstrate that the proposed use, activity or development:

3. Shall minimize the loss of natural vegetation and natural stormwater characteristics.

(10-1-16)

## **4.16 STORM DRAINAGE FACILITIES**

### **4.16.5 Usage, improvement and preservation of creeks and channels**

A. Natural creeks and drainage channels may be used where available to route stormwater runoff from the city.

B. Natural drainage systems will be improved where necessary in accordance with 9VAC25-870- 66 of the Regulations. To the maximum degree possible, these improvements shall be made in such a manner as to preserve, enhance or restore the vegetation, including trees, along the creek line so that the aesthetic, environmental and ecological values of the vegetation are not lost to the community.

C. Land disturbances within resource protection areas or resource management areas may require a water quality impact assessment in accordance with §4.18.8.

(10-1-16)

## **4.18 Chesapeake Bay Preservation**

### **4.18.1 Purpose and intent**

4.18 is enacted to implement the requirements of Code of Virginia, § 62.1-44.15:75 et seq., the Chesapeake Bay Preservation Act. These regulations establish the criteria that the city shall use to determine the extent of the Chesapeake Bay preservation areas. These regulations also establish criteria for use by the city in approving, disapproving or modifying requests to rezone, subdivide, use, develop and/or redevelop land in Chesapeake Bay preservation areas. The intent of the city council and the purpose of §4.18 is to:

A. Protect sensitive environmental lands within the city;

B. Safeguard the quality of state waters;

C. Prevent further increase in pollution of state waters;

D. Reduce existing pollution of state waters; and

E. Promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the city.

### **4.18.2. Applicability**

A. 4.18 shall apply to all lands identified as Chesapeake Bay preservation areas as designated by the city council and as shown on the city Chesapeake Bay preservation area map. The Chesapeake Bay preservation area map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of §4.18. The map, entitled city of Fairfax Chesapeake Bay preservation area map, shall be identified by the signature of the zoning administrator, attested to by the city clerk, together with the date of adoption by the city council. The map shall show the general location of Chesapeake Bay preservation areas within the city and should be consulted by persons contemplating activities within the city prior to engaging in a regulated activity. The specific delineation of the Chesapeake Bay preservation area boundaries is the responsibility of the applicant in accordance with §4.18.6

1. The resource protection area includes:

(a) Tidal wetlands;

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

(c) Tidal shores;

(d) Intermittent streams that remain largely in a natural condition and that have not been significantly impacted by adjacent development;

(e) Water bodies with perennial flow; and

(f) A 100-foot vegetated buffer area located adjacent to and landward of the components listed above, and expanded to include noncontiguous wetlands within the floodplain that are partially located within the buffer, 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 or permitted vegetation clearing in compliance with the performance criteria of §4.18.6.

2. Designation of the components listed in §4.18.2.A.1 on the city's Chesapeake Bay preservation area map shall not be subject to modification unless based upon reliable site-specific information, in accordance with §4.18.6 and, if applicable, a water quality impact assessment required pursuant to §4.18.8.

3. The resource management area includes all lands in the city that are not designated as resource protection areas.

B. If the boundaries of a Chesapeake Bay preservation area include a portion of a lot, parcel, or development project, only that portion of the lot, parcel, or development project shall be subject to the requirements of this §4.18 except as provided for in §4.18.4.D. The division of property shall not constitute an exemption from this requirement.

#### **4.18.3 Development review procedures**

Any land disturbance, development, or redevelopment with land disturbing activity exceeding 2,500 square feet shall comply with the development review procedures outlined in §6.13, where applicable, prior to any clearing, grading or construction on the site.

#### **4.18.4 Allowed uses**

A. Development, land disturbances and uses authorized by underlying zoning classifications are allowed provided that they are carried out in accordance with the applicable general performance standards set forth in §4.18.7 or otherwise modified by the requirements set forth herein.

B. Development in resource protection areas (RPAs) shall be subject to review and approval by the city and may be permitted if it:

1. Constitutes redevelopment; or

2. Is a roadway or driveway not exempt under §4.18.10, provided that:

(a) There are no reasonable alternatives to aligning the road or driveway in or across the RPA;

(b) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and adverse effects on water quality; and

(c) The design and construction of the road or driveway satisfy all applicable criteria of §4.18, including the submission of a water quality impact assessment.

(d) The plan for the road or driveway proposed in or across the RPA meets the criteria for site plan, subdivision and plan of development approvals.

3. Is a flood-control or stormwater-management facility that drains or treats water from multiple development projects or from a significant portion of a watershed, provided that:

(a) The location of the facility within the RPA is the optimum location;

(b) The size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both;

(c) The facility is consistent with a stormwater management program that has been approved by the Chesapeake Bay local assistance board as a phase I modification to this program;

(d) All applicable permits for construction in state and federal waters are obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission; and

(e) Approval from the city prior to construction.

4. Is a new use established pursuant to §4.18.7.D.2.

C. Routine maintenance is allowed to be performed on flood control or stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed in order to assure that they continue to function as designed, but it is not the intent of §4.18 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 an RPA.

D. All development or redevelopment within a Chesapeake Bay preservation area exceeding 2,500 square feet of disturbed land area shall be subject to the general performance standards in §4.18.7 as well as the development review procedures of §6.13.

E. A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within a resource protection area or a resource management area. The zoning administrator may waive the requirement for a water quality impact assessment in a resource management area upon determination that the proposed land disturbance, development or redevelopment would not significantly impact water quality. If a water quality impact assessment is required, the assessment shall include the entire lot, parcel or development project as the area of impact and shall be conducted in accordance with §4.18.8.

#### **4.18.5 Lot size**

The creation of new lots shall be subject to the requirements of the subdivision and zoning ordinances provided that any lot shall have sufficient area outside the resource protection area to accommodate an intended development in accordance with the general performance standards in

#### **4.18.6 Interpretation of RPA and CBPA boundaries**

##### **A. Delineation by applicant**

For any property that is depicted on the city's Chesapeake Bay preservation area map as a resource protection area, the applicant shall determine the site-specific boundaries of the RPA components through the performance of a RPA site-specific study. The Chesapeake Bay preservation area map shall be used only as a guide to the general location of resource protection areas within the city.

##### **B. Where conflict arises over delineation**

Where the applicant has provided a site-specific delineation of the resource protection area, the zoning administrator shall review and verify the accuracy of the boundary delineation. In determining the site-specific resource protection area boundary, the zoning administrator may render adjustments to the applicant's boundary delineation based on the RPA site-specific study features required in §6.13.2.B.

#### **4.18.7 General performance standards**

##### **A. Purpose and intent**

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

2. The performance standards are intended to prevent a net increase in nonpoint source pollution from new development and to achieve a 10 percent reduction in nonpoint source pollution from redevelopment.

##### **B. Development and redevelopment in Chesapeake Bay preservation areas**

1. Land disturbance shall be minimized and limited to the area necessary to provide for the desired use or development.

(a) In accordance with an approved subdivision or site plan, the extent of land disturbing activity, including clearing or grading, shall be limited to the specified construction footprint. The limits of disturbance shall be clearly shown on submitted plans and physically marked on the development site.

(b) Ingress and egress during construction shall be limited to one access point unless otherwise approved by the zoning administrator.



2. Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use and development proposed and in accordance with the "Virginia Erosion and Sediment Control Handbook."

(a) Existing trees shall be preserved outside the limits of disturbance, however, diseased trees or trees weakened by age, storm, fire or other injury may be removed.

(b) Clearing and grading shall be limited outside the defined limits of disturbance. Clearing shall be allowed only to provide public roads, necessary access, positive site drainage, water quality BMPs, and the installation of utilities, as approved by the zoning administrator.

(c) Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected at the drip line of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be permitted within the area protected by the barrier.

3. Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the use or development permitted.

4. Notwithstanding any other provisions of §4.18, or any exceptions or exemptions thereto, any land disturbing activity exceeding 2,500 square feet shall comply with the requirements of §4.16, Storm Drainage Facilities, and §4.17, Erosion and sediment control.

5. All on-site sewage disposal systems not requiring a VPDES permit shall be pumped out at least once every five years. However, owners of on-site sewage treatment systems may submit documentation every five years, certified by a sewage handler permitted by the Virginia Department of Health, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out.

6. A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system that operates under a permit issued by the state water control board until the structure is served by public sewer.

7. For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices consistent with §4.16, Storm Drainage Facilities and 9VAC25-870-63 of the Virginia Stormwater Management Regulations.

8. Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state and local laws and regulations shall be obtained and evidence of such submitted to the zoning administrator in accordance with the development review procedures of §6.13.

#### C. Performance criteria for resource protection areas

The following criteria shall apply specifically within resource protection areas and supplement the general performance criteria contained in §4.18:

1. All redevelopment activities shall conform to the regulations contained in §4.15, Floodplains; §4.16, Storm Drainage Facilities; and §4.17, Erosion and Sediment Control. Redevelopment shall be permitted in the resource protection area only if there is no increase in the amount of impervious cover within the RPA and no further encroachment within the RPA.

2. A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within resource protection areas in accordance with §4.18.8 and §4.18.4.D.

#### D. Buffer area requirements

To minimize the adverse effects of human activities on the core components of resource protection areas, state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients. The buffer area shall be maintained to meet the following additional performance standards:

1. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed, subject to approval of the zoning administrator, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices (including those that prevent upland erosion and concentrated flows of stormwater), as follows:

2. When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the zoning administrator may permit encroachments into the required buffer area pursuant to §4.18.11, Administrative waivers and special exceptions, and in accordance with the following provisions:

(a) Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;

(b) Where practicable, a vegetated area shall be established elsewhere on the lot or parcel in a manner that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area; and

(c) In no case shall the encroachment extend into the seaward 50 feet of the buffer area.

3. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989 and November 25, 2003, the zoning administrator may permit encroachments into the required buffer area pursuant to §4.18.11, Administrative waivers and special exceptions, and in accordance with the following provisions:

(a) The lot or parcel was created as a result of a legal process conducted in conformity with the city's subdivision regulations;

(b) Conditions or mitigation measures imposed through a previously-approved exception shall be met;

(c) If the use of a best management practice was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be re-established or repaired and maintained as required;

(d) The criteria listed in §4.18.7.D.2 shall be satisfied.

#### **4.18.8 Water quality impact assessment**

##### **A. Purpose and intent**

The purpose of the water quality impact assessment is to:

1. Identify the impacts of proposed development on water quality and lands within resource protection areas;

2. Ensure that, where redevelopment does take place within resource protection areas, it is located on those portions of a site and in a manner that is least disruptive to the natural functions of resource protection areas; and

3. Specify mitigation to address water quality protection.

##### **B. Water quality impact assessment**

A water quality impact assessment shall be submitted for:

1. Any proposed land disturbance, development or redevelopment within a resource protection area including any buffer area modification or reduction as provided for in §4.18.7; or

2. Any proposed development or redevelopment in the resource management area that may significantly impact water quality due to the unique characteristics of the site or intensity of the proposed use or development, as determined by the zoning administrator in accordance with §4.18 and §4.18.4.D. There shall be two levels of water quality impact assessment: a minor assessment and a major assessment.

C. Minor water quality impact assessment

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

1. Location of the components of any RPA, including the 100-foot buffer area;
2. Location and nature of the proposed improvements, including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or reserve drainfield sites;
3. Type and location of proposed best management practices to meet the required general performance standards specified in §4.18.7;
4. Location of existing vegetation on site, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification; and
5. A revegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.

D. Major water quality impact assessment

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

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

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

(a) All of the information required in a minor water quality impact assessment, as specified in subsection C, above;

(b) A hydrogeological element that describes existing topography, estimates of soils characteristics and potential for erosion, hydrology of the area, impacts on wetlands and streams, proposed mitigation measures, and a listing of requisite permits with permit or application status.

(c) A landscape element that fully describes existing trees required to be identified as part of a tree management plan in accordance with §4.5.9.D.1; limits of clearing and grading; trees and indigenous vegetation that are to be preserved within the disturbed area; measures to be taken to protect vegetation, proposed plantings, and other vegetative measures used to enhance water quality; and a proposed construction schedule that includes all activities related to clearing, grading, and proposed plantings; and

(d) Such other measures as deemed necessary by the zoning administrator to ensure the impact to water quality can be accurately predicted.

E. Submission and review requirements

1. Copies of all site drawings and other applicable information as required by subsections C and D, above, shall be submitted to the zoning administrator for review and approval.

2. All information required in this subsection E shall be certified as complete and accurate by a professional engineer, land surveyor, landscape architect, soil scientist, or wetland delineator certified or licensed to practice in the state.

3. RPA boundaries shall include a jurisdictional determination or verification letter from the U.S. Army Corps of Engineers for all Waters of the U.S.

4. Water quality impact assessments shall be prepared and submitted to the zoning administrator in conjunction with the development review procedures outlined in §6.13.

5. As part of any major water quality impact assessment submittal, the zoning administrator may require review and written comments by the Chesapeake Bay local assistance department (CBLAD). The zoning administrator should incorporate comments made by CBLAD into the final review of the major water quality impact assessment.

#### F. Evaluation procedure

1. Upon the completed review of a minor water quality impact assessment, the zoning administrator shall determine if any proposed modification or reduction to the buffer area is consistent with the provisions of §4.18 and make a finding based upon the following criteria:

(a) The proposed encroachment is necessary and there is no other location on site to place improvements without disturbing the buffer area;

(b) The impervious surface is minimized;

(c) The proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;

(d) The development, as proposed, meets the purpose and intent of §4.18;

(e) The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality; and

(f) Any other information deemed necessary by the zoning administrator.

2. Upon the completed review of a major water quality impact assessment, the zoning administrator shall determine if the proposed development is consistent with the purpose and intent of §4.16 and make a finding based upon the following criteria:

(a) The disturbance of any wetlands is minimized;

(b) The development will not result in significant disruption of the hydrology of the site;

(c) The development will not result in significant degradation to aquatic life;

(d) The development will not result in unnecessary destruction of plant materials on site;

(e) Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off site sedimentation;

(f) Proposed stormwater-management measures are adequate to control the stormwater runoff to achieve the required performance standard for pollutant control;

(g) Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits;

(h) The design and location of any proposed drainfield will be in accordance with the general performance standards outlined in §4.18.7;

(i) The development, as proposed, is consistent with the purpose and intent of §4.16;

(j) The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

3. The zoning administrator may require additional mitigation measures where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the zoning administrator based on the criteria listed above in subsections 1 and 2, above.

4. The zoning administrator shall find the proposal to be inconsistent with the purpose and intent of §4.16 when the impacts created by the proposal cannot be mitigated.

#### **4.18.9 Nonconforming uses and structures**

A. The lawful use of a building or structure that existed on September 17, 1990, or that exists at the time of any amendment to §4.18, and that is not in conformity with the provisions of §4.18 may be continued in accordance with Article 7, Nonconforming uses.

B. The zoning administrator may grant an administrative waiver for remodeling or alteration to an existing nonconforming principal or accessory structure provided that:

1. There will be no increase in nonpoint source pollution load; and
2. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of §4.17.

C. The zoning administrator may grant an administrative waiver for expansion, restoration or replacement of an existing nonconforming principal structure provided that:

1. If a nonconforming structure is destroyed or damaged in any manner, it shall be restored only if such use complies with the requirements of §4.18. Any such repair or restoration shall be commenced within 12 months and completed within 18 months from the date of destruction. If the repairs are not completed within 18 months of the date of destruction, the applicant shall file a request for an extension with the zoning administrator. Approval of the request will be subject to demonstration by the applicant that reconstruction by the applicant was pursued in good faith.

2. The cost of land or any factors other than the cost of the structure are excluded in the determination of cost of restoration for any structure determined to be nonconforming.

D. The zoning administrator may grant an administrative waiver only after making the required written findings outlined in §4.18.11.D.

E. Administrative waivers shall become null and void 12 months from the date issued if no substantial work has commenced.

#### **4.18.10 Exemptions**

The following uses shall be exempt from the criteria contained in §4.18:

A. Construction, installation, operation and maintenance of electric, natural gas, fiber-optic, telephone transmission lines, railroads, public roads, public trails, and their appurtenant structures; provided that said construction, installation, operation and maintenance is in accordance with the Erosion and Sediment Control Law (Code of Virginia, § 10.1-560 et seq.) and the Stormwater Management Act (Code of Virginia, § 10.1-603.1 et seq.). An erosion and sediment control plan and a stormwater management plan approved by the state department of conservation and recreation, or local water quality protection criteria at least as stringent as the above state requirements shall be deemed to constitute compliance with this provision. The exemption of public roads is further conditioned on the optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize both encroachment into the RPA and adverse effects on water quality.

B. Construction, installation and maintenance of water, sewer, natural gas, and underground telecommunications and cable television lines [owned, permitted, or both, by the city or regional service authority], provided that:

1. Such utilities and facilities shall be located outside the RPA to the degree possible;

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

3. All construction, installation and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality; and

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

C. The following land disturbances within the RPA shall be exempted from §4.18: (i) water wells; (ii) passive recreation facilities, such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities, provided that it is demonstrated to the satisfaction of the zoning administrator that:

1. Any required permits, except those to which this exemption specifically applies, shall have been issued;

2. Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;

3. The intended use does not conflict with nearby planned or approved uses; and

4. Any land disturbance exceeding an area of 2,500 square feet shall comply with all city erosion and sediment control requirements.

#### **4.18.11 Administrative waivers and special exceptions**

##### A. Administrative waivers

The following administrative waivers may be granted by the zoning administrator:

1. Encroachments into the landward 50 feet of the buffer component of the RPA, provided that the requirements of §4.18.7.D.2 or §4.18.7.D.3 and §4.18.8.F are met;

2. Remodeling and alterations to existing nonconforming principal or accessory structures, provided that the requirements of §4.18.9.B.1 are met;

3. Restoration or replacement of existing nonconforming principal or accessory structures provided that the requirements of §4.18.9.B.2 are met; or

4. Modifications and additions to existing legal principal structures provided the findings of §4.18.11.D are made.

##### B. Special exceptions

Special exceptions to the general performance criteria for resource management and resource protection areas detailed in §4.18.7 may be granted by the city council provided the findings of §4.18.11.D are made.

##### C. Waivers and exceptions

Administrative waivers and special exceptions may not be granted for new accessory structures.

##### D. Required findings

In granting an administrative waiver or a special exception, the zoning administrator or the city council shall make a written finding that:

1. The request is the minimum necessary to afford relief;

2. Granting the request will not confer upon the applicant any special privileges that are denied by §4.18 to other property owners who are subject to its provisions and who are similarly situated;

3. The request is in harmony with the purpose and intent of this §4.18 and is not of substantial detriment to water quality;

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

5. Reasonable and appropriate conditions shall be imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality.

##### E. Administrative waiver process

1. The applicant shall submit an administrative waiver request to the zoning administrator. The request shall identify the potential impacts of the waiver on water quality and on lands within the resource protection area through the performance of a water quality impact assessment that complies with the provisions of §4.18.8.

2. The zoning administrator shall review the administrative waiver request and the water quality impact assessment and may grant the waiver with such conditions and safeguards as deemed necessary to ensure and further the purpose and intent of §4.18.

3. If the zoning administrator cannot make the required findings or denies the administrative waiver request, the zoning administrator shall provide written findings and rationale for the decision to the applicant. Denial by the zoning administrator may be appealed to the board of zoning appeals pursuant to §6.21.

#### F. Special exception process

1. The applicant shall submit a special exception request to the zoning administrator. The request shall identify the potential impacts of the special exception request on water quality and on lands within the resource protection area through the performance of a water quality impact assessment that complies with the provisions of §4.18.8.

2. Each special exception request shall be reviewed by the zoning administrator and scheduled for public hearing before the city council following notification of the affected public of any such exception requests in accordance with Code of Virginia, § 15.2-2204, except that only one hearing shall be required.

3. Special exceptions shall be granted with such conditions and safeguards as deemed necessary, pursuant to §6.17, to ensure and further the purpose and intent of §4.18, provided the findings of §4.18.11.D are met.

#### **4.18.12 Violations and penalties**

A. The decisions of all departments, officials and public employees of the city that are vested with the duty or authority to issue permits or licenses shall conform to the provisions of §4.18. They shall issue permits for uses, buildings or purposes only when they are in harmony with the provisions of §4.18. Any such permit, if issued in conflict with the provisions of §4.18, shall be null and void.

B. The zoning administrator is granted all necessary authority on behalf of the city council to administer and enforce §4.18, including the authority in righting or remedying any condition found in violation of §4.18, and the bringing of legal action to secure compliance with §4.18, including injunctive abatement, the imposition of civil penalties, or other appropriate action or proceeding.

#### **4.18.13 Appeals**

Any order, determinations or decision made by the zoning administrator in administration and enforcement of the provisions of §4.18 may be appealed to the board of zoning appeals where it is alleged that an ER occurred. Such appeal shall be made within 30 days from the date of the order, determination or decision and shall further state with particularity the grounds of such appeal. Appeals shall further be made in accordance with §6.21 and Code of Virginia, § 15.1-2311.  
(10-1-16)

### **Article V. DECISION-MAKING BODIES AND OFFICIALS**

#### **5.6 ZONING ADMINISTRATOR**

##### **5.6.2 Powers and duties**

###### C. Final decisions

3. Tree removal permits (§6.10);

(10-1-16)

### **Article VI DEVELOPMENT REVIEW**

#### **6.5 Certificates of Appropriateness**



#### **6.5.4 Application requirements**

- A. Minor certificate of appropriateness
  - (b) Landscaping features, involving the planting of grass, trees or shrubs, minor grading, walks, low retaining walls, fencing, street furniture, outdoor seating areas, small fountains, and ponds;  
(10-1-16)

### **6.8 Site Plan Reviews**

#### **6.8.6 Application requirements**

- B. Each site plan shall include the delineation of:
  - 1. Resource protection area and resource management area boundaries, if any, including notations of the following specific state requirements:
    - (a) To retain an undisturbed and vegetated 100-foot wide buffer area, as specified in subdivision 3 of 9VAC25-830-140;  
(10-1-16)

### **6.10 Tree Removal Permits**

#### **6.10.1 Applicability**

- A. Tree removal permits shall be reviewed in accordance with the provisions of §6.10.
- B. Tree removal permits shall be required to remove or destroy any tree which is five inches or greater measured at breast height (DBH) on any lot larger than one-half acre in the RL, RM and RH zoning districts, and in all other districts. Tree removal permits shall not be required to be obtained prior to removing a tree if the tree has been determined a public health and safety menace in accordance with the applicable provisions of City Code, Chapter 38, Article III.
- C. A site plan review application submitted in accordance with §6.8 may satisfy the application requirements of §6.10.

#### **6.10.2. Application requirements**

Applications for a tree removal permit shall include a tree management plan (§4.5.9.D) and be submitted in accordance with §6.2.3.

#### **6.10.3. Action by zoning administrator**

- A. The zoning administrator shall review each proposed tree removal permit application for compliance with the approval criteria of §6.10.4.
- B. Based on the approval criteria and the above considerations, the zoning administrator shall approve the tree removal permit, identify those modifications that would allow approval of the tree removal permit, approve the tree removal permit with conditions, or disapprove the tree removal permit.

#### **6.10.4. Approval criteria**

Applications for tree removal permits shall be reviewed for compliance with the requirements of §4.5.9.D.3.

#### **6.10.5. Transfer of tree removal permits**

Approved tree removal permits, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

#### **6.10.6. Administrative appeals**

Any final decision of the zoning administrator on a tree removal permit may be appealed to the board of zoning appeals in accordance with §6.21.  
(10-1-16)

### **6.13 Chesapeake Bay Reviews**

#### **6.13.1 Applicability**

- A. Chesapeake Bay preservation reviews (Chesapeake Bay review) shall be conducted in accordance with the provisions of §6.13.

B. All development or redevelopment within a Chesapeake Bay preservation area exceeding 2,500 square feet of disturbed land area shall be subject to the general performance standards in §4.18.7.

C. Routine maintenance is allowed to be performed on flood control or stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed in order to assure that they continue to function as designed, but it is not the intent of §6.13 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.

### **6.13.2 Application requirements**

Applications for Chesapeake Bay review shall be submitted in accordance with §6.2.3, and shall include the following:

#### **A. General**

1. If applicable, a subdivision or site plan submitted in accordance with the provisions of chapter 86, Subdivisions, and this chapter;

2. A RPA site-specific study as provided for in §6.13.2.B.2;

3. If applicable, a water quality impact assessment as required in §4.18.8;

4. A tree management plan consistent with the provisions of §4.5.9.D.1;

5. A stormwater management plan consistent with the design and performance standards of §4.16, Storm drainage facilities;

6. An erosion and sediment control plan consistent with the provisions of §4.17, Erosion and sediment control; and

7. Copies of all wetlands permits required by law. The required plans and studies shall include the delineation of the RPA boundary, the delineation of required buffer areas, and a maintenance agreement as deemed necessary by the zoning administrator to ensure proper maintenance of best management practices in order to continue their functions. Plans and studies may be coordinated or combined as deemed appropriate by the zoning administrator. However, the zoning administrator may also determine that any of the information required in §6.13 may be unnecessary due to the scope and nature of the proposed development.

#### **B. RPA site-specific study**

##### **1. RPA Area**

(a) The resource protection area shall include the following:

(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) Intermittent streams that remain largely in a natural condition and that have not been significantly impacted by adjacent development as depicted on the Chesapeake Bay preservation area map;

(5) Water bodies with perennial flow; and

(6) A 100-foot vegetated buffer area located adjacent to and landward of the components listed in subparagraphs (1) through (5), above, and expanded to include noncontiguous wetlands within the floodplain that are partially located within the buffer, 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 or permitted vegetation clearing in compliance with the performance criteria of §4.18.7.

(b) Designation of the six components, above, shall not be subject to modification unless based on reliable, site-specific information in accordance with §6.13.2.B.2, below.

##### **2. Study requirements**

An RPA site-specific study shall be submitted as part of the development review procedures required by §6.13 and in conjunction with site plan or subdivision approval.

(a) The RPA site-specific study shall be drawn to scale and clearly delineate the resource protection area components outlined in §4.18.2.A.1.

(b) Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1987.

(c) The RPA site-specific study shall delineate the site-specific geographic extent of the resource protection area.

(d) The RPA site-specific study shall be drawn at the same scale as the site plan or subdivision plan and shall be certified by a certified engineer, land surveyor, landscape architect, soil scientist, or wetland delineator.

(e) RPA boundaries shall include a jurisdictional determination or verification letter from the U.S. Army Corps of Engineers for all Waters of the U.S.

#### C. Tree management plan

A tree management plan shall be submitted as part of the development review procedures required by §6.13. No clearing, grading, or construction on any lot or parcel shall be permitted without an approved tree management plan. In addition, the following supplemental information shall be provided for land disturbance, development, or redevelopment activity proposed within the resource protection area:

1. Any required buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by §4.18.7.D, shall be shown on the tree management plan.

2. Within the buffer area, trees to be removed for sight lines, vistas, access paths, and best management practices, as provided for in §4.18, shall be shown on the plan. Vegetation to replace any existing trees within the buffer area shall also be shown on the tree management plan.

3. Trees to be removed for stream bank stabilization projects and any replacement vegetation required by §4.18 shall be shown on the landscaping plan.

#### D. Stormwater management plan

A stormwater management plan shall be submitted as part of the development review procedures required by §6.13 and in conjunction with site plan or subdivision approval.

#### E. Contents

1. The stormwater management plan shall be developed in accordance with §4.16, Storm drainage facilities. For facilities, verification of structural soundness, including a professional engineer or class IIIB surveyor certification shall be provided.

2. All engineering calculations shall be performed in accordance with procedures outlined in the current edition of the "Virginia State Stormwater Management Handbook."

3. The plan shall establish a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance in accordance with §4.16, Storm drainage facilities.

#### F. Erosion and sediment control plan

An erosion and sediment control plan shall be submitted as part of the development review procedures required by §6.13 in conjunction with site plan or subdivision approval that satisfies the requirements of §4.17.

### **6.13.3 Action by director of public works**

The director of public works will review Chesapeake Bay review applications in accordance with the approval criteria of §6.13.5.

### **6.13.4 Action by zoning administrator**

Based on the results of the review by the director or public works, the zoning administrator shall take one of the following actions: approve the permit, identify those modifications that would allow approval of the permit; approve the permit with conditions; or disapprove the permit.

#### **6.13.5 Approval criteria**

A. Chesapeake Bay review approvals shall be in compliance with the requirements of §4.18.

B. The VSPM administrator may require physical improvements required by §4.18 to be bonded in accordance with §6.8.11 and 110-107 of City Code.

#### **6.13.6 Revocation of approval**

A Chesapeake Bay review approval shall be revoked if the zoning administrator finds that the terms of the approval have been violated or that there is a hazard to the public health, safety and welfare.

#### **6.13.7 Transfer of Chesapeake Bay review approvals**

Chesapeake Bay review approvals, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

#### **6.13.8 Administrative appeals**

Final decisions on Chesapeake Bay reviews shall be made within 30 days of the final decision to the board of zoning appeals in accordance with §6.21.

(10-1-16)

### **6.15 Temporary Use Permits**

#### **6.15.4 Approval criteria**

E. The use shall not have a substantial adverse impact on the natural environment, including trees, ground cover and vegetation.

(10-1-16)

### **6.20 Zoning Permits**

#### **6.20.1 Applicability**

E. Zoning permits are not required for permitted temporary uses (See §3.5.6) or for tree removal (See §6.10).

(10-1-16)

## **DEFINITIONS**

**BEST MANAGEMENT PRACTICE (BMP):** A practice, or combination of practices, that are determined by the state to be the most effective, practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with state water quality goals.

**BUFFER AREA:** 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.

**CANOPY TREE:** Large deciduous shade trees with a mature height of 30 feet or greater and a mature spread of 30 feet or greater, with a mature height of 20 feet or greater.

**CHESAPEAKE BAY PRESERVATION AREA OR CBPA:** Any land designated by the city council pursuant to Code of Virginia, § 10.1-2107. A Chesapeake Bay preservation area shall consist of a resource protection area and a resource management area.

**DRIP LINE:** The area defined by the outermost circumference of a tree canopy from where water drips onto the ground.

**IMPERVIOUS SURFACE:** A surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. (See also §1.5.7.B).

**LANDSCAPING:** Any live plant material such as trees, shrubs, ground cover, and grass used in spaces void of any impervious material or building structures, areas left in their natural state or areas where mulch is used as a ground cover.

**PLANT NURSERIES AND GREENHOUSES:** An establishment for the propagation, cultivation and growing of nursery stock for gardens, grounds, yards, and indoor use such as trees, plants, shrubs, sod, seeds and vines and the retail sales of such nursery stock such as soil, mulch, plant food/nutrients, fertilizers, herbicides and insecticides.

**RESOURCE MANAGEMENT AREA OR RMA:** The component of the Chesapeake Bay preservation area that is not classified as the resource protection area and which is contiguous to the inland boundary of the RPA. Resource management areas 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. All lands in the city that are not designated as resource protection areas are resource management areas.

**RIGHT-OF-WAY:** An area or strip of land, either public or private, on which an irrevocable right-of- passage has been recorded for the use of vehicles or pedestrians or both.

Understory trees (a) Small deciduous trees or large deciduous shrubs with a mature height of 10 to 30 feet, except under overhead utilities, where lower heights at maturity may be required; or

(b) Trees or large shrubs at least 10 feet tall at maturity that usually have green foliage throughout all seasons of the year.

Shrubs Prostrate or upright woody plants, either evergreen or deciduous, with a mature height usually less than 10 feet. Evergreen shrubs usually have green foliage throughout all seasons of the year.

**TREE CANOPY:** The horizontal spread of a tree at maturity.

**TREE, STREET:** Any tree that grows in the right-of-way of a street or on private property adjacent to a street as authorized by the owner and placed or planted there by the city and designated by ordinance.

**TREE:** Any living, self-supporting woody plant that produces one main trunk and is 10 feet or greater in height, and 3.50 inches or greater in caliper measured six inches above ground level.

**YARD WASTE:** All materials derived from trees shrubbery leaves fallen branch s lawn trimmings and other woody waste