

INTRODUCED: February 5, 2018

AN ORDINANCE No. 2018-025

To amend City Code §§ 14-231, 14-232, and 14-234, concerning Chesapeake Bay Preservation Area designation criteria, to incorporate therein stream determination requirements from a Commonwealth of Virginia guidance document; to amend City Code §§ 14-263, 14-335, and 15-130, concerning performance criteria for the use, development, or redevelopment of land in Chesapeake Bay Preservation Areas, the enforcement of the Richmond Stormwater Management Program Ordinance, and the maintenance of septic systems within Chesapeake Bay Preservation Areas, respectively, and to amend ch. 14, art. IV, div. 5 of the City Code, concerning the administration and enforcement of the Chesapeake Bay Preservation Program, by adding therein a new § 14-295, concerning enforcement, to provide for an enforcement mechanism for the septic pumping requirement.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: FEB 26 2018 AT 5 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That sections 14-231, 14-232, 14-234, 14-263, 14-335, and 15-130 of the Code of the City of Richmond (2015), be and are hereby **amended** and reordained as follows:

Sec. 14-231. Resource protection areas.

(a) At a minimum, resource protection areas shall consist of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: FEB 26 2018 REJECTED: _____ STRICKEN: _____

biological processes they perform or are sensitive to impacts which may cause significant degradation to the quality of State waters. In their natural condition, these lands provide for the removal, reduction or assimilation of sediments, nutrients and potentially harmful or toxic substances in runoff entering the Bay and its tributaries, and minimize the adverse effects of human activities on State waters and aquatic resources.

(b) The resource protection area shall include:

(1) Tidal wetlands;

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

(3) Tidal shores;

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

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

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

(d) For the purpose of generally determining whether water bodies have perennial flow, the City [~~shall~~] may use either the designation of water bodies depicted as perennial on the most recent United States Geological Survey 7½ minute topographic quadrangle map (scale 1:24,000)[~~. However, site-specific determinations shall be made or confirmed by the City pursuant to Section 14-234 whenever development is proposed on a site within 600 feet of a stream and any contiguous wetlands. The site-specific determinations of water bodies with perennial flow shall be based on the protocols listed in the “Determinations of Water Bodies with Perennial Flow,” Guidance on the Chesapeake Bay Preservation Area Designation and Management Regulation, September, 2003, published by the Commonwealth of Virginia, and as may be amended from time to time~~] or a reliable, site-specific determination conducted pursuant to Section 14-234.

Sec. 14-232. Resource management areas.

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

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

- (1) 100-year floodplains;
- (2) Highly erodible soils, including steep slopes;
- (3) Highly permeable soils;

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

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

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

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

(a) The City shall, on all properties located within a designated Chesapeake Bay Preservation Area, as part of the Chesapeake Bay Site Plan review process pursuant to ~~[Subdivision (1)(e) of 9VAC25-830-240 of the Virginia Administrative Code]~~ Section 14-

263(10) or during the review of a water quality impact assessment pursuant to Section 14-264(6) ensure or confirm that:

- (1) A reliable, site-specific evaluation is conducted to determine whether water bodies on or adjacent to the development site have perennial flow; and
- (2) Chesapeake Bay Preservation Area boundaries are to be adjusted, as necessary, on the site, based on this evaluation of the site.

~~[The City may accomplish this by either conducting the site evaluations or requiring the person applying to use or develop the site to conduct the evaluation and submit the required information certified by a professional engineer, land surveyor, landscape architect, soil scientist or wetland delineator certified or licensed to practice in the Commonwealth of Virginia for review by the City.]~~

(b) Where no existing evaluation has been confirmed, the City shall ensure that a reliable, site-specific evaluation is conducted by either conducting the site evaluation or requiring the person applying to use or develop the site to conduct the evaluation and submit the resulting findings for review. When required by the City, site-specific evaluations shall be performed using one of the protocols acceptable to the Virginia Department of Environmental Quality, which include the North Carolina and Fairfax County field indicator protocols referred to in the document adopted by the Commonwealth of Virginia entitled “Determinations of Water Bodies with Perennial Flow, Guidance on the Chesapeake Bay Preservation Area Designation and Management Regulations” and any other protocol either set forth in written guidance issued by the Virginia Department of Environmental Quality or for which the Administrator has received written confirmation from an authorized representative of the Virginia Department of Environmental Quality that such protocol is acceptable to the Virginia Department of

Environmental Quality. Each site-specific evaluation must be performed, and certified as complete and accurate, by a qualified professional. To be qualified, a professional must (i) work or be certified in a related field such as stream ecology, hydrology, or hydrogeology, (ii) have secondary education, post-secondary education, or technical training in a related field such as stream ecology, hydrology, or hydrogeology, and (iii) have field experience performing or substantially assisting with the performance of a site-specific evaluation using the protocol employed. The City may, at its sole discretion, conduct a site-specific evaluation using a professional qualified pursuant to this section for any purpose.

Sec. 14-263. General performance criteria.

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

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

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

(3) Where the best management practices are utilized that require regular or periodic maintenance to continue their functions, such maintenance shall be ensured through a maintenance agreement with the owner or developer or some other mechanism approved by the City that achieves an equivalent objective. Maintenance agreements submitted for best management practices installed or used in areas of the City served by the municipal separate

storm sewer system pursuant to Section 14-331 will be accepted if consistent with the requirements above.

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

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

(6) Any land disturbing activity that exceeds an area of 2,500 square feet (including construction of all single-family houses, septic tanks and drain fields, but otherwise as defined in Code of Virginia, § 62.1-44.15:51) shall comply with the requirements of Section 14-147.

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

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

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

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

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

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

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

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

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

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

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

(12) On-site sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System permit shall be pumped and maintained at least once every five years. Such pumping and maintenance shall be performed in a manner approved by the District Health Department. Immediately upon having the sewage treatment system pumped and maintained, the owner of a sewage treatment system shall certify on a form approved by the District Health

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

Sec. 14-335. Enforcement.

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

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

order or to revoke the permit. The Administrator is also authorized to pursue additional enforcement measures listed below.

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

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

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

(b) In addition to any other remedy provided by this chapter, if the Administrator determines that there is a failure to comply with the provisions of this chapter, the Administrator

may initiate such informal or formal administrative enforcement procedures in a manner authorized by this chapter and any applicable City requirements. Such measures include, but are not limited to:

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

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

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

- a. No State permit registration;
- b. No stormwater pollution prevention plan;
- c. Incomplete stormwater pollution prevention plan;
- d. Stormwater pollution prevention plan not available for review;
- e. No approved erosion and sediment control plan;
- f. Failure to install best management practices or erosion and sediment controls;
- g. Best management practices or erosion and sediment controls improperly installed or maintained;
- h. Operational deficiencies;
- i. Failure to conduct required inspections;
- j. Incomplete, improper, or missed inspections; and
- k. Discharges not in compliance with the requirements of the general permit.

(4) Notwithstanding any other civil or equitable remedy provided by this section or otherwise by law, any person who willfully or negligently violates any

provision of this article, any order of the Administrator, any condition of a permit, or any order of a court pertaining to this article, shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not [~~less~~] more than \$2,500.00[~~, nor more than \$32,500.00~~], either or both.

Sec. 15-130. Maintenance of [~~septic~~] sewage treatment systems.

All on-site [~~septic~~] sewage treatment systems within a Chesapeake Bay Preservation Area not requiring a Virginia Pollution Discharge Elimination System permit shall be pumped and maintained [~~at least once every five years. Such pumping and maintenance shall be performed in a manner approved by the District Health Department. Immediately upon having the septic system pumped and maintained, the owner of a septic system shall certify on a form approved by the District Health Department that such pumping and maintenance was performed. The pumping and maintenance required by this section shall be performed only by an individual or entity approved by the District Health Department~~] in accordance with Section 14-263(12).

§ 2. That Chapter 14, Article IV, Division 5 of the Code of the City of Richmond (2015) be and is hereby amended and reordained by **adding therein a new section** numbered 14-295 as follows:

Sec. 14-295. Enforcement.

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

(b) Without limiting the remedies available under this article, any person who violates any provision of this article or who violates or fails, neglects, or refuses to obey any variance or permit condition authorized under this article shall, upon such a finding thereof by

the Circuit Court of the City of Richmond, be assessed a civil penalty not to exceed \$5,000.00 for each day of violation. Such penalties may, at the discretion of the court, be directed to be paid into the treasury of the City for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas within the city, in such a manner as the court may direct by order, except that, in the event the City or its agent is the violator, the court shall direct the civil penalty to be paid into the treasury of the Commonwealth as provided in Code of Virginia, § 62.1-44.15:74(E).

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

§ 3. This ordinance shall be in force and effect upon adoption.



CITY OF RICHMOND

INTRACITY CORRESPONDENCE

O & R REQUEST
4-7384
DEC 21 2017
Office of the
Chief Administrative Officer
O&R

REQUEST

DATE: December 21, 2017

EDITION: 1

RECEIVED

TO: The Honorable Members of City Council

JAN 18 2018

THROUGH: The Honorable Levar Stoney, Mayor

JS 1/17/18

THROUGH: Selena Cuffee-Glenn, Chief Administrative Officer

SCG

OFFICE OF CITY ATTORNEY

THROUGH: Robert C. Steidel, Deputy Chief Administrative Officer for Operations

21 Dec. 17

THROUGH: Rosemary Green, Interim Director of Public Utilities

RHG 12-21-17

FROM: Jonet Prevost-White, Operations Manager

JPW 12-21-17

RE: Changes to Chapter 14, Article IV

ORD. OR RES. No. _____

PURPOSE: To enact City Code amendments related to the City's Chesapeake Bay Act Program, namely amendments to sections 14-231, 14-232, 14-234, 14-263, 14-294, 14-335, and 15-130.

REASON: To update the Chesapeake Bay Act program in response to Virginia Department of Environmental Quality (DEQ) recommendations related to septic system pumping enforcement, general enforcement, and perennial stream determinations.

BACKGROUND: The Chesapeake Bay Act Program managed by the Water Resources Division of the Department of Public Utilities underwent an audit by DEQ on March 30, 2017, which resulted in two recommended amendments to City Code.

The current language in Section 15-130 requires septic systems in the City to be pumped every five years but does not provide any enforcement mechanism. DEQ's first recommendation is to provide for an enforcement mechanism for the septic pumping requirement. The current language in Chapter 14 creates some uncertainty regarding the enforcement mechanisms for the Chesapeake Bay Act under Article IV. The proposed amendments to 15-130 and 14-263, along with the proposed general enforcement amendments in sections 14-295 and 14-335, address septic pumping enforcement.

The current language in Section 14-234 of City Code allows engineers, architects, land surveyors to submit site specific stream determinations to the city although professionals in those disciplines

do not intrinsically possess the training to perform an ecologically based field assessment on the perenniality of the stream. DEQ's second recommendation is to amend the stream determination language in City Code to incorporate stream determination requirements from a DEQ guidance document. The proposed amendments to City Code sections 14-231, 14-232, and 14-234 address the stream determination requirements.

City staff consulted with DEQ and the Virginia Department of Health staff to draft the proposed amendments.

RECOMMENDATION: Adopt the proposed City Code amendments in cooperation with the DEQ recommendations.

FISCAL IMPACT / COST: None.

FISCAL IMPLICATIONS: None.

BUDGET AMENDMENT NECESSARY: No.

REVENUE TO CITY: None.

DESIRED EFFECTIVE DATE: Upon adoption.

REQUESTED INTRODUCTION DATE: January 8th, 2017

CITY COUNCIL PUBLIC HEARING DATE: January 22, 2017

REQUESTED AGENDA: Consent.

RECOMMENDED COUNCIL COMMITTEE: Land Use, Housing, and Transportation

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: N/A.

AFFECTED AGENCIES: Department of Public Utilities, Department of Planning and Development Review.

RELATIONSHIP TO EXISTING ORD. OR RES.:

REQUIRED CHANGES TO WORK PROGRAM(S): None.

ATTACHMENTS: Code changes

STAFF: Jonét Prévost-White, MS4 Operations Manager, 646-6964
Rosemary Green, Interim Director, Department of Public Utilities, 646-8517.