

**PART II CODE OF ORDINANCES**

**Chapter 46 FRANCHISES**

**Article II. Cable Communications**

**Division 7. System Construction and Installation**

**Sec. 46-167. Authority of franchisee to trim trees.**

A franchisee shall have the authority to trim trees overhanging streets, alleys, sidewalks and public places of the city to prevent their branches from touching wires and cables and other television conductors and fixtures of the franchisee. All trimming shall be done under the city's supervision and direction and at the expense of the franchisee. A franchisee shall provide reasonable advance notice to the city of its tree trimming activities.  
(Code 1991, § 9-167)

**Chapter 66 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES\***

**Article IV. Use of Other Public Property**

**Sec. 66-141. Use of city waterworks property.**

(a) *Prohibited activities.* It shall be unlawful for any person to engage in any of the following activities on or upon the city waterworks property:

...  
(10) Cutting, clearing, damaging, or destroying any trees or other natural vegetation; or  
...

...  
(e) *Penalty.* Any person convicted of violating any provision of this section shall be guilty of a class 2 misdemeanor. Each day that a violation continues shall be deemed a separate offense.  
(Code 1991, § 13-41)

**Sec. 66-142. Use of city watershed property.**

(a) *Prohibited activities.* Except as otherwise provided by this section, it shall be unlawful for any person to engage in any of the following activities on or upon the city watershed property:

...  
(8) Cutting, clearing, damaging, or destroying any trees or other natural vegetation;  
...

...  
(f) *Penalty.* Any person convicted of violating any provision of this section shall be guilty of a class 1 misdemeanor, except that any person convicted of trespassing upon city watershed property in violation of subsection (d) of this section for the purpose of hunting, fishing, or trapping shall be guilty of a class 3 misdemeanor.  
(Code 1991, § 13-41.1)

**Article V. Historic Areas and Resources**

**Division 2. Infrastructure Improvements on City Property in Historic District**

**Sec. 66-193. Review standards; appeals.**

(a) In considering proposals for infrastructure improvements within the Old and Historic Fredericksburg district, the city and public utility review committee shall consider the following factors:

- ...
- (2) The preservation of trees and other landscaping that provide visual uniformity to the streetscape;

...

(Code 1991, § 16-13)

**ARTICLE VI. TREES**

**Sec. 66-221. Purpose and authority.**

In order to promote the general health, safety, and welfare of the public, to facilitate the creation of an attractive and harmonious community, to conserve, protect, and enhance the city's natural resources, and to safeguard and protect land values, the city tree program is hereby established. The goals of the tree program shall be:

- (1) To aid in stabilizing the environment's ecological balance by contributing to the process of air purification, oxygen regeneration, groundwater recharge, and stormwater runoff retardation, while aiding in noise, glare and heat abatement;
  - (2) To encourage the preservation of existing trees, shrubs, and cultivated vegetation;
  - (3) To beautify the city;
  - (4) To safeguard and enhance property values and to protect public and private investment;
  - (5) To preserve, protect, and restore the unique identity and environment of the city and to protect its economy; and
  - (6) To conserve energy and protect the public health, safety, and general welfare.
- (Ord. No. 04-08, § 1(16-72), 4-27-2004)

**Sec. 66-222. Planting of trees, shrubs, and vegetation on city property--Permit required.**

It shall be unlawful for any person other than the city manager or his designee to plant, trim, or prune any tree, shrub, or other vegetation on, or to remove any tree, shrub, or other vegetation from, any dedicated city street, alley, park, or other property owned or controlled by the city without first obtaining the written permission of the city manager or his designee; provided, however, that nothing contained in this section shall prohibit the trimming or cutting of grass in the public right-of-way. For purposes of this article, the term "city-owned property" shall mean any lands owned by the city within the city except for property under the jurisdiction and control of the school board. Any tree, shrub, or other vegetation planted in violation of this section shall be subject to removal by the city.

(Ord. No. 04-08, § 1(16-73), 4-27-2004)

**Sec. 66-223. Same--Permitted species.**

- (a) It shall be unlawful for any person to plant any tree, shrub, or other vegetation on city-owned property unless it is shown on the current list of approved species developed and maintained by the city manager. Any tree, shrub, or vegetation planted in violation of this section shall be subject to removal by the city.
  - (b) The city manager or his designee may plant trees, shrubs, and vegetation not shown on the list of approved species in public parks only.
- (Ord. No. 04-08, § 1(16-74), 4-27-2004)

**Sec. 66-224. Issuance of tree permits.**

(a) The city manager or his designee shall have the authority to issue a tree permit to any person upon payment of an application fee to be established by the city manager in order to plant any approved tree, shrub, or vegetation on city-owned property upon such terms and conditions as the city manager deems appropriate and that are consistent with the provisions of this article.

(b) Any permit used pursuant to this section shall contain a clear description of the action to be performed, the approved location, the species of tree or shrub, the duration of the permit, and any other requirements deemed necessary by the city manager or his designee. All work performed under such permit shall be in strict accordance with the terms thereof. (Ord. No. 04-08, § I(16-75), 4-27-2004)

**Sec. 66-225. Master tree plan.**

In order to promote an orderly, attractive, and economical tree planting program in the city, the city manager shall develop and implement a master plan for the design, planting, maintenance, preservation and removal of trees, shrubs, and vegetation on city-owned property. Such plan shall be developed with appropriate public participation and include proper consultation and coordination with the city school board regarding trees, shrubs, and vegetation on public school sites and Maury Field.

(Ord. No. 04-08, § I(16-76), 4-27-2004)

**Sec. 66-226. Planting and care of public trees, shrubs, and other vegetation.**

(a) The city manager shall be responsible for the planting, trimming, removal, and care of all trees, shrubs, plants, and other vegetation on city-owned property. He is hereby authorized to trim, prune, spray, fertilize, water, cultivate, maintain, plant, and remove any trees, shrubs, and other vegetation in accordance with the provisions of this article.

(b) The city manager is hereby directed to plant, prune, maintain and relocate trees, plants and shrubs within the lines of all streets and public parks in accordance with the master tree plan to preserve or enhance the symmetry and beauty of such public grounds.

(c) The city manager shall provide a written report on the tree program to the city council on an annual basis, specifying the number and location of trees that have been planted and removed on city-owned property.

(d) When a tree is removed, it shall be the city's policy to plant a replacement tree in the same general area, consistent with specified standards, except when a replacement tree is determined by the city staff to be infeasible or inappropriate.

(e) The city shall not, as a general practice, top any tree on city-owned property. For purposes of this section, "top" shall mean to cut back severely the limbs of any tree within its crown so as to remove the normal canopy of the tree and to disfigure it. Trees severely damaged by storms or other causes or trees located under utility wires or other obstructions, where other pruning practices are impractical, may be topped at the direction of the city manager or his designee.

(f) Stumps of trees located along city streets and in city parks shall generally be removed below the surface of the ground so that the top of the stump does not project above the surface of the ground.

(Ord. No. 04-08, § I(16-77), 4-27-2004)

**Sec. 66-227. Removal of trees.**

The city manager shall not remove or permit the removal of any tree, shrub, or other vegetation from any city-owned property unless he or his designee has determined that such tree, shrub, or vegetation is:

- (1) Diseased;
  - (2) Infected with injurious insects or pests;
  - (3) Obstructing or endangering existing or proposed public improvements or the traveling public;
  - (4) Dead or unsightly; or
  - (5) A species not permitted under the city's master tree plan.
- (Ord. No. 04-08, § I(16-78), 4-27-2004)

**Sec. 66-228. Pruning, trimming and removal of trees by public service corporations.**

(a) Except as otherwise provided by law or a franchise granted by the city, any public service or utility corporation desiring to cut, trim, or remove trees, shrubs, or other vegetation from city-owned property shall submit a written plan to the city manager for review and approval.

(b) The city manager or his designee shall, upon receipt of such application, issue a utility permit therefor if it appears to that such cutting, trimming, or removal is necessary for the protection of life or property and is consistent with the provisions of this article. Such cutting, trimming, or removal shall be done properly and at the expense of such public service corporation.

(Ord. No. 04-08, § I(16-79), 4-27-2004)

**Sec. 66-229. Abuse or mutilation of trees, shrubs, or other vegetation on city-owned property.**

It shall be unlawful for any person to willfully or maliciously break, bark, belt, or otherwise injure any tree, shrub, plant, or other vegetation on city-owned property.

(Ord. No. 04-08, § I(16-80), 4-27-2004)

**Sec. 66-230. Violations.**

Any person found in violation of any provision of sections 66-222, 66-223, or 66-229 shall be guilty of a misdemeanor punishable by a fine of not more than \$1,000.00. This shall be in addition to any civil penalties, charges, or other actions that may be instituted against such person to prevent, restrain, correct, or abate violations of this article.

(Ord. No. 04-08, § I(16-81), 4-27-2004)

## **Chapter 78 ZONING, PLANNING AND DEVELOPMENT**

### **Article I. In General**

#### **Sec. 78-1. Definitions.**

*Landscaping* means the improvement of a lot with grass, shrubs, trees or other vegetation. It shall include pedestrian walks, flowerbeds, and ornamental objects such as fountains, statues and other similar natural and artificial objects designed and arranged to produce an aesthetically pleasing effect.

### **Article III. Zoning**

#### **Division 2. General Regulations**

##### **Sec. 78-73. Landscaping and screening standards.**

(a) *Purpose.*

(1) The intent of this division is to enhance the attractiveness of the community, to conserve natural resources, including soil, air and water, to preserve properties and their values, and to encourage appropriate uses of land.

(2) The landscaping and screening standards are also intended to compliment the city's Tree City program and efforts such as the city's Entryways Improvement Project aimed at enhancing the overall visual and aesthetic quality of the city.

(3) A screen or barrier between uses will minimize the harmful impacts of noise, dust and debris, glare from motor vehicle lights and other sources of light, and other objectionable impacts conducted on or caused by an adjoining or nearby use.

(4) This division shall require landscaping of certain parking lots in order to reduce the harmful effects of noise, heat, wind, and the glare of motor vehicle lights, to ameliorate drainage problems, to prevent soil erosion, to reduce the level of carbon dioxide and return oxygen to the atmosphere, to provide shade and to enhance the overall appearance of parking lots within the city.

(b) *Applicability.*

(1) The provisions of this division shall apply to all development where site plans are required, to proposed parking lot construction and to improvements or expansions of existing parking lots. Site plans are to be filed in accordance with division 36 of this article.

(2) The requirements of this division shall be in addition to the landscaped open space provisions contained in the district requirements of this article.

(c) *Standards* . The standards in this subsection shall apply to the installation of all landscaping, screening and fencing as required by this article.

(1) *General requirements.*

a. All trees required by subsection (c) of this section shall be a minimum of ten feet above ground height at the time of planting. The minimum tree thickness or caliper shall be 1 3/4 to two inches.

b. The planning commission may require and specify various types of trees whose height at the time of maturity is compatible with the proposed project and its environs. The planning commission will consider project size, location, height of proposed buildings and surrounding area impact in determining the compatibility of proposed landscaping improvements with the proposed site development.

c. Existing trees and vegetation, particularly mature deciduous trees, are to be saved and used as an integral part of the site landscaping and screening.

d. The planting, spacing, location and maintenance of all trees and shrubs shall be accomplished in accordance with acceptable practices of the department of building and development services.

- (2) *Interior landscaping for parking lots with 15 or more spaces.*
- a. Any parking lot with 15 or more spaces shall be provided with interior landscaping composed of at least five percent of the total area of the parking lot. Such interior landscaping shall be in addition to any planting or landscaping provided within five feet of a building (typical building landscaping). Landscaping shall consist of trees, shrubs and flowers.
  - b. The primary landscaping material used in parking lots shall be trees which provide shade or are capable of providing shade at maturity. Shrubs and other planting materials may be used to complement the tree landscaping but shall not be the sole contribution to the required landscaping.
  - c. Distribution of the landscaping areas and materials throughout the parking lot shall be accomplished in a reasonable manner, subject to approval by the zoning administrator.
  - d. The zoning administrator may waive or modify the requirements of this section for any use in an industrial district wherein vehicles are parked or stored, provided the use is screened from view of all adjacent residential or C-T zoned property and all public streets. The planning commission shall be notified of such waivers or modifications.
- (3) *Interior landscaping for parking lots with less than 15 spaces.*
- a. For parking lots with less than 15 parking spaces, landscaping covering not less than three percent of the total area of the parking lot shall be provided, exclusive of building landscaping. Perimeter parking lot landscaping with trees and hedges is encouraged for such smaller parking lots and may be counted as part of the required three percent. Within the HFD, such parking lots shall have at least one tree for each 30 linear feet of lot frontage.
  - b. Within the area between the required tree placement (one tree for each 30 linear feet of site frontage), there shall be required planting of shrubs or hedges of a height at maturity of at least three to four feet. Such shrubs or hedges shall be planted in a manner so as to substantially screen from view the parking lot area and vehicles therein from the perspective of the public right-of-way.
- (4) *Perimeter or peripheral parking lot landscaping.* Any parking lot which contains 15 or more spaces where interior screening is not required shall provide for perimeter or peripheral parking lot landscaping as follows:
- a. Where the property line abuts land not in the right-of-way of a street:
    1. A landscaping strip at least three feet in width shall be located between the parking lot and the abutting property lines except where driveways and other openings may necessitate other treatment.
    2. At least one tree for each 30 feet shall be planted in the landscaping strip.
    3. Within the area between the required tree placement (one tree for each 30 linear feet of site frontage), there shall be required planting of shrubs or hedges of a height at maturity of at least three to four feet. Such shrubs or hedges shall be planted in a manner so as to substantially screen from view the parking lot area and vehicles therein from the perspective of the public right-of-way.
  - b. Where the property line abuts the right-of-way of a street:
    1. A landscaping strip of at least three feet in width, which shall not include a sidewalk or trail, shall be located between the parking lot and the property line. Within the HFD a landscaping strip of only three feet in width shall be required.
    2. At least one tree for each 30 linear feet shall be planted in the landscaping strip.

3. Within the area between the required tree placement (one tree for each 30 linear feet of site frontage), there shall be required planting of shrubs or hedges of a height at maturity of at least three to four feet. Such shrubs or hedges shall be planted in a manner so as to substantially screen from view the parking lot area and vehicles therein from the perspective of the public right-of-way.

4. Where perimeter landscaping required by this subsection conflicts with street planting regulations of the state department of highways and transportation or provisions of the city's planting program, the latter regulations or provisions shall govern.

c. Waivers and modifications to the landscaping requirements set out in this section may be granted by the planning commission upon finding that use of a subject lot, due to its size or configuration, would be excessively or unreasonably restricted by the strict application of such requirements. The planning commission may prescribe other appropriate conditions when considering waivers or modifications from the landscaping requirements to ensure the intent of this section is carried out.

(5) *Waiver of parking requirements in favor of additional landscaped area.* In considering site development plans, the planning commission may waive up to five percent of the total parking spaces or area required, provided that the space or area shall be landscaped, with trees constituting the primary landscaping material for the subject area.

(6) *Screening requirements .*

a. *Generally.* Screening shall be provided between commercial and residential districts or uses and between industrial districts or uses and single-family detached residential districts or uses in accordance with the screening requirements set forth in this section.

b. *Required screening.*

1. Screening shall be required at the outer boundaries of a lot except where driveways and other openings may be required.

2. Screening between uses or districts noted in subsection (a) of this section may be provided within required minimum yard areas.

3. Where a C-H or C-SC district, site or use is contiguous to property located in any R district or C-T district, a landscaped buffer strip of 20 feet in width shall be provided with plantings, in accordance with level 2 screening standards.

4. Where an I-1 or I-2 district, site or use is contiguous to property located in any district other than I-1 or I-2, a landscaped buffer strip of 20 feet in width shall be provided with plantings, in accordance with level 2 screening standards.

5. Screening between C-D or C-T districts and property located in any R district shall consist of a ten-foot landscaped buffer strip with plantings, in accordance with level 1 screening standards.

6. Screening between proposed multifamily or townhouse residential developments or districts and all single-family R districts or uses shall consist of a 20-foot landscaped buffer strip with plantings, in accordance with level 2 screening standards.

7. Where any commercial, industrial, townhouse or multifamily development is adjacent to, or within the visual site lines of, National Park Service lands, screening shall be provided consisting of at least a 20-foot landscaped buffer strip with plantings, predominantly deciduous or evergreen trees, in accordance with level 2 screening standards.

c. *Authority to require additional screening.* In addition to the screening requirements of this subsection, the planning commission or the zoning administrator may require fencing or other appropriate barriers, including brick walls, solid wood fences or other fencing materials, with the type and height subject to final plan approval, within I-2, I-1, C-SC and C-H districts where site lines are contiguous with property in a district other than I-2, I-1, C-SC or C-H. The purpose of this additional screening shall be to minimize noise, glare and other adverse impacts resulting from uses located within such districts.

d. *Waiver or modification of requirements.* Screening and fencing requirements may be waived or modified by the planning commission in any of the following circumstances:

1. Screening and fencing may be waived between uses that are to be developed under a common development plan, planned unit development or mixed use plan concept.
2. Where the strict provisions of this division would reduce the usable area of a site, due to site configuration or size, to a point which would preclude reasonable use of the site, screening and fencing may be waived or modified, provided a building, a barrier, or the land between a building and the property line has been specifically designed to minimize adverse impact through a combination of architectural and landscaping techniques.
3. The screening yard width and planting requirements may be reduced as much as two-thirds where the developer chooses to construct a six-foot brick or architectural block wall or pressure-treated wooden fence for purposes of providing a suitable barrier between uses.
4. Screening and fencing may be waived or modified where the adjoining land is designated in the adopted comprehensive plan for a use which would not require the provision of screening between the land under the site plan and the adjoining property.
5. Screening and fencing or barriers may be waived or modified where the adjacent property is zoned to allow a use similar to that of the parcel under the site plan.
6. Screening and fencing or barriers may be waived or modified where the adjacent property is used for any public purpose other than a school or hospital.
7. Screening and barriers may be waived or modified where adjacent residential property is used for any use permitted by the board of zoning appeals or city council as a special use permit or special exception use, except nursery schools, child care centers, or schools of general and special education.
8. Screening may be waived or modified when the adjoining land is an R district and is used for off-street parking as permitted by this article.
9. Screening and fencing may be waived or modified where the subject property abuts a railroad or interstate highway right-of-way.
10. Barrier or fencing requirements may be waived where the topography of the lot providing the screening and the site being protected is such that a barrier would not be effective.

(7) *Landscaping around buildings and other structures.* All areas within the immediate proximity of a building shall be landscaped. The width of this area of

landscaping shall be at least five feet. Landscaping around other site structures, including signs, is also encouraged.

(8) *Landscaping around freestanding signs.* All freestanding signs within the city shall be landscaped around the foundation of the sign and its supports.

(9) *Preservation of existing landscaping and screening.* In reviewing a site plan, the planning commission shall have the authority to require existing vegetation, trees, landscaping and screening to be preserved. The zoning administrator shall have the authority to require placement or repair of such landscaping or screening destroyed during development. Cutting of trees or vegetation on steep slopes or other sensitive environmental areas shall be discouraged.

(10) *Maintenance of landscaping and screening.*

a. The owner of any property subject to this division shall be responsible for the maintenance, repair and replacement of all required landscaping and screening materials. All plant materials shall be tended and maintained in a healthy growing condition, replaced when necessary, and kept free of refuse and debris. Fences and walls shall be maintained in good repair.

b. The zoning administrator shall require the replacement of trees or the repair of barriers within six months if such trees or barriers die or are destroyed.

(Code 1991, § 14-78)

**Note:** Per the city's request, references to "department of code compliance" have been replaced with "department of building and development services".

**Sec. 78-74. Minimum screening standards.**

The following chart outlines the minimum standards for screening:

(1) Level 1:

TABLE INSET:

Type	Minimum Size at Planting	Maximum Spacing Distance	Minimum Planting Strip, Width
Evergreen trees	6' in height	10' on centers	6'
Deciduous trees	8' in height 2 1/2" in caliper	15' on centers	6'

(2) Level 2 (satisfy (a) or (b) below):

TABLE INSET:

Type	Minimum Size at Planting	Maximum Spacing Distance	Minimum Planting Strip, Width
(a) Evergreen trees	8' in height	Solid screen treeline	10'
(b) Wall	7' in height	N/A	N/A, or
Hedge	6' in height	N/A	N/A, plus
Evergreen trees or shrubs	6' in height	10' on centers	6'

(Code 1991, § 14-79)

Sec. 78-208. Open space.

In subdivisions approved for cluster development in R-2 districts, 15 percent of the gross area shall be open space dedicated for common usage and ownership.

(Code 1991, § 14-197)

### **Division 7. R-2 Residential District**

#### **Sec. 78-208.1. Cluster residential subdivision requirements.**

The following regulations shall apply to cluster residential subdivisions:

...

(3) The design shall provide for permanent reservation of open space and efficient and improved use of land. Building sites shall be located so as to take advantage of natural topography and to minimize grading and destruction of natural vegetation, particularly mature trees on steep slopes and stream valleys. Plans shall not be approved where the clear purpose of the design is to subvert the purposes of these regulations by inclusion of unbalanced distribution of land among lots or inclusion of open space which are inappropriately located or which will not contribute to the future amenity of the development.

(4) The cluster development shall be designed to promote harmonious relationships with surrounding adjacent land, nearby developed or underdeveloped properties, and to this end may employ such design techniques as may be appropriate in a particular case, including coordination of yard dimensions, location of lots of various sizes, location of buildings with respect to project boundary lines, open spaces, and maintenance of vegetation.

...

(Ord. No. 06-41, § II, 1-9-2007)

#### **Sec. 78-246.1. Cluster residential subdivision requirements.**

The following regulations shall apply to cluster residential subdivisions:

...

(3) The design shall provide for permanent reservation of open space and efficient and improved use of land. Building sites shall be located so as to take advantage of natural topography and to minimize grading and destruction of natural vegetation, particularly mature trees on steep slopes and stream valleys. Plans shall not be approved where the clear purpose of the design is to subvert the purposes of these regulations by inclusion of unbalanced distribution of land among lots or inclusion of open space which are inappropriately located or which will not contribute to the future amenity of the development.

(4) The cluster development shall be designed to promote harmonious relationships with surrounding adjacent land, nearby developed or underdeveloped properties, and to this end may employ such design techniques as may be appropriate in a particular case, including coordination of yard dimensions, location of lots of various sizes, location of buildings with respect to project boundary lines, open spaces, and maintenance of vegetation.

(5) A minimum of 25 percent of the subject tract shall be designated as permanent common open space contained within one continuous parcel. Such land may include parks, woodlands, steep slopes, floodplains, or any natural feature appropriate for preservation, provided however, that no more than 30 percent of the required open space shall consist of floodplain or steep slope areas. The open space shall be conveyed to a responsible party such as a homeowner's association for long-term care and maintenance.

(6) The land area to be set aside for common area space shall be so located and shaped as to have a logical and mutually beneficial relationship to additional open space in an adjacent tract whenever practical.

(Ord. No. 06-41, § II, 1-9-2007)

**Division 13. Planned Development-Residential (PD-R) District**  
**Sec. 78-412. Purpose and intent.**

The planned development-residential (PD-R) district is established to encourage innovative and creative design, to facilitate use of the most advantageous construction techniques, and to protect watercourses, stream valleys, forest cover in watersheds, and areas with scenic vistas. The district is designed to permit a greater degree of flexibility in terms of layout, design and construction of planned development than is found in conventional zoning classifications. It will permit planned mixed use communities comprising residential, commercial, office and service uses. For these reasons, the PD-R district shall not be appropriate unless the generalized development plan submitted by an applicant satisfies the requirements of this division and the adopted comprehensive plan to a significantly greater degree than the requirements of a conventional zoning district.  
(Code 1991, § 14-341)

**Division 19.1. Planned Development Mixed Use District**  
**Sec. 78-627. Additional regulations.**

(1) A PD-MU district shall contain the following standards:

...

(4) Street trees shall be planted at a density of one tree per 30 linear feet along all areas dedicated for vehicular access use except as shown on the GDP. Such trees shall have a minimum caliper of two inches and a minimum height at maturity of 15 feet.

...

(Ord. No. 09-10, § I, 2-24-2009)

**Sec. 78-628. General standards.**

No application shall be approved for a planned development mixed use district under the provisions of this division unless the generalized development plan accompanying such application satisfies the following general standards and design criteria:

...

(13) Landscaping and open space shall be used to provide shading, screening and erosion and sediment control.

(14) The development shall reflect the existing natural topography of the site by preserving the natural character and existing trees to the greatest extent possible.

(Ord. No. 09-10, § I, 2-24-2009)

**Division 26. Chesapeake Bay Preservation Overlay (CBPO) District**  
**Sec. 78-847. Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Agricultural lands* means those lands used for planting and harvesting of crops or plant growth of any kind in the open, pasture, horticulture, dairying, floriculture, or raising of poultry and/or livestock.

*Best management practices* and *BMPs* mean a practice or combination of practices determined by a state, regional or city agency to be the most effective and practical means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with the water quality goals of this division.

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

*Chesapeake Bay preservation area* and *CBPA* mean any land designated by city council pursuant to this division and consisting of a resource protection area and/or a resource management area.

*Construction footprint* means the area of all impervious surface, including, but not limited to, buildings, roads and drives, parking areas, sidewalks, and areas necessary for construction of such improvements.

*Development* means the construction or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation, or utility facilities or structures.

*Diameter at breast height* and *DBH* mean the diameter of a tree measured outside the bark at a point 4.5 feet above the ground.

*Drip line* means a vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy.

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

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

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

*Infill* means vacant land in previously developed areas.

*Intensely developed area* and *IDA* mean any land designated by city council where development is concentrated and little of the natural environment remains. IDAs shall include lands where:

- (1) Development has severely altered the natural state of the area such that it has more than 50 percent impervious surface;
- (2) Public water and sewer is constructed and available to serve the area; or
- (3) Housing density is equal to or greater than four dwelling units per acre.

*Nonpoint source pollution* means pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agriculture and urban land development.

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

*Redevelopment* means the process of developing land that is or has been previously developed, or lies within an intensely developed area.

*Resource management area* and *RMA* mean that component of a Chesapeake Bay preservation area not classified as a resource protection area. RMAs shall include land types that, if improperly used or developed, would have the potential for causing significant water quality degradation or for diminishing the functional value of a resource protection area.

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

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

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

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

*Tributary stream* means any perennial stream that is so depicted on the most recent U.S. Geological Survey 7 1/2-minute topographic quadrangle map (scale 1:24,000) and that is so designated by city council on the official maps known as the "Chesapeake Bay Preservation Area Maps."

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

- (1) Ports;
- (2) The intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers;
- (3) Public flood control facilities;
- (4) Marinas and other boat docking structures;
- (5) Beaches and other water-oriented recreation areas; and
- (6) Fisheries or other marine resources facilities.

*Wetlands* means tidal and nontidal wetlands.

(Code 1991, § 14-637; Ord. No. 04-06, § II(A), (B), 3-23-2004)

#### **Sec. 78-852. Same--Resource protection area buffer area requirements.**

(a) To minimize the adverse effect of human activities on the other components of resource protection areas, state waters, and aquatic life, a vegetated buffer area that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be (1) retained, if such buffer area exists on the effective date of this section, or (2) established at the time of development or redevelopment. Such buffer areas shall be designated as the landward components of RPAs and shall be located adjacent to and landward of other RPA components, including both sides of any water body with perennial flow.

(b) A 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients.

(c) In order to maintain the functional value of buffer areas, indigenous vegetation may be removed, subject to approval by the director of building and development services, to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those designed to prevent upland erosion and concentrated flows of stormwater as follows:

- (1) Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff;
- (2) Any path shall be constructed and surfaced so as to effectively control erosion;
- (3) Dead, diseased, or dying trees or shrubbery may be removed; thinning of trees may be allowed in accordance with sound horticultural standards; and

- (4) For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.
- (d) In IDAs, the director of building and development services shall have the authority to require the establishment of vegetation within the 100-foot wide buffer area. Consideration shall be given to establishing vegetation in such areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation.
- (e) Permitted encroachments into the buffer area.
- (1) Where the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be permitted by the director of building and development services in accordance with the following criteria:
- a. Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for the principal structure and necessary utilities;
  - b. Where practicable, a vegetation area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and
  - c. No encroachment may extend into the seaward 50 feet of the buffer area.
- (2) Where the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989 and March 1, 2002, encroachments into the buffer area may be permitted by the director of building and development services in accordance with the following criteria:
- a. The lot or parcel was created as a result of a legal process conducted in conformity with article IV of this chapter;
  - b. The conditions or mitigation measures imposed through a previously approved special exception, variance, or other city approval under this chapter have been fully 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, reestablished or repaired and maintained as required; and
  - d. The criteria in subsections (e)(1)a.-c. above shall be met.

(Ord. No. 05-05, § IIA(14-642), 2-22-2005)

**Division 27. Gateway Corridors Overlay District**  
**Sec. 78-885. Streetscape buffers.**

- (a) The underlying setback areas within the gateway corridors overlay district shall be reserved for streetscape buffers consisting primarily of landscaped open space and berms, but may also include amenities such as sidewalks, trails, utilities, and lighting, provided their location has been approved by the zoning administrator as being consistent with the provisions of this division.
- (b) All electrical, data, and mechanical devices taller than one foot within the streetscape buffer shall be screened with landscaping.
- (c) The streetscape buffer areas shall be landscaped in accordance with the following standards:
- (1) At least one large shade tree (at least 3.5 inches in diameter measured at breast height) for every 30 linear feet of road frontage, with the exception of driveways. Such trees shall be evenly spaced, aligned along the right-of-way frontage within 15 feet of the edge of the roadway pavement, and placed between the edge of the roadway pavement and any sidewalk or trail. Such trees shall be

regularly trimmed so that at least the bottom seven feet of the tree trunk remain clear of branches and vegetation.

(2) Existing mature, healthy trees located within the streetscape buffer shall be preserved and maintained as part of the overall landscaping plan for the development.

(3) Vegetation planted within the streetscape buffer shall be of a type and positioned so that, when fully grown, it will not interfere with existing overhead or underground utility lines.

(4) Above-grade streetscape buffers shall include berms at least three feet in height. The height and design of such berms and all vegetation planted thereon shall be approved by the zoning administrator as being consistent with the provisions of this division.

(5) Landscaped entrance areas shall be irrigated and properly maintained. Any landscaping that dies or is substantially destroyed in such areas shall be replaced with like species. Extroscaping practices shall be encouraged, as practicable.

(6) The streetscape buffer shall be properly maintained. Any streetscaping that dies or is substantially destroyed in such areas shall be replaced with like species.

(Ord. No. 03-23, § II(14-646), 6-8-2004)

### **Sec. 78-887. Lighting, screening, and landscaping standards.**

...  
(b) *Screening* .

(1) On properties zoned for office, commercial, industrial, or multi-family residential use, heating and air conditioning units, ventilation units, loading dock and service areas, trash containers, and security fencing (e.g., chain link fences) shall be screened from view at the property line if such improvements listed above cannot be located out of view from the adjacent property.

(2) Mechanical equipment, whether ground-level or rooftop, shall be screened from view of adjacent property and public rights-of-way and designed to be perceived as an integral part of the building.

(3) Screening devices shall be compatible with the design of the buildings and surrounding natural vegetation, and may consist of appropriate walls, plantings, or fencing.

(4) Surface runoff structures and stormwater detention ponds shall be designed to fit into the natural topography to the greatest extent practicable, as determined by the zoning administrator, in order to minimize the need for screening.

(c) *Landscaping*. Existing mature, healthy trees located within the district shall be preserved and maintained to the greatest extent practicable, as part of the overall landscaping plan for the development.

(Ord. No. 03-23, § II(14-648), 6-8-2004)

### **Division 32. Performance Standards**

#### **Sec. 78-1036. Extraction and mining.**

In addition to the performance standards otherwise set forth in this division, all extraction and mining special uses shall satisfy the following additional performance standards:

...

(8) *Landscaping*.

a. A roadside landscape area shall be required. The function of the roadside landscape area is threefold: to dignify the purpose of the natural resource area and

protect it from becoming an eyesore, to dampen noise from the operation of equipment, and to absorb dust that might result from the operations.

b. Existing trees and ground cover along public road frontage shall be preserved, maintained and supplemented by selective cutting, transplanting, and addition of new trees, shrubs and other ground cover for the depth of the roadside setback.

c. The type, time of planting, design and spacing of planting screen shall be approved by the zoning administrator. Approval of maintenance of roadside landscape area by the zoning administrator shall be required for permit extension and permit renewal.

...

(Code 1991, § 14-735)

### **Division 33. Site Plans**

#### **Sec. 78-1066. Additional information required.**

(a) *General information.* If any proposed development or redevelopment within the CBPO district exceeds 2,500 square feet of land disturbance, then the following additional information shall be submitted as all or part of the site plan required by this division:

(1) An environmental site assessment, drawn to scale and field verified, which clearly delineates:

a. Tidal wetlands;

b. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or any water bodies of perennial flow, consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, (1987), as hereafter amended;

c. Tidal shores;

d. Other lands designated by the city council as resource protection areas and shown on the official maps known as the Chesapeake Bay Preservation Maps;

e. Buffer areas located adjacent to and landward of the components listed in subsections a. through d. above;

f. One-hundred year floodplains, highly erodible soils, highly permeable soils, ponds, nontidal wetlands, and intermittent streams; and

g. Any other related information requested by the director of building and development services;

(2) A vegetation plan, certified by a design professional, meeting the following requirements:

a. The plan shall be drawn to scale and shall clearly set forth the location, size, and description of existing and proposed plant material and all existing trees on the site eight inches or greater in diameter at breast height. Where there are groups of trees, stands may be outlined instead. Trees eight inches or greater in diameter at breast height to be preserved outside of the construction footprint shall be indicated. Trees to be removed to create a desired construction footprint shall be clearly delineated;

b. The buffer area required by section 78-851 shall be clearly delineated, as well as any plant material to be added in order to establish or supplement such buffer area;

c. Within buffer areas, trees to be removed for sight lines, vistas, access paths, shoreline stabilization projects, or best management practices required by this division shall be shown. Vegetation required by section 78-1067 to replace existing trees within the buffer area shall also be depicted;

- d. The plan shall depict grade changes or other work adjacent to trees that would adversely affect them. Specifications shall be provided as to how grade, drainage, and aeration will be maintained around trees to be preserved;
  - e. The plan shall include specifications for the protection of existing trees during clearing, grading, and all phases of construction;
- (3) A nonpoint source pollution control plan containing the following elements:
- a. The location and design of all planned nonpoint source pollution control devices;
  - b. Procedures for implementing nonstructural nonpoint source pollution control practices and techniques;
  - c. Pre- and post-development nonpoint source pollutant loadings, with supporting documentation of all utilized coefficients and calculations; and
  - d. Appropriate engineering calculations performed in accordance with procedures outlined in the current edition of the Local Assistance Manual of the Chesapeake Bay Local Assistance Department or any other engineering method deemed appropriate by the director of building and development services; and
- (4) Evidence that all wetlands permits required by law have been obtained.
- (b) *Water quality impact assessment.*
- (1) A water quality impact assessment shall be required for any development which will result in any land disturbance within an RPA and for any other development within the CBPO district where the director of building and development services deems such assessment necessary. The assessment shall identify the impacts of the proposed development on water quality and lands within RPAs and set forth specific measures for mitigating such impacts.
- (2) A minor water quality impact assessment shall be required if the proposed development will result in:
- a. An encroachment into any portion of a buffer area lying more than 50 feet from an RPA feature; and
  - b. The disturbance of less than 10,000 square feet of land.
- (3) A minor water quality impact assessment shall include a site drawing to scale that shows the following:
- a. The location of the components of the RPA, including all vegetated buffer areas;
  - b. The location and nature of the proposed encroachment into the buffer area, including: type of paving material; areas of clearing or grading; and location of any structures, drives, or other impervious cover;
  - c. The type and location of the proposed best management practices to mitigate the proposed encroachment; and
  - d. Any other relevant information requested by the director of building and development services.
- (4) A major water quality impact assessment shall be required if the proposed development;
- a. Will result in an encroachment into any portion of the buffer area lying more than 50 feet from an RPA feature and in the disturbance of more than 10,000 square feet of land;
  - b. Will result in the disturbance of any portion of the buffer area lying within 50 feet of an RPA feature or any other component of a resource protection area other than an encroachment into any portion of the buffer area lying more than 50 feet from an RPA feature; or
  - c. Is located, in whole or in part, within a resource management area and the director of building and development services determines that a major water quality impact assessment is warranted due to the unique

characteristics of the site or the intensity of the proposed use or development.

(5) A major water quality impact assessment shall include the following information and elements:

- a. All information required for a minor water quality impact assessment under section 78-1066(b)(3);
- b. A hydrogeological survey that:
  1. Describes the existing topography, soils, hydrology, and geology of the site and adjacent lands;
  2. Describes the impacts of the proposed development on topography, soils, hydrology, and geology on the site and adjacent lands;
  3. Indicates the following:
    - (i) Any proposed disturbance or destruction of wetlands and the justification for such action;
    - (ii) Any proposed disruption or reduction in the supply of water to wetlands, streams, lakes, rivers or other water bodies;
    - (iii) Any proposed disruption to existing hydrology, including wetland and stream circulation patterns;
    - (iv) The source location and description of proposed fill material;
    - (v) The proposed location of dredge material and location of dumping areas for such material;
    - (vi) The location of and potential impacts on shellfish beds, submerged aquatic vegetation, and fish spawning areas;
    - (vii) An estimate of pre- and post-development pollutant runoff loads;
    - (viii) An estimate of the percentage increase in impervious surface on the site and the proposed types of surfacing materials to be used;
    - (ix) The percentage of the site to be cleared;
    - (x) The anticipated duration and phasing schedule of construction;
    - (xi) A listing of all required permits from all applicable agencies necessary to develop the project; and
  4. Describes the proposed mitigation measures for the potential hydrogeological impacts;
- c. A vegetation survey that:
  1. Identifies and delineates the location of all significant plant material on site, including all trees eight inches or greater in diameter at breast height or, where there are groups of trees, an outline of stands;
  2. Describes the potential impacts of the proposed development or use on existing vegetation, including:
    - (i) The general limits of clearing;
    - (ii) A clear delineation of trees to be removed; and
    - (iii) A description of plant species to be disturbed or removed;
  3. Describes the potential mitigation measures for the potential impacts on existing vegetation; and
  4. Any other relevant information requested by the director of building and development services.

(Code 1991, § 14-759; Ord. No. 04-06, § I(E)--(I), 3-23-2004; Ord. No. 05-05, § IIB, 2-22-2005)

**Sec. 78-1067. Additional design standards.**

The following additional design standards shall be required and provided for in the site plan and shall apply to all development and redevelopment within the CBPO district:

...

(2) Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the use and development permitted and in accordance with the current edition of the Virginia Erosion and Sediment Control Handbook of the Virginia Department of Conservation and Recreation as follows:

a. Trees over eight inches diameter at breast height shall be preserved outside the construction footprint, unless otherwise authorized by the director of building and development services. Diseased trees or trees weakened by age, storm, fire, or other injury may be removed.

b. Prior to clearing or grading, suitable protective barriers shall be erected five feet outside of the dripline 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 allowed within the area protected by the barrier.

...