

AN ORDINANCE AMENDING APPENDIX "A" OF THE CHESAPEAKE CITY CODE, ENTITLED "ZONING," ADDING SECTION 13-2600 THERETO, AND AMENDING SECTIONS 16-102.B. AND C.; 16-106.A. AND B.; 16-201.B.; 17-102.B. AND C.; 17-106.B., 18-101.B.; 18-201.A. AND C.; 18-203.C., D. AND E.; 18-301.C., D. AND E.; 18-302.A. AND D.; 20-102.A.; AND 20-202.C., THEREOF, TO REQUIRE ENVIRONMENTAL SITE ASSESSMENTS FOR CERTAIN USES; TO REQUIRE DISCLOSURE AND REMEDIATION OF ADVERSE ENVIRONMENTAL CONDITIONS OF PROPERTY PROPOSED FOR CERTAIN DEVELOPMENTS; TO IMPOSE FEES FOR REVIEW OF ENVIRONMENT SITE ASSESSMENTS; TO INCREASE APPLICATION FEES TO FUND ENVIRONMENTAL MAPPING; TO REQUIRE CERTIFICATION OF ACCURACY FOR ALL REZONINGS, CONDITIONAL USE PERMITS, PRELIMINARY SITE PLANS, AND FINAL SITE PLANS; TO IMPOSE CIVIL PENALTIES FOR FALSE CERTIFICATIONS; TO EXTEND REVIEW TIMES FOR REZONINGS AND SITE PLANS; TO AUTHORIZE A REQUIREMENT FOR POSTING OF NOTICE ON PROPERTY UNDERGOING ADMINISTRATIVE SITE PLAN REVIEW; AND TO ALLOW CONSIDERATION OF ENVIRONMENTAL CONDITIONS IN EVALUATING APPLICATIONS FOR REZONINGS, CONDITIONAL USE PERMITS, AND SITE PLAN APPROVAL.

BE IT ORDAINED that the City Council for the City of Chesapeake, Virginia, hereby amends and reordains Appendix "A" of the City Code by adding Section 13-2600 thereto, and amending Sections 16-102.B. and C.; 16-106.A. and B.; 16-201.B.; 17-102.B. and C.; 17-106.B., 18-101.B.; 18-201.A. and C.; 18-203.C., D. and E.; 18-301.C., D. and E.; 18-302.A. and D.; 20-102.A.; and 20-202.C. thereof, as follows:

ARTICLE 13. SUPPLEMENTAL REGULATIONS

§ 13-2600. Environmental site assessments.

§ 13-2601. Purpose.

The purpose of this section shall be to promote and protect the public health, safety and welfare. It shall be the duty of landowners to act in accordance with all state, federal and local laws governing adverse environmental conditions of property, including without limitation, remediation of contaminated soil, groundwater and surface water and disclosure of such conditions to potential purchasers and future owners.

§ 13-2602. Environmental assessments required.

A Phase I environmental site assessment shall be required as part of the application for any rezoning, conditional use permit, preliminary site plan, final site plan or miscellaneous plan that involves land disturbance for residential, assembly, day care, group home, recreation, school, library or similar use where exposure to contaminated soil or water would pose a threat to the public health, safety and welfare. The Phase I environmental site assessment shall meet the criteria in the Chesapeake Public Facilities Manual. Where deemed necessary by the Director of Public Works or designee, the application shall also include a Phase II environmental site assessment prepared in accordance with the specifications in the Chesapeake Public Facilities Manual. The Phase I and Phase II reports shall contain recommendations to address any and all adverse environmental conditions of the property, including with limitation, contamination of the soil, surface water or groundwater.

§ 13-2603. Remediation.

Where adverse environmental conditions are known or discovered to exist, the applicant shall provide adequate written assurances to the City that such conditions shall be remediated, removed, or contained in a manner consistent with applicable state and federal regulations which govern remediation of the environmental condition. If no state or federal jurisdiction is invoked, the determination of sufficiency of remediation shall be made by the Department of Public Works. No certificate of occupancy shall be issued for a property that poses an environmental threat to the public health, safety or welfare until remediation is complete.

§ 13-2604. Disclosure.

A. Required. In any case where adverse environmental conditions are known or discovered to exist, the owner and applicant for the development shall provide adequate assurance to the City that such conditions will be disclosed to future owners. The disclosure shall be included in all sales contracts with builders and initial homeowners; in all deeds of conveyance as a covenant that runs with the land; in all restrictive covenants, homeowners association documents and condominium instruments; on all final subdivision plats; and in all other similar recorded documents. The disclosure shall consist of a clear statement addressing, without limitation, contamination of soil, groundwater or surface water; presence of methane gas; former or existing landfills on or in the vicinity of the property; and

any other condition that may have adverse impact on the public health, safety and welfare. As used herein, "vicinity" shall include parcels adjacent to the landfill site, parcels separated from the landfill site by only a street or water body, and parcels located downgradient of the landfill site.

B. *Records.* The applicant shall bear responsibility for maintaining adequate records for review by potential buyers and future homeowners. Such records shall be preserved by recording Phase I and Phase II environmental site assessment summaries as attachment to deeds to builders and initial homebuyers, restrictive covenants, homeowners association documents, condominium instruments and similar instruments of record.

C. *Release.* The owner, applicant or successor in interest may request the City to approve the release of a recorded disclosure statement at such time that all contaminants have been removed and all other adverse environmental conditions eliminated. Any approval of the release given by the City shall be in writing and signed by the Director of Public Works or designee. The City's release of a disclosure statement shall not be deemed a finding or concurrence by the City that the property is environmentally safe.

ARTICLE 16. ZONING AMENDMENTS; CONDITIONAL ZONING

§ 16-100. Amendments to the zoning ordinance and zoning map.

§ 16-102. Application for a change in zoning district classification (rezoning).

B. *Information required in application by property owner.* Any rezoning application filed by a property owner or authorized agent with the planning department shall contain the following information:

12. A map showing the actual dimensions of the subject property according to the recorded plat of such property or, where a recorded plat within the chain of title is not available, a map showing the property's dimensions as described in the most recent conveyance of the property.

Such map shall contain the following:

- a. All existing and proposed right-of-way widths of streets adjacent to the property, and all right-of-way widths of streets identified in the city's master street and highway plan as running through the property.
- b. For properties located wholly or partially within the Chesapeake Bay Preservation Area District, contour lines, showing at a minimum the most recent contour mapping maintained by the city.
- c. For properties located wholly or partially in the Northwest River Watershed Protection District, the boundaries of the District and existing drainage patterns in relation to the property.

16. When the proposed use of the rezoned property includes or proposes land disturbance for residential, assembly, day care, group home, recreation, school, library, or similar type of development where exposure to contaminated soil or water would pose a threat to the public health and

safety, the application shall include a Phase I environmental site assessment prepared in accordance with the specifications in the Chesapeake Public Facilities Manual. Where deemed necessary by the Department of Public Works, the applicant shall also submit a Phase II environmental site assessment prepared in accordance with the Chesapeake Public Facilities Manual. The Phase I and Phase II environmental site assessments shall contain recommendations to address any and all adverse environmental conditions of the property, including without limitation, contamination of the soil, surface water or groundwater.

~~16-17.~~ Such additional materials and information as reasonably may be required by the reviewing departments, by the planning commission or by city council in order for the application to be fully and appropriately reviewed and considered. The planning department shall develop instructions and/or forms for rezoning applications which establish the criteria for determining that an application is complete.

C. Certification. All applications for rezonings shall contain a certification by the owner that to the best of his knowledge, the application is complete and accurate. This certification shall apply to all plans, environmental reports and attachments accompanying the application. No application shall be deemed complete without this certification. False certifications shall be deemed a

violation of this ordinance and shall be punishable by a civil penalty in accordance with section 20-202 of this ordinance.

§ 16-106. Hearing and action by the planning commission.

A. *Hearing and continuances.* The planning commission shall hold a duly noticed public hearing on all proposed changes in zoning district classifications or in the text in the zoning ordinance. The commission, in its discretion, may continue a hearing on a matter to subsequent meetings, subject to the following provisions.

1. If the applicant objects to the continuance of the planning commission's consideration of a rezoning application to a subsequent meeting, the commission must take final action on the application within ~~ninety~~ one-hundred days of the meeting at which the applicant noted objection to such continuance. If the planning commission fails to take final action within that time period, the commission shall be deemed to have recommended approval of the application. The matter shall then be scheduled for hearing before city council in accordance with the provisions of this zoning ordinance.

B. *Recommendations to city council.* After the conclusion of the planning commission public hearing, the planning commission shall report to the council its recommendations with respect to the proposed amendment. Any recommendation in favor of a change in a zoning classification or in a change in the

text of this ordinance shall require a vote by a majority of the commission members attending a meeting at which a quorum, under the commission's rules, is present.

3. If the application is for a reclassification of property to a different zoning district classification (a rezoning), the report of the planning commission should contain findings with respect to one or more of the following matters, as the commission determines to be most significant:

h. Whether the proposed use of the property poses a risk to human health or the environment.

i. Whether the condition of the property, including without limitation, the soil, surface water and groundwater, are suitable for the proposed use.

§ 16-200. Conditional rezoning.

§ 16-201. Content.

B. *Soil tests and environmental site assessments.* Where the applicant proffers the dedication of real property to the city or the Chesapeake school board, other than property to be dedicated for exclusive use as public right-of-way, the rezoning application shall include a written report containing the results of soil tests conducted by a qualified professional engineer and certified findings as to the suitability of the property for its intended use. The application shall also include a Phase I environmental site assessment for the property. The director of planning, or designee, shall ensure that all city departments having an interest in the intended use

of the property, including the Chesapeake School Board, receive a copy of the soil test report and the Phase I environmental site assessment in a timely manner.

The soil tests and certified findings shall, at a minimum, address soil characteristics, environmental contamination, and other factors which may affect the suitability of the soil for the intended use, including, but not limited to the construction of buildings and structures, with or without the need for dewatering, soil replacement or special footings, foundations or slabs. The Phase I environmental site assessment shall address the criteria in the Chesapeake Public Facilities Manual. If deemed necessary, the Director of Public Works or designee may require a Phase II environmental site assessment. The Phase I and Phase II reports shall include recommendations to address any and all adverse environmental conditions of the property, including without limitation, contamination of the soil, surface water or groundwater.

The director of the department of public works, or designee, and in cases where the real property is intended for school use, the Chesapeake School Board or designee, shall review all soil tests and environmental site assessments submitted as part of a rezoning application prior to presentation to the planning commission to determine the sufficiency of same based on relevant criteria such as the location, number and depth of soil borings and water samples taken.

ARTICLE 17. CONDITIONAL USE PERMITS.

§ 17-102. Application for conditional use permit.

B. *Contents.* An application for a conditional use permit shall contain the following information:

13. Where the development is located wholly or partially in the Northwest River Watershed Protection District, description and proposed location of buildings, structures, storage areas and stormwater facilities for commercial and industrial uses.

14. A Phase I environmental site assessment shall be required for every proposed development that involves any land disturbance for residential, assembly, day care, group home, recreation, school, library, or similar use where exposure to contaminated soil or water would pose a threat to the public health, safety and welfare. The Phase I environment site assessment shall meet the criteria in the Chesapeake Public Facilities Manual. Where deemed necessary, the Director of Public Works or designee shall require a Phase II environmental site assessment, as specified in the Chesapeake Public Facilities Manual. The Phase I and Phase II reports shall include recommendations to address any and all environmental conditions of the property, including without limitation, contaminated soil, surface water, or groundwater, that may be adverse to the public health, safety and welfare. In the event a Phase I and/or Phase II environmental site assessment has been previously submitted to the City for the same property, such environmental

site assessment may suffice if updated in accordance with applicable standards in the Chesapeake Public Facilities Manual.

C. Certification. All applications for conditional use permit approval shall contain a certification by the owner that to the best of his knowledge, the application is accurate and complete. This certification shall apply to all plans, reports, and attachments accompanying the application. No application for a conditional use permit shall be deemed complete without such certification. False certifications shall be deemed a violation of this ordinance and shall be punishable by civil penalty in accordance with section 20-202 of this ordinance.

§ 17-106. Hearing and action by the planning commission.

B. *Factors considered.* Without in any way limiting the discretion of the planning commission in its consideration of a specific conditional use permit application, the following factors may be considered in determining whether the application meets the required standards:

6. Whether the property on which the conditional use is to be located is free of adverse environmental conditions, including without limitation, contamination of the soil, surface water or groundwater; and if not, the nature of remedial action to be taken to address the adverse conditions and to disclose such conditions in purchase contracts, deeds, restrictive covenants, homeowners association documents, condominium instruments, final

subdivision plats, and similar instruments of record, as required by Section 13-2300 of this ordinance.

ARTICLE 18. DEVELOPMENT SITE PLANS.

§ 18-101. Development site plans required; exceptions.

B. *Exceptions; requirements.* A preliminary and final site plan shall not be required in the instances set out in subsection C below. However, certain plans may be required by the department of public works as necessary to ensure that applicable development criteria are met; or by the department of inspections or zoning administrator as part of a building permit application, as described in section 18-600 et seq. below of this ordinance. A Phase I environmental site assessment shall be required when such plans involve land disturbance for residential, assembly, day care, group home, recreation, school, library, or similar use where exposure to contaminated soil or water would pose a threat to the public health, safety and welfare. The Phase I environmental site assessment shall be prepared, in accordance with the specifications in the Chesapeake Public Facilities Manual. If deemed necessary by the Director of Public Works or designee, a Phase II environmental site assessment shall also be required. The Phase I and Phase II environmental site assessments shall include recommendations to address any and all conditions that may be adverse to the public health, safety and welfare, including without limitation, contaminated soils, groundwater or surface water. In the event a Phase I and/or Phase II environmental site assessment has been previously

submitted to the City for the same property, such environmental site assessment may suffice if updated in accordance with applicable standards in the Chesapeake Public Facilities Manual.

§ 18-200. Preliminary site plans.

§ 18-201. Preliminary site plan application.

A. *Required contents.* The preliminary site plan application shall contain the following information:

21. A Phase I environmental site assessment shall be required when the development involves any land disturbance for residential, assembly, day care, group home, recreation, school, library, or similar use where exposure to contaminated soils or water would pose a threat to the public health, safety and welfare. The Phase I environment site assessment shall meet the criteria in the Chesapeake Public Facilities Manual. Where deemed necessary, the Director of Public Works or designee shall require a Phase II environment site assessment, as specified in the Chesapeake Public Facilities Manual. The Phase I and Phase II reports shall include recommendations to address any and all environmental conditions of the property that may be adverse to the public health, safety and welfare, including without limitation, contamination of soil, groundwater or surface water. In the event a Phase I and/or Phase II environmental site assessment has been previously submitted to the City for the same property, such environmental site assessment may suffice if

updated in accordance with the standards in the Chesapeake Public Facilities Manual.

22. Where the development is located wholly or partially in the Northwest River Watershed Protection District, description and proposed location of buildings, structures, storage areas and stormwater facilities for commercial and industrial uses.

C. Certification. All applications for preliminary site plan approval shall contain a certification by the owner, applicant or authorized agent, that to the best of his knowledge, the application is complete and accurate. This certification shall apply to all plans, environmental reports, and attachments accompanying the application. No application shall be deemed complete without such certification. False certifications shall be deemed a violation of this ordinance and shall be punishable by civil penalty in accordance with section 20-202 of this ordinance.

§ 18-203. Review and approval procedure for preliminary site plans.

C. *Approval or disapproval where planning director the designated approval authority.* For those preliminary site plans for which the planning director is the approval authority, as designated by the planning commission, the director shall approve or disapprove the preliminary site plan within ~~thirty (30)~~ forty-five (45) days of the submission of a complete plan, unless the developer agrees to an extension of the period for action. In the case of disapproval, the planning director shall specify the reasons for the disapproval, citing the applicable ordinances,

regulations or policies, and shall generally identify the modifications that will permit approval of the plat.

D. *Approval or disapproval where planning commission the approval authority.* For those preliminary site plans for which the planning commission is the approval authority, the site plan review committee shall make its final recommendations for consideration by the planning commission not later than ~~thirty~~ (30) forty-five (45) days after the submission of a complete plan, unless the developer agrees to an extension of that period. The planning director shall then schedule such plat for review by the planning commission at the commission's next regularly scheduled site plan review meeting.

E. *Posting of property required.* Once hearing before the planning commission has been scheduled, it shall be the responsibility of the applicant to post on the property for which the application is filed at least one sign, provided by the city, providing notice of the date, time and location of the planning commission hearing at which the preliminary site plan application will be reviewed. Such posting shall conform in all respects to the posting requirements for rezoning and conditional use permit applications, which are set out in section 16-105(A) of this zoning ordinance. In cases where the preliminary site plan is reviewed administratively by the planning director, one or more signs may be posted in accordance with direction of the planning commission or established administrative procedure.

§ 18-300. Final site plans,

§ 18-301. Contents of final site plans.

C. Environmental site assessments. A Phase I environmental site shall be required when the development involves any land disturbance for residential, assembly, day care, group home, recreation, school, library or similar use where exposure to contaminated soils or water would pose a threat to the public health, safety or welfare. The Phase I environmental site assessment shall meet the criteria in the Chesapeake Public Facilities Manual. Where deemed necessary, the Director of Public Works or designee shall require a Phase II environmental site assessment in accordance with the specifications in the Chesapeake Public Facilities Manual. The Phase I and Phase II reports shall include recommendations to address any and all environmental conditions of the property adverse to the public health, safety and welfare, including without limitation, contaminated soil, surface water or groundwater. In the event a Phase I and/or Phase II environmental site assessment has been previously submitted to the City for the same property, such environmental site assessment may suffice if updated in accordance with the standards in the Chesapeake Public Facilities Manual.

C.D. Statements on final plans. In addition to notes, statements and stipulations required to be placed on final site plans by law or as a condition of approval, ~~all~~ final site plans for the development of property shall contain the following:

1) For property located partially or wholly within the Fentress Airfield overlay district, the application final site plan shall contain a statement as follows: "This development is located partially or wholly within an aircraft noise and/or accident zone and may be subject to above average noise levels or to aircraft accidents."

2) For property which is located in the Chesapeake Bay Preservation Area District, the final site plan shall contain the notes required by the regulations in Article X, Chapter 26 of the City Code.

3) For any development which requires environmental permits from any federal, or state or local agency, the final site plan shall contain a statement that all such permits will be obtained in a timely manner.

E. *Certifications.* All submittals for final site plan approval shall contain a certification by the owner, applicant or authorized agent that to the best of his knowledge, the application is complete and accurate. This certification shall apply to all plans, environmental reports and attachments accompanying the application. No final site plan shall be considered complete without this certification. False certifications shall be deemed a violation of this ordinance and shall be punishable by civil penalty in accordance with section 20-202 of this ordinance.

§ 18-302. Review and approval process.

A. *Approval authority.* Final site plan applications shall be submitted to the public works department for review and approval. The review of each

application by the affected departments and final approval of each application shall be coordinated through the public works department.

B. Standard of Review. Each plan shall be reviewed for conformity with the approved preliminary site plan and with all other applicable provisions of this zoning ordinance and related ordinances, regulations and policies applicable to the site. In cases of any land disturbance for residential, assembly, group home, day care, recreation, school, library or similar use where exposure to contaminated soil or water would pose a threat to the public health, safety and welfare, the department of public works shall also consider Phase I and Phase II environmental site assessments to determine whether the applicant has addressed adverse environmental conditions of the property, including without limitation, remediation and disclosure of soil or water contaminants, presence of methane gas, or former or existing landfills on or in the vicinity of the property. As used herein, "vicinity" shall mean parcels adjacent to the landfill site, parcels separated from the land use site by only a street or body of water, and parcels downgradient from the landfill site.

C. Approval. The department of public works may approve final site plans subject to stipulations or conditions indicated by letter to the applicant, notes on the plan, or in the case of minor issues, by "red-lining" the plans. Failure to comply with stipulations, conditions or red-line notations, including any stipulations

or conditions attached to preliminary site plan approval, shall be deemed a violation of this ordinance.

D. *No waiver of requirements in approval.* All city ordinances, regulations and policies shall apply to final site plans and shall not be deemed waived by oversight or erroneous approval.

§ 20-100. Administration of ordinance,

§ 20-102. Fees.

A. *Fee schedules.*

1. The city council may establish a schedule of fees, charges and expenses for all permits, certificates, appeals and other matters required by or pertaining to this ordinance, which may be set out in ordinance or otherwise approved by council action.

2. Among the established fees are the following:

- a. Zoning certification letter . . . \$50.00
- b. Reissuance of certificated of use and occupancy . . . 25.00
- c. Reinspection fee . . . 25.00
- d. Temporary construction yard and/or construction trailer permit
25.00
- e. Temporary outdoor sales permit . . . 50.00
- f. Beginning work without permit . . . 75.00
- g. Application for hearing before board of zoning appeals . 75.00

- h. Review of residential plans submitted in accordance with section 18-600 of this ordinance . . . 5.00
- i. Signs (see section 14-710 of this ordinance and section 14-33 of the city code)
- j. Application for rezoning, plus \$20.00 per acre . . . ~~250.00~~ 370.00
- k. Application for conditional use permit . . . ~~300.00~~ 420.00
- l. Application for special exception . . . 100.00
- m. Application for preliminary site plan review . . . ~~200.00~~ 320.00
 Residential, plus \$20.00 per dwelling unit . . . ~~200.00~~ 320.00
 Non-residential, plus \$60.00 per acre . . . ~~250.00~~ 370.00
- n. Building permits for fences, tents, air-supported structures and sheds not governed by the Virginia Uniform Statewide Building Code. The fees imposed under section 14-33(a)(8) and (9) of the City Code are incorporated herein by reference.
 Fences, plus \$10.00 per each \$1,000.00 value of construction . . . 35.00
 Tents, air-supported structures and sheds, plus \$6.00 per each 100 square feet . . . \$35.00
- o. Fees for review of Phase I environmental site assessments \$ 1,600.00

p. Fees for review of Phase II environmental assessments \$ 2,300.00

§ 20-202. **Conformity with ordinance required; penalties for violation.**

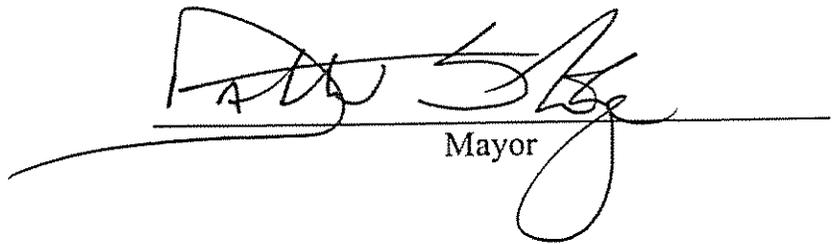
C. **Infractions and civil penalties.**

1. A violation of the following provisions of this ordinance shall be deemed an infraction and shall be punishable by a civil penalty of \$50.00 for a first offense, \$75.00 for a second offense, and \$150.00 for each subsequent offense arising from the same set of operative facts:

O. False certification on applications for rezonings (§ 16-102); conditional use permits (§ 17-102); preliminary site plans (§ 18-201); and final site plans (§ 18-301).

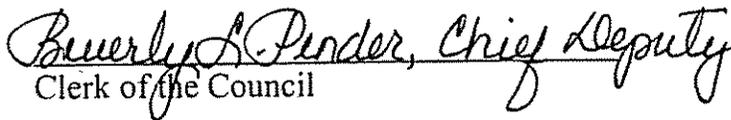
An emergency is deemed to exist and this ordinance shall become effective immediately.

ADOPTED by the Chesapeake City Council this 18th day of October, 2005.



Mayor

ATTEST:



Beverly S. Pender, Chief Deputy
Clerk of the Council

RECEIVED
OCT 24 2005
PLANNING DEPARTMENT
CITY OF CHESAPEAKE