

Chapter 35.1 SITE PLANS

ARTICLE I. IN GENERAL

Sec. 35.1-1. Purpose and intent.

- (A) *Purpose.* The purpose of this chapter is to promote sound and innovative design to ensure that land is used in a manner that is efficient, in harmony with neighboring property and the environment, and in accordance with the provisions of this chapter and other ordinances of the City Code and the zoning ordinance. If the requirements of this chapter will affect sites which are already developed, or which are partially developed, such sites should be brought into compliance with the provisions of this chapter to the maximum extent possible without creating an undue hardship especially with regard to a potential need to demolish or relocate existing parking lots or structures.
- (B) *Intent.* The intent of this chapter is to provide for a review of site development proposals in terms of:
 - (1) The development's compatibility with its environment and with other land uses and buildings existing in the surrounding area;
 - (2) The quantity, quality, utility, size and type of the development's required green space, impact upon existing natural environment and proposed landscaping improvements;
 - (3) The ability of the development's traffic circulation system to provide for the convenient and safe internal and external movement of vehicles and pedestrians and adequate and efficient coordination of streets within and contiguous to the development with other existing or planned streets, water, sewage facilities and other public needs and facilities;
 - (4) The location and adequacy of the development's provision for drainage and flood control, including impounding structures, impacts within dam break inundation zones, utilities and other public purposes;
 - (5) The development's compatibility with the protection and improvement of the water quality of the Chesapeake Bay and its tributaries, as applicable; and
 - (6) Protecting and preserving the public health, safety and welfare from the adverse impacts on the proposed development associated with high levels of noise from flight operations at Langley Air Force Base and the potential for aircraft accidents associated with proximity to such military air facility operations, as applicable.

Sec. 35.1-2. Application and scope of chapter; definitions.

- (A) The site plan regulations contained in this chapter shall apply within the corporate limits of the city.
- (B) Except as may otherwise be defined herein or in other applicable provisions of the City Code and the city zoning ordinance, the definitions set forth in chapter 2 of the city zoning ordinance shall control the meaning of any terms or phrases used herein. The terms "owner" and "developer" are used interchangeably throughout this chapter and the provisions of this chapter are applicable to an owner or developer of a site.
- (C) "Major site plan" means the submission required by section 35.1-2.1 below, if such submission contains any of the following elements:
 - (1) Development on any unimproved parcel of land;
 - (2) Developments completed in multiple phases;
 - (3) Development requiring new public utility facilities or infrastructure other than service taps;

- (4) Development which requires a new determination that the project will not increase flood levels during a base flood event (a “No-Rise study”);
- (5) Development which requires an analysis of the development’s impact on transportation (a “Traffic Impacts Study”);
- (6) Development requiring wastewater capacity improvements;
- (7) Development disturbing 10,000 or more square feet of land, or developments disturbing 2,500 or more square feet of land in the Chesapeake Bay Preservation Overlay District (O-CBP);
- (8) Development which alters the existing grade of land by more than three feet (3’); or
- (D) “Minor site plan” means any submission required by section 35.1-2.1 below which is not a major site plan.
- (E) “Major revision” means a proposed change to a previously approved site plan which, if such change was submitted in relation to a new project, would constitute a “major site plan.”
- (F) “Minor revision” means a proposed change to a previously approved site plan which is not a major revision.

Sec. 35.1-2.1. Approved site plan required.

Unless exempt pursuant to section 35.1-2.2, the following shall require submission of a site plan for review and approval prior to the issuance of any building, zoning, right-of-way, or infrastructure permit or certificate of occupancy:

- (1) *New construction and redevelopment.* Any structure or improvement permitted by the zoning ordinance as a principal, accessory, conditional, or special exception use in any district.
- (2) *Newly created parking lots and expansions to existing parking lots.* Any new parking lot or expansion to an existing parking lot exceeding ten thousand (10,000) square feet of land disturbance.
- (3) *Alteration of grade.* Alteration of the grade of land in such a manner as to change existing contours in excess of three (3) feet.
- (4) *Construction or alteration of public facilities or infrastructure.* Construction or alteration of public streets, alleys, sidewalks, curbs, gutters, retaining walls, off-street parking facilities, sewer or drainage systems, stormwater management improvements, or other such public improvements.

Sec. 35.1-2.2. Exemptions from site plan approval.

- (A) The following types of development are exempt from the requirement for a site plan approval:
 - (1) *Certain residential development.*
 - (i) A subdivision of one-family dwellings if a development plan has been submitted and approved in accordance with chapter 35 of the City Code.
 - (ii) A subdivision of one-family dwellings if a subdivision plat was duly recorded before the adoption of the city's subdivision ordinance.
 - (iii) One-family, two-family and duplex dwellings and accessory buildings or accessory structures to such dwellings, except as may be otherwise regulated or prohibited under other applicable provisions of the zoning ordinance or City Code.
 - (2) *Agricultural operations.* Agricultural operations as defined by Code of Virginia, § 3.2-300 as amended, and under those uniform standards as may be prescribed by the commissioner of agriculture and consumer services, or those uses devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.

- (3) *Bona fide tree farmers.* Bona fide tree farmers having a forest planting, cutting, or management plan approved by the state forester of the department of forestry and a written certification from the state forester that the proposed operations are in conformity with the approved management plan prior to any timber harvesting operations.
- (B) The types of development set forth in subsection (C) are exempt from the requirement for site plan approval provided that the following conditions are met:
 - (1) The development does not require direct connection to public infrastructure, not including taps or meter connections.
 - (2) The development does not reduce the amount of existing green area required by the zoning ordinance on the site.
 - (3) No part of the development is within the Chesapeake Bay Preservation Overlay District (O-CBP) as set forth in the zoning ordinance.
 - (4) The applicant submits a scaled two-dimensional plan or drawing and physical property survey as set forth in section 1-7 of the zoning ordinance.
- (C) Provided that all of the requirements stated in subsection (B) are met, the following types of development are exempt from site plan approval:
 - (1) *Certain additions.* Building or structural additions where the total floor area of the proposed addition does not exceed 1/3 of the existing floor area or 3,000 square feet, whichever is smaller, or where additions are proposed to two (2) or more buildings located on the same lot or part of the same development, the aggregate proposed additions do not exceed 1/3 of the total gross floor areas of the existing buildings or 3,000 square feet, whichever is smaller.
 - (2) *Alterations or additions to a site.* Alterations or additions to a site that do not exceed ten thousand (10,000) square feet of land disturbance such as walkways, landscaping, paving, light poles, or lighting fixtures, but that involve no buildings or structures.
 - (3) *Ornamental and accessory structures and façade improvements.* Ornamental structures or façade improvements, including but not limited to bay windows, chimneys, canopies, decks (covered and uncovered), vestibules, loading docks, and mechanical equipment.
 - (4) *Temporary uses and structures.* Temporary uses, buildings, and structures provided that such a use, building, or structure:
 - (i) Does not exceed a continued period of six (6) months;
 - (ii) Does not occur before a period of ninety (90) days has elapsed since the last temporary use building, or structure was terminated and completely removed from the site; and
 - (iii) Does not remain on the site more than thirty (30) days after discontinuance of the temporary use, building, or structure.
 - (5) *Public service companies performing normal and necessary maintenance activities.* Provided, however, that for any such maintenance proposed within any subdistrict of the Chesapeake Bay Preservation Overlay District (O-CBP), nothing in this section shall be construed to waive any requirement to submit the plan of development required by the zoning ordinance for development in such subdistricts.
 - (6) *Recreational amenities in public parkland.* Recreational amenities in public parkland that do not exceed a total of ten thousand (10,000) square feet land disturbance, including but not limited to gazebos, benches, and playground equipment; provided, however, this exception shall not include uses such as swimming pools, paved tennis or play courts regardless of size.
 - (7) *Bus shelters.*

- (8) *Retaining walls.* Retaining walls affecting less than ten thousand (10,000) square feet of land-disturbance with review and approval by the U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, the Hampton Wetlands Board, the Chesapeake Bay Review Committee, and/or the Virginia Marine Resources Commission, as applicable.
- (D) All development, regardless of exemption from this chapter, shall be subject to all other applicable provisions of the City Code and zoning ordinance, including but not limited to chapters 9, 33.3 and 41.1 of the City Code.

Sec. 35.1-3. Administration and enforcement of chapter.

Pursuant to the authority granted to the city council by the Code of Virginia § 15.2-2255, the city council designates as its agent the city manager for purposes of administering and enforcing the provisions of this chapter. The city manager authorizes and designates the director of the department of community development or their designee to act as the "city agent." Accordingly, the city agent is granted the authority to coordinate the site plan review process, to approve or disapprove site plans with the concurring approval of the director of public works or his designee and administer the provisions of this chapter that are not governed by the Zoning Ordinance, chapters 9, 33.3 and 41.1 of the City Code or the public works design and construction standards. The city manager also designates the director of the department of public works to (i) administer and enforce the provisions of this chapter related to approval or disapproval of site plans together with the city agent; (ii) administer, review, modify and waive provisions of the City of Hampton Department of Public Works Design and Construction Standards and related requirements as set forth in articles III and IV of this chapter; and (iii) enforce compliance with an approved site plan as set forth in section 35.1-4 of this chapter. Wherever the term director of community development or public works is used throughout this chapter, the term shall include their respective authorized designees.

(Ord. No. 13-0008, 5-8-13; Ord. No. 14-0020, 9-10-14; Ord. No. 15-0022, 9-9-15; Ord. No. 24-0016, 12-11-24)

Sec. 35.1-4. Compliance with chapter; stop work orders; penalty for violation.

- (A) Except as otherwise set forth in chapter 12 of the zoning ordinance, no building permit or certificate of occupancy shall be issued for any building or structure that fails to comply with the requirements of this chapter, and no excavation of land or construction of any public or private improvements shall be commenced, except in conformity with the requirements of this chapter.
- (B) The directors of public works and community development, the building official, and the zoning administrator (or their respective authorized representatives) shall have the authority, pursuant to applicable ordinances and policies, to enforce non-compliance with the provisions of said ordinances and policies, prosecute violations of an approved landscape plan or commencement of construction without an approved landscape plan, and to stop site construction, improvements or alterations in the event of any deviations from an approved site plan, or upon the discovery of unexpected adverse impacts of the development activity on adjacent properties or public facilities.
- (C) The directors of public works or community development or their authorized representatives have the authority to serve a written notice of violation for violations of this chapter, to order the abatement of such violation, and to issue a summons to appear in the general district court to any person who shall fail to obey a lawful order contained in such notice of violation.
- (D) Except as otherwise provided in this chapter, any person, firm or corporation, whether as principal, agent, employee or otherwise, violating the provisions of this chapter shall be upon conviction thereof, guilty of a misdemeanor, punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00). If the violation is uncorrected at the time of conviction, the court shall order the violator to abate or remedy the violation in compliance with this chapter, within a time period established by the court. Failure to remove or abate a violation in compliance with this chapter within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor

more than one thousand dollars (\$1,000.00) and any such failure during any succeeding ten-day period shall constitute a separate misdemeanor offense for each ten-day period punishable by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand five hundred dollars (\$1,500.00).

- (E) In addition, the city may pursue injunctive relief and other available remedies to prevent, restrain, abate or correct any violation of this chapter. Nothing contained in this chapter shall excuse compliance with other applicable ordinances or laws. Except where more stringent requirements are expressly set forth by state or federal statute, where local requirements are in conflict with mandatory state or federal requirements, the local requirements shall prevail.

Sec. 35.1-5. How chapter may be amended.

This chapter may be amended in whole or in part by the city council. Any such amendment shall either originate with or be submitted to the planning commission for recommendation prior to adoption. If no recommendation is received from the planning commission within sixty (60) days after submission, the city council may act without a recommendation. No such amendment shall be adopted without a public hearing having been held by the city council and advertised pursuant to § 15.2-2204 of the Code of Virginia, (1950), as amended.

Sec. 35.1-6. Changes, erasures and revisions.

Except for field changes as may be required by other ordinances, no change, erasure or revision shall be made on any site plan, or on accompanying data sheets, after the city agent and the director of public works have approved in writing the plan or sheets, unless authorization for such changes has been granted in writing by the city agent and the director of public works.

Sec. 35.1-7. Exceptions.

- (A) Except as otherwise set forth in this chapter, the city council may grant exceptions to the general provisions of this chapter not governed by chapters 9, 13.1, 33.3, and 41.1 of the City Code, the "City of Hampton Landscape Guidelines," the zoning ordinance, or the public works design and construction standards. The burden shall be on the applicant to demonstrate the need for the exception.
- (1) Application required.
- (a) Application for a Petition of Exception shall be made by the property owner, or by persons other than the property owner with the written consent of the property owner, in writing to the city agent. A complete application shall include, unless waived by the director of the community development department or his designee, each of the following:
- (i) A narrative statement addressing the grounds for the Petition for Exception and all of the facts relied upon by the applicant.
 - (ii) A plan of development of the subject property for which the Petition is requested, which shall be prepared by a duly licensed professional engineer, land surveyor, architect, or landscape architect authorized to do business in the state of Virginia and shall depict the property boundaries, existing and proposed buildings and uses, yards, fences, signs, access to the site, and on-side parking and vehicle circulation, easements, water bodies, flood plains, wetlands and other natural features, existing and proposed streets, and utilities and drainage facilities within one quarter-mile of the subject property.
 - (iii) If a site plan has been prepared and submitted for review by the city, the application shall include the most recent draft site plan; and
 - (iv) A current physical property survey involved in the Petition for Exception.

(2) *Procedure for application review.*

- (a) *Community Development Department review.* Upon receiving a complete Petition for Exception, the Petition shall first be reviewed by the community development department. In order to be forwarded to the planning commission for review, the petition must satisfy each of the following criteria:
 - (i) No objection to the exception has been received in writing from the City's fire chief, or any affected state, federal or local agency including (without limitation) Langley Airforce Base; provided, however, that any such objection and the reasons therefor, must reference specific adopted ordinances, laws, regulations and policies. All modifications or corrections that would permit approval shall also be identified in the letter of objection;
 - (ii) The relief sought will not in any manner vary the provisions of the zoning ordinance, chapters 9, 13.1, 33.3, or 41.1 of the City Code, the comprehensive plan, the "City of Hampton Landscape Guidelines," the public works design and construction standards, or the official map, except as those provisions may be amended in the manner prescribed by law; and
 - (iii) The city agent and the planning division staff shall review the petition for completeness and may require such additional information as city staff may deem necessary to process the petition to the planning commission for consideration.
 - (b) *Planning commission and city council review.* If the Petition for Exception is consistent with the criteria set forth in the section 2(a) above, the community development department staff shall forward the Petition to the planning commission for review. The planning commission shall hold a public hearing advertised in accordance with the Code of Virginia § 15.2-2204, and shall submit its recommendations to the city council to approve or deny the petition no later than one hundred (100) days from the date of the public hearing on the Petition. Failure of the planning commission to act on the Petition within the one hundred (100) day period shall constitute a recommendation of approval and the petition shall be forwarded to the city council for consideration. The planning commission in considering such petitions may impose such reasonable restrictions in addition to the provisions of this chapter as it may deem necessary in the public interest. The planning commission may recommend approval of the Petition for Exception if each of the following findings are met:
 - (i) The granting of the exception will not be detrimental to public safety, health, or welfare, and will not adversely affect the property of others;
 - (ii) Strict adherence to the ordinance requirement will cause undue hardship based upon the unusual character of the property, including dimensions and topography, or by some other extraordinary situation or condition of the property. Personal, financial, or self-inflicted hardships shall not be considered proper justification for an exception; and
 - (iii) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formation of a general regulation to be adopted as an amendment to this ordinance.
 - (c) Following the recommendation of the planning commission, the city council shall consider the petition at a public hearing, advertised in accordance with Code of Virginia § 15.2-2204, and shall approve or deny the petition based upon the criteria set forth in section 2(b)(i)-(iii). If approving the Petition, the city council may attach any conditions it deems necessary in the public interest.
- (B) If granted, such exception shall be specifically stated in writing as evidenced by a formal council resolution and filed with the site plan. A note shall be prominently placed on the site plan detailing the exception so granted.

Sec. 35.1-8. Appeals.

In the event a site plan is disapproved by the city agent (or other official as may be provided by this Chapter) and the owner or developer contends that the disapproval was not properly based on the ordinance applicable thereto, or was arbitrary or capricious, the developer may appeal such decision to the Hampton Circuit Court within sixty (60) days after written disapproval by the city agent. No owner or developer may pursue approval of an alternative site plan while his appeal from the disapproval of the original site plan is pending.

Sec. 35.1-9. Reserved.

Sec. 35.1-10. Compliance with other ordinances.

In addition to the requirements set forth in this chapter, and without limiting the applicability of any other provision of law, site plans shall comply with the provisions of all city ordinances and the zoning ordinance and specifically, chapters 33.3, and 41.1 of the City Code, and chapter 9, articles IV and II of the city zoning ordinance unless exempted thereunder. The owner will be required to submit any additional plans, delineations, calculations, declaration of covenants and place required notations on the site plan as required by the City Code or the city zoning ordinance.

Sec. 35.1-11. Fees.

- (A) *Site plan review fees.* At the time any site plan is submitted for review, the following fees shall be submitted to the city agent and payable to the "City of Hampton":
 - (1) Three hundred fifty dollars (\$350.00) for the first acre (or portion thereof) contained in the site, plus one hundred fifty dollars (\$150.00) per acre of the site (or portion thereof) in excess of one (1) acre.
 - (2) An additional fee of two hundred dollars (\$200.00) shall be collected for any review after the first re-submission, except for resubmittals that are the result of redesign due to additional state or federal agency comments.
- (B) *Permit, inspection and re-inspection fees.* At the time of installation of any public improvements, permit and inspection fees shall be required as set forth in section 35.1-103(B) of this chapter and in other ordinances of the city. For permits and inspections not specified elsewhere, fees shall be based on costs, as determined by the agency involved. For re-inspections made necessary (i) by failure to pass earlier inspection, (ii) because work is not ready by the requested inspection time, (iii) due to cancelation of an inspection by the owner or developer after the inspector arrives, or (iv) failure to provide safe and sufficient access to allow for proper inspection, the re-inspection fee shall be one hundred dollars (\$100.00) per re-inspection visit. All fees required by this chapter shall be payable to the City of Hampton within thirty (30) days after billing. Failure to pay within the period stipulated may result in a stop-work order issued by the department of public works or such other action as deemed warranted under the circumstances of the case.
- (C) *Separate private easements; private dedication deeds/plats.* When separate private easements or private dedication deeds or plats are submitted a review fee shall be required in the amount of fifty dollars (\$50.00) per instrument, payable to the City of Hampton.
- (D) *Revised site plan.* If an owner or developer, at any time during the site plan review, submits a revised site plan or portion thereof, files or makes a change to the site plan or public improvement plan under review not at the request of the city agent or the director of public works as the case may be, such revision shall be accompanied by a fee of one hundred dollars (\$100.00) per sheet that is revised or changed payable to the City of Hampton.
- (E) *Recording fees.* Recording fees for any legal instrument required under this chapter for site plans shall be submitted to the city agent at the time prescribed in this section or in this chapter and shall be made payable to the Clerk of the Hampton Circuit Court.

Sec. 35.1-12. Maintenance of improvements and landscaping required.

Maintenance of all site improvements, including landscaping, required by this chapter and shown on an approved site plan shall be perpetually maintained by the property owner.

Sec. 35.1-13. Off-site public facilities.

The owner or developer shall install or modify off-site public facilities, such as utilities, sidewalks, curb and gutter, storm drainage facilities, and stormwater management facilities when such improvements are affected or required by the proposed development and pursuant to the authority of and in accordance with the requirements of the Code of Virginia, 1950, as amended, or any other applicable provisions of the City Code or the zoning ordinance.

Sec. 35.1-14. Dedication of on-site easements, rights-of-way.

The owner or developer shall dedicate to the city adequate rights-of-way, easements and/or additional areas to increase existing or establish new rights-of-way or easements when it is determined that: (i) there is a mutual desire on the part of the owner or developer and the city to install public facilities on the site; (ii) public facilities are presently located or partially located on the site; (iii) storm drainage systems (manmade or natural) that convey stormwater from public rights-of-way or public drainage systems are located or partially located on the site; or (iv) on-site public facilities are required to meet the provisions of this chapter or other city ordinances or policies. Easements for utilities, sewer and drainage when required shall be at least ten (10) feet wide. The director of public works may require a statement on the site plan indicating that no permanent structures (including fences) may be placed in a public easement.

Sec. 35.1-15. Separability.

Should any section or provision of this chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, other than the part so declared to be unconstitutional or invalid.

Secs. 35.1-16—35.1-19. Reserved.

ARTICLE II. SITE PLAN REVIEW PROCEDURES

Sec. 35.1-20. Preapplication conference and submission of conceptual plan.

Before submitting any application for site plan review, the owner or developer is advised to confer with the city agent and the director of public works concerning the proposed improvements. Such action does not require formal application or fees or formal filing of the site plan and is not to be construed as an application for approval of a site plan in computing time limitations in relation thereto or any requirements of this chapter or any other applicable city ordinance or code. Any comments made at a pre-application conference, whether oral or written, are guidance only and shall not be construed as or be deemed to be official site plan review comments.

Sec. 35.1-21. Who may prepare a site plan.

- (A) A site plan shall be on a black or blue line print and shall be prepared by a duly licensed professional engineer, land surveyor, architect or landscape architect authorized to do business in the State of Virginia.

Sec. 35.1-22. Contents of a major site plan.

- (A) A major site plan shall comply with the standards for surveys determining topography as set forth in 18 Virginia Administrative Code § 10-20-382, the "City of Hampton Landscape Guidelines," and the latest edition

of the public works design and construction standards, and shall include a vicinity sketch at a scale appropriate to the level of detail but not less than one (1) inch to one thousand (1,000) feet, which vicinity sketch shall show the area for the proposed development and all streets and water bodies that exist within the area of the vicinity sketch, along with the date, scale, and north arrow. A major site plan shall show the total land area of the site, the area to be developed, approximate land area of separate parcels of land, areas to be encumbered by stormwater management facilities, and other features in relation to existing topography, including any existing impervious areas in any subdistrict of the Chesapeake Bay Preservation Overlay District (O-CBP). The major site plan shall have a horizontal scale of not less than one hundred (100) feet to the inch and clearly show each of the following (along with the location, dimension and size thereof) when existing or proposed by the owner or developer:

- (1) The name of the development and the street address, when available or assigned by the city.
- (2)
 - (a) Topographic information of existing and proposed ground and paved areas, elevations of streets, alleys, utilities, grading and surface drainage, sanitary and storm sewers, and ground floor elevation of proposed buildings and other structures. Topography shall be a suitable scale shown as dashed lines illustrating one-foot or five-foot contours, as may be required by the director of public works or by spot elevations.
 - (b) Vertical control shall be based on North American Vertical Datum of 1988 (NAVD 88).
- (3) The name, address and any other contact information of the record owner and the developer and the name, address, signature and registration number and seal of the professional engineer, land surveyor, architect, or landscape architect who prepared the site plan.
- (4) A legal property description showing subdivision, lot, block and section number where applicable and the land record serial number (LRSN).
- (5) Driveways, entrances, exits, parking areas, sidewalks, streets, alleys, utilities, public sewer systems, including lateral and cleanout locations, pipe sizes, materials and grades with relevant calculations, water mains, meters and valves, standpipes, fire service lines and fire hydrants and all connections to existing and proposed central water and sewer systems.
- (6) Buildings and structures, and all building restriction lines, highway setback lines, easements, reservations and rights-of-way which affect the development of the site.
- (7) The zoning of the site and adjacent properties and identifying number and approval date of proffers and conditions of any special exceptions, variances, conditional use permits, conditional privileges, conditional rezonings or exceptions granted pursuant to this chapter affecting the site.
- (8) Existing slopes, terraces and retaining walls, including heights, grades or elevations.
- (9) Natural and artificial water courses and limits of floodplains, including a delineation of the boundaries of all floodways, flood fringes, approximated floodplains, and coastal high hazard areas. Flood elevations for any land located within a special flood hazard area in accordance with the provisions of section 9-31 of the zoning ordinance and the city flood insurance rate map (FIRM).
- (10) Proposed erosion and sediment control and stormwater pollution prevention measures and the limits of clearing and land disturbance.
- (11) Estimates of the following:
 - (a) Number of dwelling units and each type;
 - (b) Number of parking spaces and loading spaces;
 - (c) Square footage of floor space;
 - (d) Height of building(s); and

- (e) Approximate number of commercial or industrial tenants.
 - (12) Proposed point of refuse collection (dumpster pads).
 - (13) Plans for collecting and depositing stormwater and the method and treatment of natural and artificial water courses, including appropriate drainage calculations and site impervious area calculations, and existing and proposed storm drainage easements and direction of drainage flow in streets, storm sewers, valley gutters, streams and ditches as required by article II of chapter 33.3 of the City Code.
 - (14) Courses and distances of the right-of way center line of all abutting and on-site streets and all property lines on the site being developed, with a curve data table showing curve number, arc lengths, radii and delta angles, tangent lengths, chord distances and chord bearings.
 - (15) All passive or active recreation space and natural green space.
 - (16) Boundary lines of any nontidal wetlands as confirmed in writing by the Virginia Department of Environmental Quality or the U. S. Army Corps of Engineers.
 - (17) Any grave, object or structure marking a place of burial within the proposed development shall be clearly designated.
 - (18) Where any part of the land proposed for development lies in a mapped dam break inundation zone such fact shall be delineated on the plat.
 - (19) A method of sewage disposal.
 - (20) The soil characteristics of the land being developed.
 - (21) Two (2) signature and date lines each for the signed approval by the community development department, city agent and the director of public works.
 - (22) Photometric plan which includes (without limitation) all structures intended to support on-site or off-site lighting.
 - (23) Location and minimum light source for site lighting in accordance with section 35.1-41(l).
 - (24) If the director of public works approves roadside ditches/open drainage system in lieu of piped drainage systems or the elimination of sidewalks, a notation on the site plan shall be required, which advises any potential purchaser that the city will not be responsible for providing or bearing the costs of installation of sidewalks, curbs and gutters if the owner of any lot on the site desires a piped drainage system.
 - (25) Other information as necessary to ensure compliance with all applicable city ordinances, regulations and policies.
- (B) A site plan for development within Chesapeake Bay Preservation Overlay District (O-CBP) shall contain a notation thereon to state that land use and development activities including land disturbing activities or clearing of vegetation within any subdistrict of the O-CBP are regulated pursuant to chapter 9, article II of the zoning ordinance. Additionally, the site plan shall contain reference to any Resource Protection Area ("RPA") buffer or Intensely Developed Area ("IDA") encroachment or exception to the O-CBP regulations for development and redevelopment authorized by the City of Hampton.
- (C) A site plan containing any land located in an aircraft accident potential zone as designated on the geometric specifications and height limitations map and/or in a noise zone greater than 75 dB Ldn, 70—75 dB Ldn, or 65—70 dB Ldn as designated on the city zoning map, shall delineate the boundaries of such zones and such plan shall state as follows: "THIS SITE LIES WITHIN AIRCRAFT ACCIDENT POTENTIAL ZONE AND/OR NOISE ZONE(S) AND MAY BE SUBJECT TO AIRCRAFT ACCIDENTS AND/OR ABOVE AVERAGE NOISE LEVELS DUE TO ITS PROXIMITY TO AIRPORT OPERATIONS. NOISE ATTENUATION MEASURES FOR NEW CONSTRUCTION MAY BE REQUIRED IN ACCORDANCE WITH THE AIRPORT NOISE ATTENUATION AND SAFETY ORDINANCE AND HEIGHT RESTRICTIONS HAVE BEEN IMPOSED IN ACCORDANCE WITH THE HAMPTON CITY ZONING ORDINANCE."

- (D) A landscape plan for the site which complies with the "City of Hampton Landscape Guidelines" shall be required unless waived or modified by the city agent in accordance with this chapter.
- (E) At the time of submission of site plans and related data, or at any time thereafter, appropriate officers of the city may request additional information required due to the circumstances of the particular case. Time elapsing between the request and provision of any such additional information shall be added to the general time limitation of processing.
- (F) The city agent with the concurrence of the director of public works may waive or modify any of the requirements of this section so long as the waiver of modification is not in conflict with any requirement set forth in chapter 9 of the City Code, any provisions of the City Code, the zoning ordinance, the public works design and construction standards or the "City of Hampton Landscape Guidelines."

Sec. 35.1-22.1. Contents of a minor site plan.

A minor site plan shall include all of the contents required by Section 35.1-22 above for major site plans, except the following shall not be required:

- (A) Information needed only to establish compliance with Article II of Chapter 33.3 of this Code entitled "Stormwater Management," including (without limitation) information concerning the following:
 - (1) The location or function of any stormwater management facility or feature such as watersheds, storm drain systems, retention facilities, ditches, swales, riprap, or outfalls; or
 - (2) Pollution control activities;
- (B) Information concerning the location or function of water, sanitary sewer, electricity, or gas utility infrastructure, including (without limitation) flow calculations;
- (C) Information concerning proposed grade alterations; or
- (D) Information concerning any existing or proposed easements encumbering the parcel.

Sec. 35.1-23. Submission of copies and application for approval, to be accompanied by review fee.

A completed application for site plan review, a digital (Portable Document Format or ".pdf") version of the site plan required by this article, acceptable to the city agent, and the required fee pursuant to section 35.1-11 shall be submitted to the city agent in the development services center of the community development department.

Sec. 35.1-23.1. Coordination with other agencies and private utilities.

- (A) The city agent shall require evidence that the appropriate federal and state agencies, to include at a minimum the U.S. Army Corps of Engineers, Langley Air Force Base (if applicable) and the Virginia State Water Control Board of the Department of Environmental Quality have been notified of the submission of a site plan. Such notification shall include a property description and a request that the city be informed of any jurisdictional determinations relative to such property.
- (B) The city agent shall make the applicant aware that the applicant must contact appropriate utility providers to ensure connection is possible. Failure on the part of the applicant to contact utilities is not the responsibility of the City.
- (C) The site plan may be processed concurrently with a rezoning or a use permit.

Sec. 35.1-24. Distribution of copies.

The city agent shall distribute the digital version of the site plan to any city, state or federal agencies or entities as necessary for complete review and conformity with the provisions of this chapter.

Sec. 35.1-25. Review of site plan—Approval or disapproval generally.

(A) A site plan application with the applicable fees shall be reviewed as follows:

- (1) Within forty (40) days of their official submission, the site plan and other related materials shall be reviewed by the city agent and other appropriate agencies of the city for conformity to this chapter and other applicable regulations, and to allow any discussions with the owner as to changes deemed advisable and the kind and extent of improvements to be made. Review and approval of any applicable erosion and sedimentation control plans and stormwater management plans shall be in conformance with chapter 33.3 of the City Code respectively.
- (2) However, in cases where approval of a feature or features of the site plan by a state agency or public authority authorized by state law is necessary, the city agent shall forward the site plan to the appropriate state agency or authority for review within five (5) days of receipt of such site plan. Such state agency or public authority shall conduct its review in accord with the requirements set forth in Code of Virginia § 15.2-2222.1. The city agent shall act upon a site plan within twenty (20) days of receipt of approvals from all state agencies.
- (3) The city agent shall not be required to take initial action upon a site plan in less than forty (40) days from the date of its original submission to the city agent, except for site plans which require approval by a state agency or public authority authorized by state law, in which case the city agent shall take initial action within twenty (20) days after receipt of approval from all such state agencies and public authorities.
- (4) The city agent shall act upon site plan and related materials as submitted, as modified by the state agency or authority or as modified by the owner, and if approved shall certify his approval in writing or if disapproved, shall indicate his disapproval and identify all deficiencies in the site plan which caused the disapproval by referencing in writing specific duly adopted ordinances, regulations and policies. The city agent shall also identify, to the greatest extent practicable, all modifications or corrections that would permit approval.
- (5) In the review of a resubmitted site plan that has been previously disapproved the city agent shall consider only the deficiencies identified in the review of the initial submission of the site plan that have not been corrected in such resubmission and any deficiencies that arise as a result of the corrections made to address deficiencies identified in the initial submission. In the review of a resubmission of a site plan, the city agent shall identify all deficiencies in the site plan that caused the disapproval by referencing specific duly adopted ordinances, regulations or policies, and shall identify all modifications or corrections that will permit approval of the site plan. Upon the second resubmission of such disapproved site plan, the city agent's review shall be limited solely to the previously identified deficiencies that caused his disapproval.
- (6) The city agent shall act on any site plan that he has previously disapproved within thirty (30) days after the site plan has been modified, corrected and resubmitted for approval. Notwithstanding the approval of any site plan, any deficiency in any site plan, that if left uncorrected, would violate local, state or federal law or regulations, mandatory VDOT engineering and safety requirements, and other mandatory engineering and safety requirements, shall not be considered, treated or deemed as having been approved by the city agent. Should any resubmission include a material revision of infrastructure or physical improvements from the earlier submission or if a material revision in the resubmission creates a new required review by a state agency or public authority authorized by state law, then the city agent's review shall not be limited to only the previously identified deficiencies identified in the

prior submittals and may consider deficiencies initially appearing in the resubmission because of such material revision.

- (7) Upon receipt of a third or subsequent resubmission of a site plan, the city agent shall provide all deficiencies identified in such resubmission concurrently to the applicant and to the director of community development. Within fourteen (14) days of receipt, such director shall either:
- (a) Approve the site plan as submitted;
 - (b) Permit the applicant to address any deficiencies deemed minor by the director, and resubmit the site plan for administrative approval. The director shall complete the administrative approval within seven (7) days after receipt of the resubmission; or
 - (c) Disapprove the resubmission, and identify all deficiencies that caused the disapproval by referencing specific duly adopted ordinances, regulations, or policies and identify all modifications or corrections that will permit approval of the site plan.
- (B) The action of the city agent, with the concurrence of the director of public works, shall be noted in a digital findings letter retained in the record, referenced and in the case of disapproval, attached to any changes or conditions determined. A copy of the digital findings letter shall be delivered to the owner to the email address on record in the owner's application.
- (C) If a disapproved site plan is not resubmitted within one (1) year of the date of disapproval, such site plan shall become null and void, unless within such period, upon application in writing to the city agent an extension not exceeding one (1) year is granted by the city agent.
- (D) If the city agent fails to approve or disapprove the site plan within the prescribed period of time set forth herein, the owner may, after ten (10) days' written notice to the city agent, petition the Hampton Circuit Court to enter such order as it deems proper, which may include directing approval of the site plan. No alternative site plan may be pursued for approval by the city agent while an owner's proceeding in the Hampton Circuit Court is pending.
- (E) Notwithstanding any provision of this Chapter to the contrary, the city agent, with the concurrence of all applicable local reviewing agencies, may administratively approve any resubmitted site plan that the designated agent deems to be in compliance with local ordinances and state law.

Sec. 35.1-26. Required legal instruments and cost of recordation.

Legal instruments, in writing, of sufficient legal form for recordation in the Hampton Circuit Court Clerk's Office as may be required by this chapter or the city agent, shall accompany the site plan. A check payable to the Clerk of the Hampton Circuit Court, for costs of recordation of any such instruments, shall accompany the site plan prior to approval except as otherwise set forth in this chapter.

Sec. 35.1-27. Effect of approval.

- (A) Approval of a site plan as evidenced by the dated signatures of the community development department or city agent and the director of public works shall constitute the final site plan.
- (B) An approved site plan shall become null and void if no significant development is made on the site within five (5) years from the date of approval, unless, within such period, upon application to the city agent in writing, an extension not exceeding one (1) year is granted by the city agent. However, upon application by the owner or developer, filed prior to the expiration of the extension period, the city agent may grant one (1) or more extensions of such approval for additional periods as the city agent may, at the time the extension is granted, determine to be reasonable, taking into consideration the size and phasing of the proposed development, and the laws, ordinances and regulations in effect at the time of the request for extension. If the city agent denies an extension requested as provided herein and the owner or developer contends that such denial was not properly based on the ordinance applicable thereto, or was arbitrary or capricious, he may appeal such decision to the Hampton Circuit Court within sixty (60) days of written disapproval by the

city agent or the city council. No owner or developer may pursue approval of a new site plan while his appeal from the disapproval of the extension of the original approved site plan is pending.

- (C) For so long as the approved site plan remains valid in accordance with the provisions of this section no change or amendment to any city ordinance, map regulation, policy or plan adopted subsequent to the date of approval of the site plan shall adversely affect the right of the owner or developer, or their respective successors in interest, to commence and complete a development in accordance with the lawful terms of the approved site plan unless the change or the amendment is required to comply with state law or there has been fraud.
- (D) Any major revision to an approved site plan shall be subject to all review procedures provided in Section 35.1-25.
- (E) The city agent may approve minor revisions to an approved site plan without observing all review procedures provided in Section 35.1-25 above.
- (F) Approval of any revision to an approved site plan shall not constitute a waiver of the requirements of this chapter, nor extend the period of validity of any approved site plan.

Sec. 35.1-28. Distribution of copies after approval.

After approval of the site plan, the city agent shall email digital copies to distribute among the city agencies as deemed necessary. A digital copy will be provided to the applicant (and the owner, if the owner is not also the applicant), and the owner shall be responsible for distributing copies to appropriate state and federal agencies as required by state or federal law.

Sec. 35.1-29. Article creates no city obligation as to improvements prior to acceptance thereof by city.

Nothing in this article shall be construed as creating an obligation upon the city to pay for grading or paving, or for public sidewalks, sewers, curb and gutter or other public improvements or construction, or for the maintenance and care thereof until duly accepted by the city.

Sec. 35.1-30. Compliance with site plan.

It shall be unlawful for any person to construct, erect or enlarge any building or structure or develop, change or improve land for which an approved site plan is required by this chapter, except in accordance with the approved site plan.

Sec. 35.1-31. Public records.

Copies of approved site plans shall be kept on file in the development services center of the community development department and shall be deemed public records.

Secs. 35.1-32—35.1-40. Reserved.

ARTICLE III. WORK AND DEVELOPMENT PURSUANT TO APPROVED PLAN

Sec. 35.1-41. General requirements.

- (A) All work and development covered by a site plan approved pursuant to this chapter shall comply with the following:

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- (1) Any building or structure erected or enlarged and any work of development on the site shall comply with all of the provisions of the City Code, the zoning ordinance and any applicable state and federal laws.
 - (2) Any building or structure shall provide access to fire, police, emergency and service vehicles as required by the City Code.
 - (3) Access points to the development shall, insofar as reasonably practicable, provide good and safe circulation to adjacent lands, existing streets, alleys, sidewalks and proposed or planned streets, alleys and minimum necessary access points with the location and spacing as determined by the director of public works to provide for vehicle cross connectivity between adjacent parcels.
 - (4) Adequate provisions shall be made to protect other lands, structures and persons.
 - (5) To the extent reasonably practicable, the width, grade, location, alignment and arrangement of public, dedicated streets, sidewalks and alleys shall conform to the master plan of the city. All streets, whether public or private, shall be designed and constructed in accordance with the latest edition of the public works design and construction standards.
 - (6) The limits of clearing and methods to be used to protect existing vegetation shall be provided.
 - (7) The obstruction of natural water courses shall be avoided.
 - (8) Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the development permitted.
- (B) Measures shall be taken for erosion and sediment control to comply with the standards and procedures set forth in article III of chapter 33.3 of the City Code.
- (C) On properties zoned O-CBP, areas shown on the site plan as undisturbed, or as a buffer proffered as part of a conditional rezoning or required for a use permit, or as part of a resource protection area, shall be protected from disturbance as required by chapter 33.3 of the City Code, chapter 9, article II of the city zoning ordinance or in accordance with the "City of Hampton Landscape Guidelines" on file with the department of community development, development services center, as applicable.
- (D) All public drainage systems shall be constructed and designed in conformance with the applicable provisions of the latest edition of the public works design and construction standards. Easements for all public drainage shall be dedicated to the city by separate instrument.
- (E) Off-street parking facilities shall be reasonably accessible and all such parking areas shall be paved in order to reduce erosion and dust and to facilitate positive drainage. Areas designated as overflow parking or construction material or equipment storage may not be required to be paved if not deemed necessary by the director of public works. Notwithstanding the foregoing, grid and modular pavements, or other pervious pavement which promote infiltration are encouraged and may be required for any required parking area alley, or other low traffic driveway within property zoned SPI-CBPD.
- (F) All dumpsters and compaction devices shall be screened by an enclosure constructed of durable materials with a lockable gate to fully screen the refuse container(s) in addition to any required vegetative screening treatment of trees and/or shrubs as set forth in the "City of Hampton Landscape Guidelines." Dumpsters and compaction devices shall not be located within front yards or side yards adjacent to a street unless specifically authorized by the director of public works. When authorized in yards adjacent to streets, the enclosure shall be constructed of durable materials which are consistent and compatible with the principal structure. Refuse collection points shall be accessible and located so as to minimize the disruption of on-site vehicular movements and the public right-of-way. Dumpster pads shall be constructed of concrete capable of withstanding the weight of the dumpster and be adequately sized to serve the collection point. Protective bollards shall be provided as necessary to protect the enclosure.

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- (G) The owner shall provide the development with a stormwater drainage system, as approved by the director of public works, adequate to serve the area of development and the contributing drainage area thereto for the collection and disposal of all stormwater and natural water in accordance with design standards and specifications of article II of chapter 33.3 of the City Code.
 - (H) Adequate approved water mains and fire hydrants shall be provided in accessible places and installed by the owner as directed by the fire chief in accordance with the city fire prevention code.
 - (I) Exterior lighting shall be installed at the Owner's expense. Light fixture type, location and spacing shall comply with the latest edition of the "City of Hampton Outdoor Lighting Policy and Procedures" manual which is administered by the director of public works. Exterior lighting shall be reasonably designed to provide for the safety of the public in their use of parking lots, walkways and entrance areas. These areas shall be illuminated by a source providing not less than one-half of one (0.5) foot candle of light at the surface during hours of darkness. The light source shall be fully shielded, located so as not to cause glare or excessive light spillage onto neighboring sites and mounted or installed to maintain the aforementioned characteristics. All light poles located within pavement areas shall be protected by concrete curbing or shall be installed at the intersection of four (4) parking spaces.
 - (J) Street signs required by the city agent or the director of public works shall be paid for by the owner in advance and shall be constructed and installed in accordance with the provisions of the latest edition of the public works design and construction standards.
 - (K) Curbs, gutters and sidewalks shall be provided within a development except as otherwise provided in the public works design and construction standards. Curbs, gutters and sidewalks shall be constructed in accordance with the latest edition of the public works design and construction standards.

Sec. 35.1-42. Development of land subject to flooding.

No lot, tract or parcel of land, or any part thereof, in a floodplain or flood prone area, shall be developed for the use of buildings or structures erected or to be erected for dwelling or residential purposes on the portion of the land within the floodplain or flood prone area, unless corrected to the satisfaction of the director of public works and in accordance with chapter 9, article IV of the zoning ordinance.

Sec. 35.1-43. Utilities.

All utilities, including, but not limited to wires, cables, pipes, fiber optics, conduits and accessory equipment for electric, telephone, internet, cable television, gas, steam, petroleum, water, sewer or similar services shall be installed by the owner and located underground in accordance with the latest edition of the public works design and construction standards or chapter 9 of the City Code, as applicable. All connections shall be shown on the site plan. Existing overhead utilities on the site will be allowed to remain as-is if not impacted by the proposed development. Any change to the existing overhead utilities will necessitate utilities being placed underground.

Sec. 35.1-44. Design, layout and dimensions of commercial development.

The design, layout and dimensions of structures on a site reserved or planned for business and commercial purposes shall be adequate to provide for off-street parking and service facilities required by the type of use and development contemplated and shall be in compliance with applicable provisions of this Code and other ordinances of the city.

Sec. 35.1-45. Sewage disposal system.

- (A) Every development shall be provided with a sanitary sewer system or an approved system for sewage disposal as provided for in governing provisions of this Code or other ordinances or resolutions. All publicly serviced systems provided by the owner shall be offered for dedication to the city at no cost to the city, upon

completion. The sanitary sewer system shall include, but shall not be limited to, the necessary force mains, sewer mains, laterals, lines, pipes, pumping stations and other facilities needed to service the development.

- (B) All warranties shall be in compliance with section 35.1-106. Before construction is commenced, all plans and specifications must be reviewed by and have the approval of the director of public works. The developer shall notify the city prior to start of construction so that an inspection may be provided. Any work covered prior to inspection may be required to be uncovered at the developer's expense. All construction shall be in accordance with approved plans. No changes shall be made in approved plans without further approval by the director of public works. Upon final approval of the system, the city will notify the developer in writing when the city will receive sewage originating in the area and will specify the date upon which the developer may discharge sewage into the city system.

Sec. 35.1-46. Water supply.

The owner shall provide the development with a complete potable water supply system conforming to the city's policy thereon and approved by Newport News Waterworks.

Sec. 35.1-47. Lands for public acquisition.

The city agent may require, in any development pursuant to an approved site plan, the reservation of land for public acquisition; such lands as are designated by the comprehensive plan for parks, playgrounds, public buildings and other purposes. In the event such reservations are required, the city must acquire the reserved land within one hundred twenty (120) days of approval of the site plan.

Sec. 35.1-48. Development in the resource protection area; buffer area.

There shall be no improvements or development allowed in the resource protection area except as permitted pursuant to chapter 9, article II of the zoning ordinance.

Sec. 35.1-49. Green areas and landscaping requirements.

- (A) In recognition of the environmental value of maintaining a balance between the manmade and natural environment, each site developed pursuant to a site plan under this chapter shall be required to provide and maintain natural required green areas in accordance with the city zoning ordinance.
- (B) The director of community development department has prepared minimum specifications, and standards governing landscaping, tree removal, tree preservation and buffer establishment and maintenance entitled the "City of Hampton Landscape Guidelines" ("Landscape Guidelines"), as amended, and on file in the community development department, development services center. In any development pursuant to a site plan under this chapter, all required green areas shall be landscaped as set forth in the Landscape Guidelines, and landscape and tree protection or removal shall comply with the provisions of the Landscape Guidelines or any other applicable provision of the City Code.
- (C) In any development pursuant to a site plan under this chapter, a landscape plan complying with all applicable provisions of the Landscape Guidelines shall be submitted to and reviewed and approved by the city agent prior to the issuance of any building permit(s).
- (1) A landscape plan that deviates from the Landscape Guidelines may also be approved by the city agent. Such landscape plan must be submitted to the city agent for review. Approval of any landscape plan which does not meet the Landscape Guidelines shall be at the discretion of the city agent in accordance with good planning practices and in compliance with any applicable provisions of the City Code or the zoning ordinance. The purpose of this provision is to not preclude innovative landscaping treatments and site designs which may create a quality design while not explicitly meeting the standards specified in the Landscape Guidelines.

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- (2) Except as otherwise set forth in the City Code or the city zoning ordinance, the city agent may waive the requirement of a landscape plan for legally nonconforming lots and structures, or in order to accommodate topographical or size or area of a lot or parcel or any circumstance resulting in an unnecessary hardship other than economic hardship.
 - (3) Where such modification or waiver is granted under this subsection (C), the city agent shall attach such modification or waiver in the form of notations on the landscape plan or site plan.
 - (D) Where landscaping is required, no certificate of occupancy shall be issued until the required landscaping is completed in accordance with the approved landscape plan as certified by an on-site inspection by the community development department. When the occupancy of a structure is desired prior to the completion of the required landscaping, a certificate of occupancy may be issued only if the owner or developer provides to the city a form of surety satisfactory to the city attorney in an amount equal to the remaining plant materials, related materials, and installation costs with the costs approved by the city agent. All required landscaping must be installed and approved within six (6) months following the issuance of the certificate of occupancy or the surety shall be forfeited to the city.
 - (E) Maintenance of landscaping is a continuing obligation of the owner, and the owners and their agents shall be responsible for providing, protecting and maintaining all landscaping in healthy and growing conditions at all times, replacing fifty (50) percent or more of landscaping plant material which is unhealthy, and 100% of landscaping plant material which is dead, within ninety (90) days upon written notice of violation, except when replacements should be delayed because of seasonal factors until the next planting season. Replacement materials shall conform to the original intent of the approved landscape plan as determined by the city agent.
 - (F) This section shall apply to any site plan filed subsequent to the 9th day of May, 2013.

Sec. 35.1-50. Stormwater management facilities.

- (A) Where stormwater management facilities are required, no certificate of occupancy shall be issued until the facilities are completed and an as-built survey has been submitted and approved, in accordance with the approved site plan and article II of chapter 33.3 of the City Code.
- (B) The inspection, monitoring, enforcement and bonding of stormwater management facilities shall be governed by the provisions of article II of chapter 33.3 of the City Code.

Secs. 35.1-51—35.1-100. Reserved.

***ARTICLE IV. PUBLIC IMPROVEMENTS—REQUIREMENTS, PROCEDURES FOR
PERMITTING AND PERFORMANCE ASSURANCES.***

Sec. 35.1-101. Public improvements.

- (A) The director of public works may require in any development pursuant to a site plan approved under this chapter, the dedication of land for, and the installation of public streets, street signs, alleys, sidewalk, curbs, gutters, sewers, drains and other public improvements substantially generated by the development. The design and construction of all streets, street signs, curbs, gutter, alleys, sidewalks and drainage shall comply with the latest edition of the public works design and construction standards.
- (B) Public Improvements required by the director of public works shall be shown on the site plan or by separate sheet if necessary, depicting the improvements and specifications as required by the director of public works. However, prior to acceptance by the city, all such public improvements shall be dedicated or

conveyed by separate legal instrument, with necessary plats attached for recordation at the expense of the owner or developer.

- (C) An engineering cost estimate for construction of stormwater management facilities, all infrastructure located within the public rights-of-way and public easements, and all erosion and sediment control measures shall be provided to the director of public works.

Sec. 35.1-102. Reserved.

Sec. 35.1-103. Permits for installation of public improvements and inspections.

At the time of approval of the site plan, in order to proceed with the installation of any required public improvements, the owner or developer must have applied for and obtained all necessary and applicable permits.

- (A) *Infrastructure permit.* An infrastructure permit will be issued by the director of public works for all proposed public improvements to be constructed outside of existing public rights-of-way, but within proposed public rights-of-way or easements. At the time of approval of the site plan, the owner and/or developer shall obtain such permit and shall pay all applicable fees for the cost of permitting and inspection of the public improvements. It shall be a violation of the City Code to construct public improvements without possession of a valid infrastructure permit. Work within existing public rights-of-way shall be permitted through a right-of-way permit in accordance with section 34-41 of the City Code.
- (B) *Permitting and inspection fees.* Permitting and inspection fees shall be paid prior to the issuance of the infrastructure permit for the installation of public improvements, according to the following schedule:
- (1) One dollar (\$1.00) per linear foot of mainline sanitary sewer line, plus
 - (2) One dollar (\$1.00) per linear foot of curb and gutter, and sidewalk plus
 - (3) One dollar (\$1.00) per linear foot of storm sewer line.
- (C) *Term of permit.*
- (1) A permit issued under this chapter shall be valid for a period of one (1) year; provided however, such permit may be extended for an additional one (1) year period prior to the expiration of the original permit, by written approval of the director of public works, upon receipt of evidence of reasonable progress toward the completion of the public improvements and compliance with all conditions of approval.
 - (2) If the owner or developer fails to commence construction of the public improvements within one (1) year after the date of the permit issuance, and the permit is not extended as set forth in subsection (C)(1) hereinabove, then the infrastructure permit shall become null and void. A new infrastructure permit must be obtained, new permit fees must be paid for and new surety must be provided as set forth in this section in order to commence construction of the public improvements. However, if the infrastructure permit is extended as set forth in subsection (C)(1) hereinabove, no new fees or surety will be required.
- (D) *Revocation of permit.* In the event that public improvements are not being installed in accordance with city standards, the director of public works shall give written notice of construction deficiencies (notice to comply) to the permittee by registered or certified mail to the address specified by the permittee in his permit application, or by delivery at the site of the public improvement activities to the agent or employee supervising such activities. If, after seven (7) days of the date of notice, the permittee has not corrected the deficiencies, the director of public works may revoke the infrastructure permit, and the permittee or person responsible for constructing the public improvements shall be deemed to be in

violation of this section and, upon conviction, shall be subject to the penalties provided by paragraph (G) below.

- (E) *Stop work orders.* Upon notification of a violation of this article which threatens life, limb or property, the director of public works may, in conjunction with or subsequent to a notice to comply, as specified in paragraph (D) above, issue an order requiring that all or part of the public improvement construction on the site be stopped until the specified corrective measures have been taken. The order shall be served in the same manner as the notice to comply, and shall remain in effect for seven (7) days from the date of service, pending the completion of the corrective action. Upon completion of the corrective action, the order shall immediately be lifted.
- (F) *Reinstatement of the permit.* In the event that an infrastructure permit has been revoked, the owner or developer may seek reinstatement of the permit by correcting all identified deficiencies, and by paying a reinstatement fee of two hundred dollars (\$200.00).
- (G) *Penalties for violation.* A violation of the conditions of this section shall be deemed a Class 1 misdemeanor and each day shall constitute a separate violation.

Sec. 35.1-104. Inspections during installation.

Periodic inspections during the installation of the public improvements on a site shall be made by the city to ensure conformity with the approved site plan. The owner or developer shall notify the department of public works when each phase of the installation is completed and ready for inspection.

Sec. 35.1-105. Acceptance of public improvements by city.

After the installation by the owner or developer of the public improvements in the development as required by this chapter, the owner or the developer shall notify the director of public works in writing to schedule an inspection thereof and shall also submit to the director of public works a certificate of completion of the public improvements as required in section 35.1-106(C). Upon submission of the required certificate of completion as set forth in section 35.1-106(C), inspection and approval of the public improvements by the city, and performance of all requirements set forth in section 35.1-106, the city shall accept the public improvements and release the remainder of the performance bond either as set forth in the right-of-way permit or pursuant to section 35.1-106, as applicable.

Sec. 35.1-106. Construction and maintenance of public improvements; performance bond; release of performance bond.

- (A) Prior to the issuance of any building permit, the owner or developer shall execute and submit to the director of public works one of the following forms of surety in an amount equal to the estimated costs of any physical improvements required by this chapter and/or Code of Virginia § 15.2-2241.A.5 to be installed, which are not located in the existing right-of-way or not covered by a right-of-way permit, to be dedicated for public use, including, but not limited to any right of way located within the development or section thereof as follows: (i) certified check or cash escrow with the right of the city to draw upon such account in the event the owner fails to install and complete the required improvements; or (ii) a performance bond to be written by a bonding company licensed to conduct the business of surety in the State of Virginia with the right of the city to call on the bond in the event the owner fails to install and complete the required improvements; or (iii) an irrevocable letter of credit issued from a bank or savings institution licensed to do business in the State of Virginia and acceptable to the city evidencing the establishment of credit to the owner on which letter the city shall be authorized to draw drafts in the event the owner fails to install and complete the required improvements (the foregoing forms of surety shall be referred to as the "performance bond."

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- (B) The required surety as set forth in subsection (A) herein ("performance bond"), shall be approved by the city attorney. The costs of public improvements under subsection (A) herein shall be set by the director of public works for purposes of determining the amount of said check or cash escrow, bond or letter of credit.
- (C) Performance bonds established in accordance with the provisions of this section shall be released when the director of public works certifies that the requirements set forth therein have been met. On application by the owner or developer, portions of such bonds or other sureties may be released in proportion to the cost of the requirements certified by a duly licensed professional engineer or land surveyor as having been met; however, in no case shall the amount of surety be reduced to less than ten (10) percent of the total construction costs of the public improvements. Periodic partial releases shall not occur before the completion of at least thirty (30) percent of the public improvements covered by any surety.
- (1) The director of public works shall not be required to execute more than three (3) periodic partial releases in any twelve (12) month period. Within thirty (30) days after receipt of written notice by the owner or developer of completion of part or all of the improvements or facilities required to be constructed, the director of public works shall notify the owner or developer of any nonreceipt of approval by an applicable state agency, or of any specified defects or deficiencies in construction and suggestive corrective measure.
 - (2) "Written Notice" shall consist of a letter from the owner or developer to the director of public works requesting reduction or release of the surety along with a certificate of completion of such improvements or facilities from either a duly licensed professional engineer or land surveyor.
 - (3) If no action is taken by the director of public works within the thirty (30) day period, the request shall be deemed approved and a partial release granted to the owner or developer. No final release shall be granted until after expiration of such thirty (30) day period and there is an additional request in writing sent by certified mail to the city manager. The director of public works shall act within ten (10) working days of receipt of this request. If no action is taken, the request shall be deemed approved and final release granted to the owner or developer.
- (D) Performance bonds established in accordance with the provisions of section 35.1-106(C) shall be completely released at the end of one (1) year from the date the public improvements have been installed and inspected; provided, however, that all improvements and requirements of this chapter shall have been installed or met and no defects have been found to exist. If defects found to exist at the end of the one (1) year period have not been corrected after proper notice, the director of public works shall estimate the cost of correction and such cost shall be deducted from the performance bond.
- (E) Reserved.
- (F) No performance bond shall be released in full until as-built construction drawings for all public improvements, including, but not limited to street trees, landscape plantings, sanitary sewer and stormwater infrastructure (including tops of curbs and flow lines for rights-of-way) are submitted on an 11-inch by 17-inch approved durable tracing medium and an approved digital version by the owner or developer for review and approval by the director of public works. All detention, retention and impoundment best management practices ("BMP") shall require a certification of as-built conditions in accordance with the public works design and construction standards and article II of chapter 33.3 of the City Code prior to the release of the performance bond.
- (G) No performance bond shall be released until the owner or developer executes and submits any required deed of dedication or easement with attached plats in a form acceptable to the city attorney accompanied by the required recordation fees payable to the clerk of the circuit court for the City of Hampton.