



**City of Hampton, Virginia**  
Ordinance - Coded

22 Lincoln Street  
Hampton, VA 23669  
www.hampton.gov

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**AN ORDINANCE TO AMEND AND REENACT CHAPTER 33.1 OF THE CODE OF THE CITY OF HAMPTON, VIRGINIA ENTITLED "STORMWATER MANAGEMENT" AND TO REPEAL SECTIONS 33.1-13 AND 33.1-18, EFFECTIVE JULY 1, 2007.**

**Chapter 33.1**

**STORMWATER MANAGEMENT\***

\* **Cross References:** Building and development regulations, Ch. 9; excavating, filling and similar operations, Ch. 13; sewers and sewage disposal, Ch. 30; water supply, Ch. 39.

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**ARTICLE I.**  
**IN GENERAL**

**Sec. 33.1-1. Title.**

This chapter shall be known as the "Stormwater Management Ordinance."  
(Ord. No. 994, 12-12-90)

**Sec. 33.1-2. Findings of fact.**

The health of city, state and federal waters are vital to the economy of the City of Hampton and the State of Virginia; degradation of these resources from both point and nonpoint source pollution must be curtailed. Uncontrolled drainage and development of land have significant adverse impacts upon the health, safety, and welfare of the community. The purpose of this chapter is to implement the Chesapeake Bay Preservation Act (Code of Virginia, § 10.1-2100 et seq.), the Virginia Stormwater Management Act (Code of Virginia, § 10.1-603.2 et seq.) and the Federal Clean Water Act at the local level, and to protect the quality of state waters as authorized under Section 10.1-2100 et seq. of the Code of Virginia, 1950, as amended; specifically:

- (1) Stormwater runoff can carry pollutants into receiving water bodies, degrading water quality;
- (2) The increase in nutrients such as phosphorous and nitrogen adversely affects flora and fauna;
- (3) Improperly channeling water increases the velocity of runoff, thereby increasing erosion and sedimentation;
- (4) Certain lands that are proximate to shorelines have intrinsic water quality value due to the ecological and biological processes they perform;
- (5) Construction requiring the alteration of natural topography and removal of vegetation tends to increase erosion;
- (6) Siltation of water bodies resulting from increased erosion decreases their capacity to hold and transport water, interferes with navigation, and harms flora and fauna;
- (7) Impervious surfaces increase the volume, rate and pollutant load of stormwater runoff and allow less water to percolate into the soil, thereby decreasing groundwater recharge, and increasing erosion and surface water pollution;

- (8) Improperly managed stormwater runoff can increase the incidence of flooding and the level of floods which occur, endangering property and human life;
  - (9) Improperly managed stormwater runoff can interfere with the maintenance of optimum salinity in estuarine areas, thereby disrupting biological productivity;
  - (10) Substantial economic losses result from these adverse impacts on city and state waters; and
  - (11) Future water degradation can be avoided if land is developed in accordance with sound stormwater management practices.
- (Ord. No. 994, 12-12-90; Ord. No. 1098, 8-11-93; Ord. No. 1373, 5-12-04)

**Sec. 33.1-3. Objectives.**

In order to protect, maintain, and enhance both the immediate and the long-term health, safety and general welfare of the citizens of the City of Hampton, this chapter has the following objectives:

- (1) To balance development interests and the natural resources of the city;
- (2) To protect, restore or maintain the chemical, physical and biological integrity of city and state waters in such conditions that will permit all reasonable public uses, and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them;
- (3) To prevent activities which harm the city by adversely affecting water resources;
- (4) To encourage the construction of drainage systems which maintain or functionally approximate existing natural systems;
- (5) To encourage the protection of natural drainageways and the use of them in ways which do not impair their beneficial functioning;
- (6) To prevent any increase in the transport of pollutants to city and state waters;
- (7) To maintain or restore groundwater levels;
- (8) To protect, maintain or restore natural salinity levels in estuarine areas;
- (9) To minimize erosion and sedimentation;

- (10) To prevent damage to wetlands and resource protection areas as defined in the zoning ordinance;
  - (11) To prevent damage from flooding, while recognizing that natural fluctuations in water levels are beneficial;
  - (12) To protect, restore and maintain fish and wildlife habitat in the watersheds of the city; and
  - (13) To ensure that attainment of these objectives by requiring the approval and implementation of stormwater management plans for all activities which may have an adverse impact upon city and state waters.
- (Ord. No. 994, 12-12-90)

**Sec. 33.1-4. Definitions.**

Unless specifically defined below, words or phrases shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most effective application.

- (1) *Adverse impacts* are any modifications, alterations or effects on a feature or characteristic of community waters or wetlands, including their quality, quantity, hydrodynamics, surface area, species composition, living resources, aesthetics or usefulness for human or natural uses which are or may potentially be harmful or injurious to human health, welfare, safety or property, to biological productivity, diversity or stability or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation. The term includes secondary and cumulative as well as direct impacts.
- (2) *Best management practices (BMPs)* means a practice, or a combination of practices, that is determined by a state, city or designated area-wide planning agency to be the most effective, practical means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.
- (3) *Chesapeake Bay Preservation District (SPI-CBPD)* means any land so designated by the Hampton City Council pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, VAC 10-20-70 et seq., and Section 10.1-2109 of the Code of Virginia and pursuant to Chapter 17.3, Article X, of the Hampton City zoning ordinance. A Chesapeake Bay Preservation District shall consist of a resource protection area and a resource management area.

- (4) *Clearing* means the removal of vegetative ground cover, including, but not limited to the removal of root mat or topsoil. Clearing does not include the ordinary mowing of grass.
- (5) *Detention* means the collection and storage of surface water for subsequent gradual discharge.
- (6) *Developable area* means area that is not constrained by wetlands, or other site limitations. However, the lack of availability of water or other utilities shall not be considered a site limitation, for purposes of assessing a stormwater utility charge.
- (7) *Developed nonresidential property* means developed property which does not serve a primary purpose of providing permanent dwelling units. Such property shall include, but not be limited to commercial, industrial, educational, civic, religious, cultural and recreational properties, parking lots, hotels and offices. For the purposes of this article, this definition shall also include developed property on which is located apartments or mobile home facilities containing more than four (4) residential or dwelling units.
- (8) *Developed property* means a parcel of real property that has been altered in whole or in part from its natural state by the addition of improvements, such as buildings, structures, paving and/or other impervious surfaces, if the total square footage of such impervious surface exceeds five hundred (500) square feet.
- (9) *Developed residential property* means a developed lot or parcel containing at least one but no more than four (4) residences or dwelling units, and accessory uses related to, but subordinate to, the purpose of providing permanent dwelling facilities. Such property shall include houses, duplexes, triplexes, quadriplexes and mobile homes. For the purposes of this article, each townhouse located on a separate lot shall be considered as a developed residential property and each condominium, although it is not on a separate lot, will also be considered as a developed residential property.
- (10) *Developer* means any person who engages in development either as the owner or as the agent of an owner of property.
- (11) *Development activity* means:
  - a. The construction, installation, alteration, demolition or removal of a structure, impervious surface or drainage facility, best management practices facilities, buffer areas, etc.;

b. Clearing, scraping, grubbing or otherwise removing or killing the vegetation of a site; or

c. Adding, removing, exposing, excavating, leveling, grading, digging, burrowing, dumping, piling, dredging or otherwise significantly disturbing the soil, mud or sand of a site.

- (12) *Director* means the Director of the Department of Public Works or his designee.
- (13) *Drainage facility* means any man-made or man-altered component of the drainage system.
- (14) *Drainage system* means the system through which water flows from the land. It includes all watercourses (both intermittent and perennial), water bodies and wetlands.
- (15) *Dwelling unit* means a single housing unit, mobile home, townhouse, or condominium providing complete, independent living facilities for one or more persons, including provisions for living, sleeping, eating, cooking and sanitation.
- (16) *Equivalent residential unit (ERU)* means the equivalent impervious area of the developed residential property class per dwelling unit located within the city based on the statistical average horizontal impervious area of developed residential property in the city. One ERU shall equal two thousand four hundred twenty-nine (2,429) square feet of impervious surface area.
- (17) *Erosion* means the wearing or washing away of soil by the action of wind or water.
- (18) *Erosion and sediment control plan* means a document providing for the conservation of soil and water resources, as required by the erosion and sediment control ordinance.
- (19) *ERU rate* means the service charge fee charged for one ERU, as established in this article.
- (20) *Filling* means any depositing or stockpiling of earth materials.
- (21) *Flood* means is a temporary rise in the level of any water body, watercourse or wetlands which results in the inundation of areas not ordinarily covered by water.

- (22) *Grading* means any excavating, filling, leveling or sloping of earth materials, or any combination thereof, including the land in its excavated, filled, leveled or sloped condition.
- (23) *Impervious surface* means a surface compacted or covered with a layer of material so that it is highly resistant to infiltration by water. It includes semi-impervious surfaces such as compacted clay, as well as most conventionally surfaced streets, roads, sidewalks, parking lots, and other similar surfaces. Other surfaces such as gravel, dirt, or a mixture thereof, that are regularly used for vehicular access, parking or storage shall also be considered impervious, if there is inadequate vegetative cover to affect the rate of stormwater infiltration.
- (24) *Manual of stormwater management practices* means to the guidance, specifications and techniques made available to the public as required by section 33.1-10 of this chapter.
- (25) *Natural systems* means systems which predominantly consist of or use those communities of plants, animals, bacteria and other flora and fauna which occur indigenously on the land, in the soil, or in the water.
- (26) *Non-point source pollution* means pollution whose sources cannot be pinpointed but rather is washed from the land surface in a diffuse manner by stormwater runoff.
- (27) *Nontidal wetlands* means those wetlands other than tidal wetlands that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers, pursuant to enforcement of Section 404 of the Federal Clean Water Act in 33 CFR 328.3b.
- (28) *Owner* means the person in whom is vested the fee ownership, dominion or title of property, i.e., the proprietor. This term may also include a tenant, if chargeable under his lease for the maintenance of the property, and any agent of the owner or tenant including a developer.
- (29) *Person* means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the state, any interstate body or any other legal entity.
- (30) *Predevelopment conditions* means the conditions that exist at the time that plans for the land development of a tract of land are approved by the plan approval authority. Where phased development or plan approval occurs

(preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first item being approved or permitted shall establish predevelopment conditions.

- (31) *Receiving bodies of water* means any water bodies, watercourses or wetlands into which surface waters flow either naturally in man-made ditches or in a closed conduit system.
- (32) *Resource management area (RMA)* means that component of the Chesapeake Bay Preservation District that is not classified as resource protection areas. The RMA is comprised of land that is contiguous to the one hundred (100) foot RPA buffer for a distance of one hundred (100) feet in the landward direction.
- (33) *Resource protection area (RPA)* means that component of the Chesapeake Bay Preservation District comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or that are sensitive to impacts which may result in significant degradation to the quality of state waters. Resource protection areas include: (i) tidal wetlands; (ii) nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow; (iii) tidal shores; and, (iv) a buffer area not less than one hundred (100) feet in width located adjacent to and landward of the components listed above, and along both sides of any water body with perennial flow. The buffer area shall be designated as the landward component of the RPA notwithstanding the presence of permitted uses, encroachments, and permitted vegetation clearing in compliance with Chapter 17.3, Article X, of the Hampton City Zoning Ordinance.
- (34) *Review committee* means that group of persons, as defined in the zoning ordinance, which convenes to hear requests for relief from the Chesapeake Bay Preservation District regulations and to arbitrate Chesapeake Bay Preservation District boundary disputes.
- (35) *Retention* means the collection and storage of runoff without subsequent discharge to surface waters.
- (36) *Sediment* means fine particulate material, whether mineral or organic, that is in suspension or has settled in a water body.
- (37) *Sedimentation facility* means any structure or area designed to hold runoff water until suspended sediments have settled.
- (38) *Service charge* means the user fee based upon the ERU rate applied to the developed residential property and developed nonresidential property.

- (39) *Site* means any tract, lot or parcel of land or combination of tracts, lots or parcels of land which are in one (1) ownership or are contiguous and in diverse ownership where development is to be performed as part of a unit, subdivision or project.
- (40) *Storm Sewer System or Stormwater system* means all facilities, structures and natural watercourses used for collecting and conveying stormwater to, through and from drainage areas to the point of final outlet, including, but not limited to, the following: streets, curbs and gutters, inlets, conduits and appurtenant features, canals, creeks, channels, catch basins, ditches, drains, sewers, streams, gulches, gullies, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, levees, pumping stations and wetlands.
- (41) *Stormwater* means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include storm water runoff, snow melt runoff, and surface runoff and drainage.
- (42) *Stormwater management revenues* or revenues means all rates, service charges, fees, assessments, rentals, other charges or other income received, including amounts received from the investment or deposits of money in any fund or account and any amounts distributed by the city council from general revenues of the city.
- (43) *Stormwater management system* or system means the stormwater management infrastructure and equipment of the city and all improvements thereto. Infrastructure and equipment shall include structural and natural stormwater control facilities of all types, including, without limitation, retention and detention basins, open ditches, canals, creeks, conduits, pumping stations, and other plants, structures, and real and personal property used for support of the system.
- (44) *Structure* means an edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner.
- (45) *Subdivide* means to divide a parcel of land into three (3) or more lots or parcels of less than five (5) acres each for the purpose, whether immediate or future, or both, of transfer of ownership or building development, or if a new street is involved in such division, any division of a parcel of land.
- (46) *Tidal wetlands* means vegetated land which lies between and contiguous to mean low water and an elevation above mean low water equal to the factor of one and one-half (1 1/2) times the mean tide range, or

nonvegetated land which lies contiguous to mean low water and is between mean low water and mean high water.

(47) *Undeveloped property means any parcel that has not been altered from its natural state in such a manner that the topography or soils on the property have been disturbed or altered to the extent that the rate of surface infiltrating or stormwater has been affected.*

(48) *Watershed means a drainage area or drainage basin contributing to the flow of water in a receiving body of water.*

(Ord. No. 994, 12-12-90; Ord. No. 1098, 8-11-93; Ord. No. 1185, 5-28-97; Ord. No. 1373, 5-12-04)

**Sec. 33.1-5. Applicability.**

(a) *Generally.* Unless exempted pursuant to subsection (b) or waived pursuant to subsection (c), a stormwater management plan for land disturbances over twenty-five hundred (2,500) square feet, as a part of the plan of development process in conjunction with site plan, subdivision plan, or construction plan approval must be submitted and approved:

- (1) Before an existing drainage system is altered, rerouted, deepened, widened, enlarged or obstructed in preparation for development except for routine maintenance which does not increase the size of any drainage ditch or structure;
- (2) Before or concurrent with the submittal and approval of an erosion and sediment control plan; or
- (3) Before any land disturbance is commenced.

(b) *Exemptions.*

- (1) The following development activities are exempt from the stormwater management plan requirement:
  - a. The development of single-family dwelling or duplex dwelling and their accessory structures (including, but not limited to fences, storage sheds, etc.) on individual lots. This exemption does not apply to subdivisions containing individual lots or to development within the RPA.
  - b. Residential subdivisions with a density of one dwelling unit per acre or less;

- c. Any maintenance, alteration, use, improvement, or addition to structures existing on October 1, 1993, which increases land disturbance by less than twenty-five hundred (2,500) square feet;
- d. All agricultural activities and home gardens not associated with development.

All projects which are additions, extensions and/or modifications to those developments listed in the above category which have been granted prior exemption or waiver under this chapter shall be required to provide erosion and sediment control and stormwater management plans for the entire site where the acreage, and/or density limitations listed for each are exceeded by the subsequent addition, extensions, and/or modification thereto.

- (2) All exempted activities must meet the RPA buffer requirements, if applicable, and all erosion and sediment control provisions.

(c) *Waivers.* A waiver of the requirement to submit and have approved a stormwater management plan does not relinquish the applicant's responsibility to provide the required vegetated buffer as a component of the RPA.

- (1) A waiver of the requirement to submit and have approved a stormwater management plan may be applied for by submitting an application to the Director. The application shall contain:
  - a. The name, address and telephone number of the developer and owner;
  - b. A legal description of the property and a description and plan of the proposed development location;
  - c. The location of development, and a sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and any RMA and RPA; and
  - d. Any other information requested by the department of public works that is reasonably necessary to evaluate the proposed development, including, but not limited to, a water quality impact assessment.
- (2) The Director may grant a waiver if, in its determination, the development is not likely to:

- a. Produce an increase in the nonpoint source pollution load;
- b. Increase the rate of stormwater runoff;
- c. Have an adverse impact on the RPA and wetlands not included in the RPA, if applicable; and
- d. Otherwise impair attainment of the objectives of this chapter.

A waiver may also be granted if an individual development is within the boundaries of a planned development that has already incorporated the required stormwater management facilities for the entire planned development.

(d) *Exceptions.* In cases where strict application of the regulations of this chapter would render a property undevelopable, exceptions to the regulation may be granted.

- (1) A request for an exception to the stormwater management regulations shall be made, in writing, to the Director. Such request shall specify the hardships imposed by the regulations and identify, through a water quality impact assessment, the impacts of the requested exception on water quality and, if applicable, lands within the RPA.
- (2) The Director shall review the request and the accompanying water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this chapter if they find that:
  - a. Granting the exception will not confer upon the applicant any special privileges that are denied by this chapter to similarly situated property owners in the city;
  - b. The request is the minimum necessary to afford relief;
  - c. The problem involved is not of so general or recurring a nature as to make reasonably practicable the formulation of general regulations to be adopted as an amendment to the chapter; and
  - d. The request will be consistent with the purpose and intent of the stormwater management regulations, and not

injurious to the neighborhood or otherwise detrimental to the public welfare;

- e. Reasonable and appropriate conditions are imposed which will prevent the request from causing a degradation of water quality; and
- f. The granting of the exception must not:
  - 1. Increase the rate of stormwater runoff;
  - 2. Have an adverse impact on the RPA, if applicable; or
  - 3. Otherwise impair attainment of the objectives of this chapter.

Where an exception is granted, the Director may attach such conditions and safeguards as deemed necessary to protect the general public interest or the character of adjoining neighborhoods, and may require a guarantee or bond to assure compliance.

Appeals from the decisions of the Director shall be subject to review by the circuit court of the city, provided such appeal is filed within thirty (30) days from the date of any written decision.

(Ord. No. 994, 12-12-90; Ord. No. 1098, 8-11-93)

**Sec. 33.1-6. Stormwater management plan.**

(a) It is the responsibility of an applicant to include in the stormwater management plan sufficient information for the Director to evaluate the environmental characteristics of the affected areas, the potential and predicted impacts of the proposed activity on city and state waters, and the effectiveness and acceptability of those measures proposed by the applicant for reducing adverse impacts. The stormwater management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, and explanations and citations to supporting references, as appropriate, to communicate the information required by this section.

(b) A stormwater management plan shall be submitted as part of the preliminary site plan/subdivision plan and shall contain the following:

- (1) Name, address, and telephone number of the owner and the developer;
- (2) Legal description of the property and the property's location with reference to such landmarks as major water bodies, adjoining roads, railroads, subdivisions, etc. These features shall be clearly identified on a map prepared by a professional surveyor or engineer; and

- (3) A minor or major water quality impact assessment.  
(Ord. No. 994, 12-12-90)

**Sec. 33.1-7. Water quality impact assessment.**

(a) *Purpose and intent.* The purpose of the water quality impact assessment is to:

- (1) Identify the impacts of proposed development on water quality and other environmentally-sensitive lands;
- (2) Ensure that, where development does take place within sensitive lands, it will be located on those portions of a site in a manner that will be least disruptive to the natural functions of sensitive lands;
- (3) To protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high ground water, erosion, or vulnerability to flood and storm damage; and
- (4) Specify mitigation which will address water quality protection.

(b) *Water quality impact assessment required.* A water quality impact assessment is required for any proposed development disturbing over twenty-five hundred (2,500) square feet, except those uses exempt from the stormwater management requirements. A water quality impact assessment is required for any land disturbance in the RPA. There shall be two (2) levels of water quality impact assessments: a minor assessment and a major assessment.

(c) *Minor water quality impact assessment.* A minor water quality impact assessment will be required for development which causes from twenty-five hundred (2,500) to ten thousand (10,000) square feet of land disturbance, or for any development within RPAs which causes up to twenty-five hundred (2,500) square feet of land disturbance. A minor assessment must demonstrate through acceptable calculations that the best management practices will result in meeting a "no net increase" in pollution loading goal for new development, or a ten (10) percent reduction in pollution loadings for redevelopment within SPI-CBPD. A minor assessment shall include a site drawing to scale, and other documentation which shows the following:

- (1) Location of the RMA as well as the location of the components of the RPA, including the one hundred-foot buffer area, if applicable;
- (2) Pre- and post-development pollutant loads in runoff; and
- (3) Type and location of proposed best management practices to mitigate the pollution loading impact, and attain the pollutant removal requirements.

(d) *Major water quality impact assessment.*

- (1) A major water quality impact assessment shall be required for any development which exceeds ten thousand (10,000) square feet of land disturbance, or any development which exceeds twenty-five hundred (2,500) square feet of land disturbance within the RPA.
- (2) The information required in this section shall be considered a minimum, unless the Director determines that some of the elements are unnecessary due to the scope and nature of the proposed uses and development of land.
- (3) The following elements shall be included in the preparation and submission of a major water quality assessment:
  - a. All of the information required in a minor water quality impact assessment, as specified in subsection (c) above;
  - b. A hydrogeological element, to include, as required by the Director:
    1. Existing topography, and hydrology of the site and adjacent lands;
    2. All existing watercourses, water bodies, and wetlands on or adjacent to the site;
    3. Direction, flow rate and volume of stormwater runoff under existing conditions;
    4. Location of areas on site where stormwater collects or percolates into the ground;
    5. Groundwater levels, including seasonal fluctuations;
    6. Location of floodplain and vegetation;
    7. Impacts of the proposed development on topography and hydrology on the site and adjacent lands;
    8. Disturbances or destruction of wetlands and RPA features and justification for such action;

9. Disruptions or reductions in the supply of water to wetlands, streams, lakes, rivers or other water bodies. This may include, but is not limited to changes in the incidence or duration of flooding on the site and upstream and downstream from it;
10. Disruptions to existing hydrology including wetland and stream circulation patterns;
11. Source location and description of proposed fill material;
12. Location of dredge material and location of dumping area for such material;
13. Location of and impacts on shellfish beds, submerged aquatic vegetation, and fish spawning areas;
14. Estimation of pre- and post-development pollutant loads in runoff and supporting documentation of all utilized coefficients and calculations;
15. Estimation of percent increase in impervious surface on site and type(s) of surfacing materials used;
16. Changes in topography;
17. Percent of site to be cleared for project and areas where vegetation will be cleared or otherwise killed;
18. Channel, direction, flow rate, volume, and quality of stormwater that will be conveyed from the site, with a comparison to the predevelopment conditions;
19. Detention and retention areas, including plans for the discharge of contained waters, maintenance plans and prediction of water quality in those areas;
20. Detailed anticipated duration and phasing schedule of construction project;
21. Plan for the control of erosion and sedimentation which describes in detail the type and location of control

measures, the stage of development at which they will be put into place or used, and provisions for their maintenance. Such a plan shall be filed in accordance with the provisions of the erosion and sediment control ordinance.

22. Verification of structural soundness of stormwater management facilities, including professional engineer or class III B surveyor certification;

23. Plan to establish a long term schedule for inspection and maintenance of stormwater management facilities that include all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than the City of Hampton, then a maintenance agreement shall be executed between the responsible party and the city;

24. Any other information which the developer or the Director believe is reasonably necessary for an evaluation of the proposed development;

25. Listing of all requisite permits from all applicable agencies necessary to develop project.

26. Proposed mitigation measures for the potential hydrogeological impacts. Potential mitigation measures include:

i. Proposed erosion and sediment control concepts, which may include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, and measures to stabilize disturbed areas;

ii. Proposed stormwater management system;

iii. Creation of wetlands to replace those lost;

iv. Minimizing cut and fill.

(e) *Submission and review requirements; water quality impact assessment.*

(1) Copies of all site drawings and other applicable information as required by subsections (c) and (d) above shall be submitted to the Director for review.

- (2) All information required in this section shall be certified as complete and accurate by a professional engineer or a certified land surveyor.
- (3) A water quality impact assessment shall be prepared and submitted to, and reviewed by, the Director in conjunction with the preliminary site plan or subdivision improvement plan, or in conjunction with a request for building permit or zoning permit if no site plan or subdivision plan is required.
- (4) Any request for encroachment within the RPA shall be accompanied by a water quality impact assessment.
- (5) As part of any major water quality impact assessment submittal for property within SPI-CBPD, the Director may require review by the Department of Conservation and Recreation, Chesapeake Bay Local Assistance Division (CBLAD). Upon receipt of such a major water quality impact assessment, the Director may request CBLAD to review the assessment and respond with written comments. Any comments by CBLAD may be incorporated into the final review by the Director provided that such comments are provided by CBLAD within sixty (60) days of the request.

(f) *Evaluation procedure.* The evaluation procedure sets forth the criteria the Director will use in evaluating the water quality impacts of proposed development. This evaluation will allow the Director to determine the consistency of the proposed development project with the stormwater management provisions of the Chesapeake Bay Preservation Act (Code of Virginia, § 10.1-2100 et seq.). Inconsistent proposals can be modified so that the impacts are minimized or the mitigation measures are enhanced.

- (1) Upon the completed review of a minor water quality impact assessment, the review committee will determine if any proposed modification of or encroachment into the buffer area is consistent with the provisions of all applicable city ordinances and make a finding based upon the following criteria:
  - a. The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
  - b. Impervious surface is minimized;
  - c. Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
  - d. The development, as proposed, meets the purpose and intent of this chapter; and

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

(2) Upon the completed review of a major water quality impact assessment, the Director will determine if the proposed development is consistent with the purpose and intent of this chapter and make a finding based upon the following criteria in conjunction with the preliminary site plan review, subdivision improvement plan review or construction plan review:

a. Within any RPA, the proposed development is a permitted use pursuant to Section 17.3-64 Part 2b of the Hampton City Zoning Ordinance;

b. The disturbance of the components of the RPA will be minimized;

c. The development will not result in significant disruption of the hydrology of the site;

d. The development will not result in significant degradation to aquatic vegetation or life;

e. The development will not result in unnecessary destruction of plant materials on site;

f. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentation;

g. Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required standard for pollutant control;

h. Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits;

i. The design and location of any proposed drainfield will be in accordance with the performance standards of this chapter;

j. The development, as proposed, is consistent with the purpose and intent of the Chesapeake Bay Preservation Act (Code of Virginia, § 10.1-2100 et seq.); the Virginia Stormwater

Management Act (Code of Virginia, § 10.1-603.2 et seq.) and the Federal Clean Water Act; and

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

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

(4) The Director shall find the proposal to be inconsistent with the purpose and intent of this article when the impacts created by the proposal cannot be mitigated. Evaluation of the impacts will be made by the Director based on the criteria listed in subsections (1) and (2).

(Ord. No. 994, 12-12-90; Ord. No. 1098, 8-11-93; Ord. No. 1373, 5-12-04)

### **Sec. 33.1-8. Procedure and fees.**

(a) Any person planning a development, as defined in this chapter, unless exempted, shall submit a stormwater management plan to the Director.

(b) Within fifteen (15) working days after submission of the completed waiver application the Director shall notify the applicant in writing that the waiver has been approved or denied and whether a stormwater management plan must be submitted by the applicant. Any denial of the waiver application shall include an explanation of the reasons for such denial.

(c) A fee will be collected at the time the stormwater management plan or application for waiver is submitted and will reflect the cost of administration and management for the review process. Applications for review of minor water quality assessments shall include payment, to the city, of one hundred dollars (\$100.00); applications for review of major water quality assessments shall include payment, to the city, of two hundred dollars (\$200.00); applications for waivers shall include payment, to the city, of twenty-five dollars (\$25.00).

(d) Within forty-five (45) working days after submission of the completed stormwater management plan in conjunction with preliminary site plan, subdivision improvement plan or construction plan submission, the Director shall approve, with or without specified conditions or modifications, or reject the plan and shall notify the applicant accordingly. If the Director has not rendered a decision within forty-five (45) working days after plan submission, the stormwater management plan shall be deemed approved, unless CBLAD comments have been requested. If the Director requests CBLAD comments on the water quality assessment portion of the plan, as provided in

section 33.1-7(e), the decision shall be rendered within ninety (90) working days after plan submission. If no decision is forthcoming within ninety (90) days, the stormwater management plan shall be deemed approved. In the case of disapproval, the reasons for such shall be identified in writing, referencing specific adopted ordinances, regulations and policies. Modifications or corrections that would permit approval shall also be identified; however, it is not the responsibility of the Director to design an acceptable project.

(e) The stormwater management plan shall not be approved unless it clearly indicates that the proposed development will meet the performance standards described in section 33.1-9. Such plan shall also be in accordance with the specifications outlined in the manual of stormwater management practices described in section 33.1-10.

(f) The Director or his designee shall inspect the work and shall either approve it or notify the applicant in writing in what respects there has been a failure to comply with the requirements of the approved stormwater management plan. Any portion of the work which does not comply shall be promptly corrected by the applicant or the applicant will be subject to the enforcement provisions of section 33.1-12. In such case, the development will not receive final approval by the city and cannot be occupied or otherwise used.

(Ord. No. 994, 12-12-90; Ord. No. 1098, 8-11-93)

### **Sec. 33.1-8.1. Structure Encroachment Permit.**

(a) In circumstances where structures or impervious cover have been determined by the Zoning Administrator to be allowed in the Resource Protection Area (RPA) buffer, any person desiring to build, construct, or place an accessory structure or impervious cover in single family residential zoning districts, in the RPA buffer or the Intensely Developed Area (IDA), as defined in this chapter, shall first obtain a structure encroachment permit from the Codes Compliance Department. The permit fee for an accessory structure or impervious cover with less than or equal to 150 square feet within the RPA buffer or IDA shall be \$100. The permit fee for an accessory structure or impervious cover with more than 150 square feet within the RPA buffer or IDA shall be \$1.00 per square foot of encroachment into the RPA buffer or IDA not to exceed a \$400 maximum fee.

(b) In circumstances where structures have been determined by the Zoning Administrator to be allowed in the Resource Protection Area (RPA buffer), any person desiring to build, construct, or place any structure other than an accessory structure governed by paragraph (a) in the RPA buffer or Intensely Developed Area (IDA) shall obtain a structure encroachment permit from the Codes Compliance Department. The permit fee for a structure with less than or equal to 150 square feet within the RPA buffer or IDA shall be \$100. The permit fee for structure with

more than 150 square feet within the RPA buffer or IDA shall be \$1.00 per square foot of encroachment into the RPA buffer or IDA, not to exceed a \$1,000 maximum fee.

(c) No building permit, zoning certificate, or land disturbing permit shall be issued for a structure or an impervious improvement within the RPA buffer or IDA until a structure encroachment permit has been issued. All funds collected pursuant to this section shall be placed into a special revenue account to be used solely as approved by the City Manager for the creation, enhancement, or restoration of wetlands, and/or vegetative buffers on public property within the Chesapeake Bay Preservation District. Failure to obtain a permit shall constitute a class 3 misdemeanor.

(d) No permit shall be required for piers, pervious surfaces or uses exempt pursuant to sections 17.3-67 2 and 17.3-67 3.

### **Sec. 33.1-9. Stormwater management performance standards.**

(a) *Purpose and intent.* The following performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential. The purpose and intent of these requirements are also to implement the following objectives: prevent a net increase in non-point source pollution from new development; achieve a ten (10) percent reduction in non-point source pollution from redevelopment within the SPI-CBPD; and achieve a forty (40) percent reduction in non-point source pollution from agricultural uses. These criteria are for use by the City of Hampton in granting, denying, or modifying requests to rezone, subdivide, or to use and develop land.

(b) *General performance standards for development and redevelopment.*

(1) Land disturbance shall be limited to the area necessary to provide for the proposed use or development.

a. The limits of land disturbance, including clearing or grading, shall be clearly shown on submitted plans and physically marked on the development site. No construction activity shall occur outside those limits.

b. During construction, ingress and egress to the site shall be the minimum necessary. For construction in the RPA, ingress and

egress shall be limited to one (1) access point, unless otherwise approved by the Director.

- (2) Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the proposed use or development and in accordance with the "Virginia Erosion and Sediment Control Handbook."
  - a. Existing healthy trees exhibiting a minimum trunk diameter of six (6) inches, measured four and one-half (4 1/2) feet from the ground, shall be preserved outside the limits of clearing.
  - b. Clearing outside the construction footprint shall be allowed only to provide necessary access, positive site drainage, water quality BMPs, and the installation of utilities, as approved by the Director.
  - c. Prior to clearing or grading, suitable tree protective measures, as outlined in the site plan and subdivision ordinances, shall be followed.
- (3) Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the proposed use or development. Grid and modular pavements which promote infiltration are encouraged for any required parking area, alley, or other low traffic driveway.
- (4) For any development or redevelopment, stormwater management criteria consistent with the water quality protection provision (4 VAC 3-20-71 et seq.) of the Virginia Stormwater Management Regulations (4 VAC 3-20) shall be satisfied. Stormwater runoff shall be controlled by the use of best management practices (BMPs) that achieve the following:
  - a. For new development, the post-development nonpoint source pollution runoff load shall not exceed the pre-development load. Pre-development load shall be the average phosphorus loading of Hampton's Chesapeake Bay Watershed, eighty-five one hundredths (0.85) pounds per acre per year, based upon an average impervious cover of thirty-four (34) percent.
  - b. For sites within IDAs or other redevelopment sites, the predevelopment nonpoint source pollution load shall be reduced by at least ten (10) percent. The Director may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control, provided the following provisions are satisfied:

1. In no case may the post-development non-point source pollution runoff load exceed the pre-development load;
2. Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling nonpoint source pollution; and
3. If best management practices are structural, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service. The Director may require a review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this chapter.

c. BMPs that are implemented to control stormwater runoff shall be maintained in accordance with the maintenance requirements and procedures outlined in the Manual of Stormwater Management Practice, City of Hampton (June 1991), and the standards pursuant to the Virginia Stormwater Management Handbook. BMP maintenance agreements shall be required for all BMPs implemented to control stormwater runoff.

- (5) Ensure that after development, runoff from the site approximates the rate of flow and timing that would have occurred following the same rainfall had this development not occurred;
- (6) Incorporate measures which ensure compliance with the criteria for a ten-year design storm event;
- (7) Maintain the existing natural hydrodynamic characteristics of the watershed;
- (8) Maintain the existing groundwater levels;
- (9) Retain the beneficial functioning of wetlands as areas for the natural storage of surface waters and the chemical reduction and assimilation of pollutants. Care should be taken not to overload their capacity, thereby harming the wetlands and transitional vegetation. Wetlands shall not be damaged by the construction of detention ponds.
- (10) Prevent increased flooding and damage that results from improper location, construction and design of structures in areas which are presently subject to an unacceptable danger of flooding;

- (11) Channeling runoff directly into water bodies shall be prohibited. Instead, runoff shall be routed through systems designed to increase time of concentration, decrease velocity, increase infiltration, allow suspended solids to settle and remove pollutants.
- (12) Streambank erosion control shall be designed to meet or exceed the minimum state stormwater management criteria (sections 10.1-603.2 et seq., Code of Virginia), which require runoff to be discharged into a channel which can convey runoff from a two-year storm event without flooding or erosion.
- (13) Wetlands, resource protection areas and water bodies shall not be used as sediment traps during development.
- (14) Erosion and sedimentation facilities shall receive regular maintenance to ensure that they continue to function properly.
- (15) Artificial watercourses shall be designed with consideration given to soil type(s), so that the velocity of flow is low enough to prevent erosion.
- (16) Vegetated filter strips shall be created or, where practicable, retained in their natural state along the banks of all watercourses, water bodies, or other RPA features. The width of the filter, used in conjunction with other stormwater management devices, shall be sufficient to prevent erosion, filter pollutants, trap the sediment in runoff, provide access to the water body and allow for periodic flooding without damage to structures.
- (17) Detention and retention ponds shall be used to detain and retain the increased and accelerated runoff which the development generates. Water shall be released from detention ponds into watercourses or wetlands at a rate and in a manner approximating the natural flow which would have occurred before development.
- (18) Detention and retention areas shall be designed so that shorelines are winding rather than straight and so that the length of shoreline is maximized, thus offering more space for growth of littoral vegetation.
- (19) The banks of detention and retention areas shall slope at a maximum grade of three to one (3:1) to a minimum depth of six (6) feet, as a safeguard against drowning, personal injury or other accidents, to encourage the growth of vegetation and to allow the alternate flooding and exposure of areas along the shore as water levels periodically rise and fall.
- (20) The use of the natural drainage system and vegetated buffer zones as open space and conservation areas shall be encouraged.

- (21) All site specific stormwater management facilities shall be designed for the ultimate development of contributing watersheds based on zoning, the comprehensive plan, the erosion and sediment control plan, capital improvement plan, and other similar documents.
  - (22) All engineering calculations must be performed in accordance with procedures outlined in the Virginia Stormwater Management Handbook, Virginia Erosion and Sediment Control Handbook, Virginia Department of Transportation Drainage Manual and/or any other engineering methods deemed appropriate by the Director.
  - (23) The required one hundred-foot buffer area within the RPA shall be deemed to achieve a seventy-five (75) percent reduction of sediments and a forty (40) percent reduction of nutrients.
  - (24) Otherwise further the objectives of this chapter.
- (Ord. No. 994, 12-12-90; Ord. No. 1098, 8-11-93; Ord. No. 1373, 5-12-04)

**Sec. 33.1-10. Manual of stormwater management practices.**

- (a) The Director shall compile a manual of stormwater management practices for the guidance of persons preparing stormwater management plans and designing, operating or maintaining drainage systems. The manual shall be updated periodically to reflect the most current and effective best management practices (BMPs) and shall be made available to the public.
  - (b) The manual shall include guidance and specifications for the preparation of stormwater management plans. Acceptable techniques for obtaining, calculating and presenting the information required in the stormwater management plans shall be described.
  - (c) The manual shall include guidance in the selection of environmentally sound BMPs for the management of stormwater and the control of pollutants, erosion and sediment. Specific techniques and BMPs shall be described in detail. The development and use of techniques and BMPs which emphasize the use of natural systems shall be encouraged. Other practices will be allowed subject to approval by the Director.
  - (d) The manual shall include minimum specifications for the construction and maintenance of drainage facilities. Construction specifications shall be established in accordance with current sound engineering practices.
- (Ord. No. 994, 12-12-90)

**Sec. 33.1-11. Maintenance.**

- (a) Drainage easements shall be dedicated to the City of Hampton where they are determined to be appropriately a part of the local stormwater management system.

(b) Minimum maintenance requirements and procedures shall be outlined in the manual of stormwater management practices described in section 33.1-10. (Ord. No. 994, 12-12-90)

**Sec. 33.1-12. Enforcement, stormwater management.**

(a) The Director shall be responsible for the use, management, operation and maintenance of the storm sewer system as prescribed in this chapter. The Director shall have the authority to establish procedures, conduct inspections and monitoring, and to enforce regulations pertaining to the storm sewer system.

(b) Bonds. Prior to the approval of any stormwater management plan, the Director shall require from the applicant a reasonable performance bond, cash escrow, letter of credit or other legal surety, or any combination thereof acceptable to the city attorney, to ensure that measures may be taken by the city, at the applicant's expense, should he fail, after proper notice, within the time specified, to carry out his development activity in accordance with the requirements of this chapter. Within sixty (60) days of final inspection and approval of the development activity, such bond, cash escrow, letter of credit or other legal surety, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated as the case may be. These requirements are in addition to all other provisions of law relating to the approval of such plans and are not intended to otherwise effect the requirements of such plans.

(c) Any development activity that is commenced without prior approval of a stormwater management plan or is conducted contrary to an approved stormwater management plan as required by this chapter, shall be deemed a public nuisance and may be restrained by injunction or otherwise abated in a manner provided by law. When the Director determines that development activity is not being carried out in accordance with the requirements of this chapter, he shall issue a written notice of violation to the owner of the property. The notice of violation shall contain:

- (1) A statement specifying the nature of the violation;
- (2) A description of the remedial action necessary to bring the development activity into compliance with this chapter and a time schedule for completion of such remedial action; and
- (3) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed.

(Ord. No. 994, 12-12-90; Ord. No. 1098, 8-11-93)

**Sec. 33.1-12.1. Pollution of the storm sewer system.**

(a) It shall be unlawful for any person to put, throw, place or deposit or allow to be put, thrown, placed or deposited any filth, animal or vegetable matter, chips,

compost, construction debris, shavings, or any other substance or pollutant whether solid or liquid in the stormwater system or place or dispose of such material or substance in any area which drains into the stormwater system, or in any manner pollute the storm sewer system.

(b) It shall be unlawful for any person to pour or discharge, or to permit to be poured or discharged, or to deposit, so that the same may be discharged, any gasoline, oil waste, antifreeze, or other automotive, motor or equipment fluids into any storm sewer system.

(c) It shall be unlawful for any commercial, industrial, or manufacturing entity to discharge process water, wash water, or any other unpermitted discharge into any storm sewer system.

(Ord. No. 1098, 8-11-93)

(d) It shall be unlawful for any person to throw, place or deposit, or cause to be thrown, placed or deposited, in any gutter, ditch, storm drain or other drainage area in the City anything that impedes or interferes with the free flow of stormwater therein.

(e) It shall be unlawful for any person to discharge chlorinated swimming pool water into the stormwater system.

**Sec. 33.1-12.2. Illicit discharges to the storm sewer system.**

(a) No person shall connect, or cause or permit to be connected, any sanitary sewer to the storm sewer system.

(b) No person, either directly or indirectly, shall cause or permit any significant discharge to the city's storm sewer system that is not composed entirely of stormwater.

(Ord. No. 1098, 8-11-93)

(c) Subject to the provisions of subsection (d), the following activities shall not be in violation of this ordinance:

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Rising ground waters;
- (5) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
- (6) Uncontaminated pumped ground water;
- (7) Discharges from potable water sources;
- (8) Foundation drains;
- (9) Air conditioning condensation;
- (10) Irrigation water;

- (11) Springs;
- (12) Water from crawl space pumps;
- (13) Footing drains;
- (14) Lawn watering;
- (15) Individual residential car washing;
- (16) Flows from riparian habitats and wetlands;
- (17) De-chlorinated swimming pool discharges;
- (18) Street wash water;
- (19) Discharges or flows from fire fighting; and
- (20) Any activity authorized by a valid Virginia Pollutant Discharge Elimination System (VPDES) permit or Virginia Pollution Abatement (VPA) permit.

(d) In the event any of the activities listed in subsection (c) are found to be causing sewage, industrial wastes or other wastes to be discharged into the storm sewer system, the Director shall so notify the person performing such activities, and shall order that such activities be stopped or conducted in such manner as to avoid the discharge of sewage, industrial wastes or other wastes into the storm sewer system. The failure to comply with any such order shall constitute a violation of the provisions of this ordinance.

#### **Sec. 33.1-12.3. Violations.**

(a) Any person who shall violate any of the provisions of this chapter, or any regulation promulgated pursuant to the authority granted by this chapter, shall be guilty of a misdemeanor and shall be subject to a fine not exceeding one thousand dollars (\$1,000.00) or up to thirty (30) days imprisonment, or both, for each violation. Any such person shall furthermore be liable for all damage, loss and expense suffered or incurred by the city as a result of such violation.

(b) In addition to any penalty imposed for a violation of the provisions of this chapter, a judge hearing the case may direct the person responsible for the discharge or deposit to remediate or remove such discharge or deposit, and each day's default in such remediation or removal shall constitute a separate violation under this section.

(Ord. No. 1098, 8-11-93)

#### **Sec. 33.1-13. Repealed.**

#### **Sec. 33.1-14. Effective date.**

This chapter shall become effective on December 12, 1990 and as amended thereafter.

(Ord. No. 994, 12-12-90)

## **ARTICLE II.**

## **SERVICE CHARGES AND REVENUES\***

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\* **Editors Note:** Ordinance No. 1138, adopted May 24, 1995, amended Art. II to read as herein set out. Formerly, Art. II consisted of §§ 33.1-15--33.1-17, which pertained to a stormwater management fee and derived from Ord. No. 1087, adopted May 12, 1993; and Ord. No. 1121, adopted May 25, 1994.

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### **Sec. 33.1-15. Purpose; scope.**

The city has developed and continues to maintain an infrastructure of manmade and natural components of a stormwater management system to both limit and manage the volume of stormwater runoff to control flood events and, through stormwater pollution control measures, to prevent degradation of the city's waterways. Adequate revenues shall be generated to provide for balanced operating and capital improvement budgets for the stormwater management system by setting sufficient levels of the service charge.

(Ord. No. 1138, 5-24-95)

### **Sec. 33.1-16. Program administration.**

The city stormwater management program shall be administered by the department of public works.

(Ord. No. 1138, 5-24-95)

### **Sec. 33.1-17. Findings and determinations.**

(a) Stormwater runoff is associated with all real estate in the city, whether residential or nonresidential, and the quantity and quality of runoff is correlated to the amount of impervious surface on each parcel.

(b) The elements of the stormwater management system provide benefit and service to all land within the city through direct protection of property, control of flooding of critical components of the infrastructure, and enhancement of water quality and the city's natural environment.

(c) The costs of monitoring, operating, maintaining and constructing the system required in the city, both to meet stormwater pollution control regulations and to address and resolve erosion and flooding needs, should therefore be allocated to the extent practicable to all property owners based on their contribution to stormwater runoff and their impact on the stormwater management system.

(Ord. No. 1138, 5-24-95)

### **Sec. 33.1-18. Repealed.**

### **Sec. 33.1-19. Service charge--Establishment; expenditures of revenue.**

(a) There is hereby established a service charge pursuant to the statutory authority granted to localities in sections 15.2-1102 15.2-2114 of the Code of Virginia to provide for the general health, welfare and safety of the city and its residents.

(b) The revenues collected pursuant to this article shall be deposited in a separate ledger account. The funds deposited shall be used exclusively to provide services and facilities related to the system. Services and facilities related to the system shall include, but not be limited to, the following:

- (1) Acquisition, as permitted by Code of Virginia, § 15.2-1800<sub>2</sub>, of real or personal property and interests therein necessary to construct, operate and maintain the system;
- (2) The cost of administering such programs, to include the establishment of reasonable operating and capital reserves to meet unanticipated or emergency requirements of the system and all associated legal and collection costs;
- (3) Engineering and design, debt retirement, construction costs for new facilities and enlargement or improvement of existing facilities;
- (4) Facility maintenance;
- (5) Monitoring of stormwater control devices;
- (6) Pollution control and abatement<sub>2</sub>, consistent with city, state and federal regulations for water pollution control and abatement, including public education; and
- (7) Planning, design, land acquisition, construction, operation and maintenance activities.

(Ord. No. 1138, 5-24-95)

**Sec. 33.1-20. Same--Imposition.**

(a) There shall be and hereby is levied an annual stormwater management service charge on real property in the city.

(b) For the purposes of determining the service charge, all properties in the city are classified into one of the following classes:

- (1) Developed residential property;
- (2) Developed nonresidential property; or
- (3) Undeveloped property.

(c) The service charge for each developed residential property shall equal the rate for one ERU.

(d) The service charge for developed nonresidential property shall be the ERU rate multiplied by the numerical factor obtained by dividing the total impervious surface area square footage of the property by the square footage contained in one ERU. The number factor will then be rounded up to the nearest whole number if fifty cents (\$0.50) or greater, or rounded down to the nearest whole number if less than fifty cents (\$0.50); however, in no case shall the service charge for any developed nonresidential property be less than the ERU rate.

(e) The service charge for vacant developed property shall be calculated in the same manner as for occupied property of the same class.

(f) Undeveloped property with less than twelve thousand (12,000) square feet of developable area shall not be subject to the service charge. Undeveloped property containing twelve thousand (12,000) square feet or greater, of developable area, if it is not incorporated as part of one land use with an adjacent developed property, shall be subject to a service charge equal to one-half of one ERU.

(g) Stormwater management service charges levied annually under the provisions of this article shall be effective on the first day of July in the year for which the same is made.

(Ord. No. 1138, 5-24-95; Ord. No. 1185, 5-28-97)

**Sec. 33.1-21. Same--Billing, payment, interest, fee and lien.**

(a) The levied service charge shall be billed, due and payable in two (2) equal installments. The first installment shall be due on or before the fifth (5th) day of December and the second installment shall be due on or before the fifth (5th) day of June. Any parcel or dwelling unit owner who has remitted payment of the service charges and believes that it is incorrect may submit an adjustment request as provided for in this article.

(b) The service charge is to be paid by the owner of each parcel or dwelling unit that is subject to the charge. The owner of each parcel or dwelling unit in the city, except undeveloped property, shall be mailed a statement for the stormwater service charges. The statements shall include a date by which payment shall be due. All statements shall be mailed at least thirty (30) days prior to the payment due date stated thereon. Payments received after the due date of the bill shall be subject to interest as established in this article.

(c) The service charge due the city from property owners for stormwater management shall be based on the ERU rate of fifty-five dollars and twenty cents

(\$55.20) per ERU per year. When applicable, the service charge shall be prorated at four dollars and sixty cents (\$4.60) per ERU per month.

(d) Any bill which has not been paid by the due date shall be deemed delinquent. Unpaid service charges and accrued interest shall constitute a lien against the property, ranking on a parity with liens for unpaid taxes. All charges and interest due may be recovered by action at law ~~and~~ or suit in equity. For delinquent charges, interest thereon shall commence on the first day of July following the due date and shall accrue at the rate of up to ten (10) percent per annum until such time as the delinquent charges and accrued interest are paid.

(e) When previously undeveloped properties are brought into the system or in the event of alterations or additions to developed nonresidential property that alter the amount of impervious surface, a service charge will accrue, as determined by the Director, upon substantial completion of the improvements or, in the event completion of the improvements is not diligently pursued, upon establishment of the impervious area or dwelling units that affect stormwater runoff. A statement will be issued and such charges will be prorated for the number of months for which the parcel is subject to the service charge.

(Ord. No. 1138, 5-24-95; Ord. No. 1305, 5-23-01; Ord. No. 1349, 5-14-03)

### **Sec. 33.1-22. Same--Waivers and adjustments.**

(a) *Waivers:*

- (1) Full waivers of the service charge shall be provided to properties owned by federal, state, and local government agencies when those agencies own and provide for maintenance of storm drainage and stormwater control facilities or are units of the city.
- (2) Full waivers of the service charge shall be provided for roads and public street rights-of-way that are owned and maintained by state and local agencies.

(b) *Adjustments:*

- (1) Any owner who has paid his service charge and who believes his service charge to be incorrect may submit an adjustment request to the Director. All such requests must be submitted prior to the end of the fiscal year for which the request applies.
- (2) Adjustment requests shall be made in writing, setting forth in sufficient details to substantiate the claim to the satisfaction of the Director including plans, engineering calculations, and related documents prepared by a licensed professional engineer or land surveyor. The Director may

waive the licensed professional requirement if, in his opinion, the specific adjustment request does not warrant such a requirement.

- (3) Response to the adjustment request, whether providing an adjustment or denying an adjustment, shall be made by the Director in writing within sixty (60) days of receipt of the request.
- (4) Any owner may appeal the Director's decision to the city manager, but must do so in writing within fifteen (15) calendar days of the date of the Director's response. The city manager shall respond to the appeal within fifteen (15) calendar days and such response shall be final.
- (5) The Director may extend such city response times as appropriate to ensure full and complete evaluation of the application. In those cases, the Director shall notify the applicant of the action by certified mail.

(c) *Credit.* The city recognizes that on-site stormwater control facilities, increased green area, frequent sweeping of parking lots, etc., reduces stormwater runoff rates and/or the transport of pollutants. Property owners who provide these private stormwater facilities incur expenses to operate and maintain these facilities in addition to their payment of stormwater fees. To encourage the proper maintenance of private stormwater facilities and other measures which would reduce the polluting effects of stormwater, the following stormwater utility fee credit system is hereby offered:

- (1) The applicant is required to apply for and to demonstrate to the satisfaction of the Director that a stormwater utility fee credit is warranted.
- (2) The service charge after credits shall be greater than one ERU.
- (3) The water quality improvement must be privately constructed, owned, operated and maintained.
- (4) The stormwater facility shall be covered under an ongoing maintenance program approved by the Director.
- (5) The facility or stormwater quality improvement practice shall be designed to meet or exceed the minimum criteria established by the Director.
- (6) The following facilities and/or practices shall qualify for a specific percentage reduction in stormwater fee for a particular property:

	Facility or Practice Credit	Percentage
1.a	Wet retention basin	25%
1.b	Extended dry detention basin	20%
1.c	Infiltration facilities (infiltration basin, trench, grassed swale	15%

	with check dams, porous/modular pavement	
2.a	Green area in excess of 20%	10%
2.b	Green area in excess of 50%	25%
3.a	Parking lot sweeping at least once per week	5%
3.b	Parking lot sweeping at least 5 times per week	10%
	MAXIMUM CREDIT (1 + 2 + 3 above)	45%

- (7) Stormwater utility fee credits for retention/detention facilities, or for green areas in excess of 50%, will be based upon the percentage of the impervious area on-site, which drains to the stormwater facility.
- (8) Property owners are eligible for additional credits for providing an oversized BMP through which stormwater is routed from off-site impervious surfaces on adjacent nonresidential properties.
- (9) Credits are subject to annual review by the property owner and city staff to ensure that the facility is in operation, and that it is being properly maintained.
- (10) Credits for parking lot sweeping shall be applied against the stormwater utility fee for the following fiscal year, only after the property owner has paid the full amount of the stormwater fee in the current fiscal year and has provided the city with adequate documentation that sweeping had been performed at the required frequency throughout the current fiscal year.  
(Ord. No. 1138, 5-24-95; Ord. No. 1185, 5-28-97; Ord. No. 1252, 7-14-99)

This Ordinance will be effective July 1, 2007.

Adopted at the regular meeting of the City Council of the City of Hampton, Virginia held on May 23, 2007, to be effective on July 1, 2007.

**Signed by** \_\_\_\_\_ **Date** \_\_\_\_\_  
 Ross A. Kearney, II, Mayor

**Attested by** \_\_\_\_\_ **Date** \_\_\_\_\_  
 Katherine K. Glass  
 Clerk of the Council