



Legislation Text

File #: 23-0332, **Version:** 1

Ordinance to Amend and Re-Enact Article III of Chapter 41.1 of the City Code of the City of Hampton, Virginia Entitled "Wetlands" to Reflect Changes Made to the Tidal Wetlands Act Regarding Advertising, Notice, and Permit Issuance Requirements

Background Statement:

The purpose of this amendment is to bring the Hampton Wetlands Ordinance into compliance with recent changes made to the model ordinance within the Tidal Wetlands Act.

Senate Bill 867 modified the model ordinance such that it eliminates the requirement for a permit issued by the Wetlands Board to be notarized. Senate Bill 1160 made several changes to the requirements for hearing notices: such notices can now be sent to any applicant and other relevant parties via email rather than only mail and are now required to be published in a newspaper just once in the seven days leading up to the hearing instead of the previous requirement to publish once a week for two weeks. This bill also established new requirements for the hearing notice to be posted on the board's website at least 14 days prior to the hearing and also to be provided to the Virginia Marine Resources Commission for submittal to the Virginia Regulatory Town Hall.

In addition to the above changes, the amendment also includes several housekeeping edits including the addition of certain oxford commas and changing a "which" to "that."

Changes to the Code specify that localities that have adopted a wetlands ordinance must amend any such ordinance to conform with the provisions of the bill by January 1, 2024.

Recommendations:

Staff Recommendation:
Approval

BE IT ORDAINED by the Council of the City of Hampton, Virginia that Article III of Chapter 41.1 of the City Code of the City of Hampton, Virginia, be amended and re-enacted as follows:

CHAPTER 41.1 - WETLANDS

ARTICLE XIII. - WETLANDS ZONING ORDINANCE

Sec. 41.1-6. - Definitions.

....

Governmental activity means any or all of the services provided by this city to its citizens for the purpose of maintaining this city including, but not limited to, such services as constructing, repairing, and maintaining roads, providing sewage facilities and street lights; supplying and treating water; and constructing public buildings.

Sec. 41.1-7. - Permitted uses and activities.

(1) The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters,

fences, duckblinds, wildlife management shelters, footbridges, observation decks, and shelters and other similar structures, provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands;

.....

(5) Grazing, haying and cultivating and harvesting agricultural, forestry, or horticultural products;

(6) Conservation, repletion, and research activities of the Commission, the Virginia Institute of Marine Science, the Department of Wildlife Resources and other conservation-related agencies;

(7) The construction or maintenance of aids to navigation that are authorized by governmental authority;

.....

Sec. 41.1-8. - Required; application generally.

.....

(3) A map, drawn to an appropriate and uniform scale, showing the area of wetlands directly affected; the location of the proposed work thereon; the area of existing and proposed fill and excavation; the location, width, depth, and length of any proposed channel and the disposal area; and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways and other related appurtenances or facilities, including those on adjacent uplands;

.....

Sec. 41.1-9. - Public inspection of application.

All applications, maps and documents submitted shall be open for public inspection at the office of the community development department as specified in the public notice for public hearing required under section 41.1-10 of this article.

Sec. 41.1-10. - Public hearing on application.

Not later than sixty (60) days after receipt of a complete application, the wetlands board shall hold a public hearing on the application. The applicant, Hampton City Council, commissioner, owner of record of any land adjacent to the wetlands in question, known claimants of water rights in or adjacent to the wetlands in question, the Virginia Institute of Marine Science, the Department of Wildlife Resources, the State Water Control Board, the Department of Transportation and any governmental agency expressing an interest in the application shall be notified of the hearing. The board shall mail or email these notices not less than twenty (20) days prior to the date set for the hearing. The board shall also (i) cause notice of the hearing to be published at least once in the seven days prior to such hearing in the newspaper of general circulation in this city.; (ii) post a notice of the hearing on its website at least 14 days prior to such hearing; and (iii) provide a copy of such notice to the Commission for submittal to the Virginia Regulatory Town Hall. The published notice shall specify the place or places within the city where copies of the application may be examined. The costs of publication shall be paid by the applicant. In the event that the board submits a correct and timely notice for publication and the newspaper fails to publish the notice or publishes the notice incorrectly, the board shall be deemed to have met the notice requirements of this subsection so long as the notice is published in the next available edition of such newspaper.

.....

Sec. 41.1-14. - Factors to be considered in making decision as to grant or denial.

.....

(1) In deciding whether to grant, grant in modified form, or deny a permit, the board shall consider the following:

a. The testimony of any person in support of or in opposition to the permit application;

- b. The impact of the proposed development on the public health, safety and welfare; and
- c. The proposed development's conformance with standards prescribed in § 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.

.....

Sec. 41.1-15. - Permit.

The permit shall be in writing and signed by the chairman of the board or his authorized representative. A copy of the permit shall be transmitted to the Commissioner.