



Legislation Details (With Text)

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Title:	Ordinance to Amend and Re-Enact Chapter 41.1 of the City Code of the City of Hampton, Virginia Entitled "Wetlands," by Amending Article III to Make Technical Amendments and to Reflect Changes to State Law Effective July 1, 2020				

Sponsors:

Indexes:

Code sections:

Attachments: 1. Senate Bill 776 (2020), 2. Redline Ordinance

Date	Ver.	Action By	Action	Result
6/10/2020	1	City Council Legislative Session	approved	Pass

Ordinance to Amend and Re-Enact Chapter 41.1 of the City Code of the City of Hampton, Virginia Entitled "Wetlands," by Amending Article III to Make Technical Amendments and to Reflect Changes to State Law Effective July 1, 2020

PURPOSE/BACKGROUND:

The 2020 session of the Virginia General Assembly included adoption of Senate Bill 776 pertaining to wetlands protection and living shorelines. Senate Bill 776 will be effective on July 1, 2020, and requires the Virginia Marine Resources Commission (VMRC) to promulgate and periodically update minimum standards for the protection and conservation of wetlands and to approve only living shoreline approaches to shoreline stabilization unless the best available science shows that such approaches are not suitable.

Local wetlands boards must act in a manner consistent with the new standards to be promulgated by VMRC. In addition, permit applicants must include a statement in their applications indicating whether use of a living shoreline as defined by the Code of Virginia is suitable, including reasons for the determination.

Section 28.2-1302 of the Code of Virginia provides that localities must adopt the language of the Code of Virginia governing the operation of a local wetlands board. Accordingly, Chapter 41.1 of the Hampton City Code must be updated to reflect the changes made by Senate Bill 776.

Recommendation:

Approve the Ordinance.

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, with an effective date of July 1, 2020:

CHAPTER 41.1 - WETLANDS

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ARTICLE III. - WETLANDS ZONING ORDINANCE

DIVISION 1. - PERMITS

Sec. 41.1-8. - Required; application generally

(a) Any person who desires to use or develop any wetland within this city, other than for the purpose of conducting the activities specified in section 41.1-7, shall first file an application for a permit directly with the wetlands board or with the commission.

(b) The permit application shall include the following:

(1) The name and address of the applicant;

(2) A detailed description of the proposed activities;

(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;

(4) A statement indicating whether use of a living shoreline as defined in Section 28.2-104.1 of the Code of Virginia, as amended, for a shoreline management practice is not suitable, including reasons for the determination;

(5) A description of the type of equipment to be used and the means of equipment access to the activity site;

(6) The names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice;

(7) An estimate of cost;

(8) The primary purpose of the project;

- (9) Any secondary purposes of the project, including further projects;
 - (10) The public benefit to be derived from the proposed project;
 - (11) A complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects;
 - (12) The completion date of the proposed work, project or structure; and
 - (13) Such additional materials and documentation as the wetlands board may require.
- (c) A nonrefundable processing fee of three hundred fifty dollars (\$350.00) shall accompany each permit application. In the case of an after-the-fact permit application, the fee shall be three hundred fifty dollars (\$350.00).

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 advertisement for public hearing required under section 41.1-10 of this article.

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Sec. 41.1-12. - Review or appeal of board's action on application.

If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing to the commissioner. Upon a final determination by the commission, the record shall be returned to the board. The record shall be open for public inspection in the office of the community development department.

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

In fulfilling its responsibilities under this article, the board shall preserve and prevent the despoliation and destruction of wetlands within its jurisdiction while accommodating necessary economic development in a manner consistent with wetlands preservation and any standards set by the Commonwealth of Virginia in addition to those identified in Section 28.2-1308 of the Code of Virginia, as amended, to ensure protection of shorelines and sensitive coastal habitats from sea level rise and coastal hazards, including the provisions of guidelines and minimum standards promulgated by the Commission pursuant to Section 28.2-1301 of the Code of Virginia, as amended.

- (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.

(2) The board shall grant the permit if all of the following criteria are met:

- a. The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment;
- b. The proposed development conforms with the standards prescribed in § 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia; and
- c. The proposed activity does not violate the purposes and intent of this ordinance or chapter 13, § 28.2-1300 et seq. of title 28.2 of the Code of Virginia.

(3) If the board finds that any of the criteria listed in subsection (2) of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

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DIVISION 2. - ENFORCEMENT

Sec. 41.1-18. - Enforcement officer.

The director of the community development department ~~codes compliance~~ shall designate one or more members of his staff as the wetlands board staff coordinator and enforcement officer.

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