

ARTICLE 7
NATURAL RESOURCES

(As Last Amended by Ord. 21-020)

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DIVISION I: FLOODPLAIN MANAGEMENT

EDITOR'S NOTE: Ordinance 11-516 extensively amended this Division I, effective February 2, 2012. Later, as a result of new requirements by, among others, the Federal Emergency Management Agency and the National Flood Insurance Program, an even more comprehensive revision of this Division and of other related City Code provisions was enacted by Ordinance 14-208 {"Flood Management Code – Revision"} and Ordinance 14-209 {"Floodplain Management Code – Cross-References and Corrections"}, both effective April 2, 2014. *See also* Editor's Note following Subtitle 9.

**SUBTITLE 1
DEFINITIONS; GENERAL PROVISIONS****§ 1-1. Definitions – In general.**

In this Division I, the following terms have the meanings indicated.
(*Ord. 14-208.*)

§ 1-2. Definitions – “Accessory structure” to “Floodplain District”.**(a) *Accessory structure.***

“Accessory structure” means a detached structure:

- (1) that is usable solely for parking vehicles or limited storage;
- (2) that is on the same parcel of property as the principal structure;
- (3) that is no larger than 300 square feet and 1 story; and
- (4) the use of which is incidental to the use of the principal structure.

(b) *Actual start of construction.*

See “new construction”.

(c) *ASCE 24.*

“ASCE 24” means the most current of ASCE/SEI 24, “Flood Resistant Design and Construction” (American Society of Civil Engineers).

(d) *Base flood.*

“Base flood” means a flood that has a 1% chance of being equaled or exceeded in any given year.

(e) *Base-flood elevation.*

(1) *In general.*

“Base-flood elevation” means the elevation of surface water resulting from a flood that has a 1% chance of equaling or exceeding that level in any given year.

(2) *Areas of shallow flooding.*

In areas of shallow flooding, “base-flood elevation” means the highest natural elevation of the ground surface, prior to construction, that is adjacent to the proposed foundation of a structure; plus:

- (i) the depth number specified in feet on the Flood Insurance Rate Map; or
- (ii) if the depth number is not specified, 4 feet.

(f) *Basement.*

“Basement” means any area of the building, including any sunken room or sunken portion of a room, having its floor below ground level on all sides.

(g) *Coastal A Zone.*

“Coastal A Zone” means an area within a special flood hazard area, landward of a coastal high hazard area (V Zone) or landward of a shoreline without a mapped coastal high hazard area, in which the principal source(s) of flooding are astronomical tides and storm surges, and in which, during base flood conditions, the potential exists for breaking waves with heights greater than or equal to 1.5 feet. The inland limit of the Coastal A Zone may be delineated on FIRMs as the Limit of Moderate Wave Action (LiWMA).

(h) *Design flood.*

“Design flood”, as used in ASCE 24, is the greater of the following two flood events:

- (1) area within a floodplain subject to a 1% or greater chance of flooding in any year as identified on the Flood Insurance Rate Map as a Special Flood Hazard Area; or
- (2) area designated as a flood hazard area on a community’s flood hazard map or otherwise legally designated.

(i) *Design-flood elevation.*

“Design-flood elevation”, as used in ASCE 24 for application to the City, means the elevation of the design flood, including wave height, relative to the datum specified on the flood hazard map.

(j) *Development.*

(1) *In general.*

“Development” means:

- (i) any man-made change to improved or unimproved real estate; or
- (ii) the subdivision of land.

(2) *Inclusions.*

“Development” includes any construction, reconstruction, modification, extension, or expansion of structures, placement of fill or concrete, construction of new or replacement infrastructure, temporary development, placement of manufactured homes or buildings, dumping, mining, dredging, grading, paving, drilling operations, storage of equipment, vehicles, materials, or products, land excavation, land clearing, land improvement, land fill operation, or any combination of these.

(k) *Dry floodproofing.*

See “floodproofing”.

(l) *Elevation Certificate.*

(1) *In general.*

“Elevation Certificate” means a certification, in the form and containing the information required by the Federal Emergency Management Agency, of the elevations of a structure and its improvements.

(2) *By whom and how prepared.*

An Elevation Certificate may only be prepared and certified by a licensed land surveyor or professional engineer, using Mean Sea Level as established by the North American Vertical Datum of 1988 (“NAVD”).

(m) *Fair market value.*

(1) *In general.*

“Fair market value” means the price at which the improvement portion of the property will change hands between a willing buyer and a willing seller, neither of which is under compulsion to buy or sell and both of which have reasonable knowledge of relevant facts.

(2) *By whom determined.*

For purpose of this Division I, the fair market value of a structure is determined by:

- (i) a licensed real estate appraiser; or
- (ii) the most recent, fully phased-in assessed value of the structure, as determined by the Maryland Department of Assessments and Taxation.

(n) *FEMA*.

“FEMA” means the Federal Emergency Management Agency.

(o) *FIRM*.

See “Flood Insurance Rate Map”.

(p) *FIS*.

See “Flood Insurance Study”.

(q) *Flood*.

“Flood” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters; or
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

See also “base flood” and “design flood”.

(r) *Flood elevation*.

See “base-flood elevation”, “design-flood elevation”, and “flood-protection elevation”.

(s) *Flood hazard area*.

See “Regulated Flood Hazard Area” and “Special Flood Hazard Area”.

(t) *Flood Insurance Rate Map (FIRM)*.

“Flood Insurance Rate Map” or “FIRM” means an official map on which the Federal Emergency Management Agency has delineated special flood hazard areas to indicate the magnitude and nature of flood hazards, to designate applicable flood zones, and to delineate floodways, if applicable. FIRMs that have been prepared in digital format or converted to digital format are referred to as Digital FIRMs (DFIRM).

(u) *Flood Insurance Study (FIS)*.

“Flood Insurance Study” or “FIS” means the official report in which the Federal Emergency Management Agency has provided flood profiles, floodway information, and water surface elevations.

(v) *Flood-protection elevation.*

“Flood-protection elevation” is:

- (1) the base flood elevation plus 2 feet of freeboard in the non-tidal floodplain; and
- (2) the modeled elevation of the 0.2% chance of flood plus 2 feet of freeboard in the tidal floodplain as listed on the Flood Insurance Study (Table 4).

(w) *Floodplain.*

“Floodplain” means any land area and watercourse susceptible to partial or complete inundation by water from any source, including::

- (1) a relatively flat or low land area adjoining a river, stream, or watercourse that is subject to partial or complete inundation;
- (2) an area subject to the unusual and rapid accumulation or runoff of surface waters from any source; or
- (3) an area subject to tidal surge or extreme tides.

(x) *Floodplain District.*

“Floodplain District” means the District, and its constituent subdistricts, established under Subtitle 2 {“Floodplain District”} of this article.

(City Code, 1976/83, art. 7, §3; 2000, art. 7 §1-1(part).)
(Ord. 88-188; Ord. 92-134; Ord. 11-516; Ord. 14-208; Ord. 21-020.)

§ 1-3. Definitions – “Floodproofing” to “Wet floodproofing”.(a) *Floodproofing.*(1) *In general.*

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to buildings or structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, {and} structures and their contents, such that the buildings or structures are watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(2) *Methods of floodproofing.*

For purposes of this Division I, the two methods of floodproofing are as follows:

- (i) “Dry floodproofing”, which is a combination of measures that results in a structure, including the attendant utilities and equipment, being watertight with all elements substantially impermeable and with structural components having the capacity to resist flood loads, as specified in ASCE 24; and

(ii) “Wet floodproofing”, which is the floodproofing method that, as specified in the following FEMA Technical Bulletins and on ASCE 24, relies on flood-damage-resistant materials and construction techniques in areas of a structure that are below the flood-protection elevation required by this standard by intentionally allowing those areas to flood :

(A) FEMA Technical Bulletin 2 {“Flood Damage-Resistant Material Requirements for Buildings Located in Special Flood Hazard Areas in accordance with the National Flood Insurance Program”}; and

(B) FEMA Technical Bulletin 7 {“Wet Floodproofing Requirements for Structures Located in Special Flood Hazard Areas in accordance with the National Flood Insurance Program”}.

(b) *Floodproofing Certificate.*

(1) *In general.*

“Floodproofing Certificate” means the FEMA Form 086-0-34 that is to be completed, signed and sealed by a licensed professional engineer or licensed architect to certify that the design of floodproofing and proposed methods of construction are in accordance with the applicable requirements of § 3-14 of this article.

(2) *By whom prepared.*

A floodproofing certificate may only be prepared and certified by a licensed professional engineer or professional architect.

(c) *Flood Resilience Area.*

“Flood Resilience Area” means the area described in § 2-2(g) {“Subdistricts: Flood Resilience Area”} of this article, and that:

(1) appears on the Flood Insurance Rate Map as Shaded Zone X; and

(2) includes all areas subject to the 0.2% annual chance flood.

(d) *Floodway.*

(1) *In general.*

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved to pass the base-flood discharge so that the cumulative increase in the water surface elevation of the base-flood discharge is no more than a designated height. When shown on a FIRM, the floodway is referred to as the “designated floodway.”

(2) *Considered high-velocity-flow area.*

An area shown on a FIRM as a “designated floodway” is considered an area with “high velocity flow”, as that term is used in ASCE 24, § 1.2 {“Definitions”}.

(e) *Freeboard.*

(1) *In general.*

“Freeboard” is a factor of safety expressed in feet above the:

- (i) height of the 0.2% annual chance of flood in the tidal floodplain; or
- (ii) base flood elevation in the non-tidal floodplain.

(2) *In Baltimore.*

The freeboard in Baltimore City is 2 feet.

(f) *Functionally dependent use.*

(1) *In general.*

“Functionally dependent use” means, except as otherwise provided in this subsection, any of the following uses that cannot perform their intended purposes unless located or carried out in close proximity to water:

- (i) docking facilities that are necessary for the loading and unloading of cargo or passengers; and
- (ii) ship building and ship repair facilities.

(2) *Exclusions.*

“Functionally dependent use” does not include long-term storage or related manufacturing facilities.

(g) *Historic structure.*

“Historic structure” means a structure that is:

- (1) individually listed in the National Register of Historic Places or certified or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing in the Register;
- (2) individually listed in the Maryland Register of Historic Properties;
- (3) individually listed in the Baltimore City Landmark List; or
- (4) certified or preliminarily determined by the Secretary of the Interior as contributing to the historic significance of an historic district registered with the Secretary.

(h) *Limit of Moderate Wave Action (LiMWA).*

“Limit of Moderate Wave Action (LiMWA)” means the inland limit of the area affected by waves greater than 1.5 feet during the base flood. Base flood conditions between the VE Zone and the LiMWA will be similar to, but less severe than, those in the VE Zone.

(i) *Limited storage.*

“Limited storage” means storage that is incidental to the primary use of the principal structure and consists of low-damage items that cannot be conveniently stored above the flood-protection elevation.

(j) *Lowest floor.*(1) *In general.*

“Lowest floor” means, except as otherwise provided in this subsection:

- (i) the lowest floor of the lowest enclosed area (including basement) of a building or structure; the floor of an enclosure below the lowest floor is not the lowest floor provided the enclosure is constructed in accordance with these regulations; and
- (ii) the lowest floor of a manufactured home is the bottom of the lowest horizontal supporting member (longitudinal chassis frame beam).

(2) *Exclusions.*

“Lowest floor” does not include any unfinished or flood-resistant enclosure that is usable solely for parking vehicles, building access, or limited storage, as long as the enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of the Federal Emergency Management Agency, National Flood Insurance Program.

(k) *Manufactured home or building.*(1) *In general.*

“Manufactured home or building” means a structure, transportable in 1 or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities.

(2) *Inclusions.*

For floodplain management purposes, “manufactured home or building” includes any park trailer, travel trailer, and other similar vehicle placed on a site for more than 180 consecutive days.

(l) *Mixed-use structure.*

Any structure that is used or intended for use for a mixture of nonresidential and residential uses in the same structure.

(m) *New construction.*

Structures include additions and improvements and the placement of manufactured homes, for which the start of construction commenced on or after March 15, 1978, the initial effective date of the City of Baltimore Flood Insurance Rate Map, including any subsequent improvements, alterations, modifications, and additions to such structures.

(1) *Exclusions.*

“New construction” does not include any structure for which the building permit was issued before March 15, 1978, and the actual start of construction was within 180 days of the permit date.

(2) *“Actual start of construction”.*

As used in paragraph (1) of this subsection, “actual start of construction” means either:

- (i) the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or
- (ii) the placement of a manufactured home on a foundation.

(3) *“Permanent construction”.*

As used in paragraph (2) of this subsection, “permanent construction” does not include:

- (i) land preparation, such as clearing, grading, and filling;
- (ii) the installation of streets and walkways;
- (iii) excavation for basements, footings, piers, or foundations;
- (iv) the erection of temporary forms; or
- (v) the installation on the property of accessory structures.

(n) *Nonconforming structure.*

“Nonconforming structure” means any lawfully existing structure that does not comply with the applicable floodplain regulations of the subdistrict in which it is located.

(o) *Nonresidential structure.*

“Nonresidential structure” includes the nonresidential portion of a mixed-use structure.

(p) *Planning Department.*

“Planning Department” means the Baltimore City Department of Planning.

(q) *Planning Director.*

“Planning Director” means the Director of the Baltimore City Department of Planning or the Director’s designee.

(r) *Regulated Flood Hazard Area.*

“Regulated Flood Hazard Area” means:

- (1) any Flood Resilience Area; and
- (2) any Special Flood Hazard Area.

(s) *Residential structure.*

“Residential structure” includes the residential portion of a mixed-use structure.

(t) *Special Flood Hazard Area.*

(1) *In general.*

“Special Flood Hazard Area” means the land in a floodplain subject to a 1% or greater chance of flooding in any given year.

(2) *By whom and how designated.*

Special Flood Hazard Areas are designated by the Federal Emergency Management Agency in the Flood Insurance Study and on the Flood Insurance Rate Map as Zones A, AE, AH, AO, A1-30, and A99, and Zones V1-30 and VE.

(u) *Structure.*

(1) *In general.*

“Structure” means any building or other structure, specifically, a walled and roofed building.

(2) *Inclusions.*

“Structure” includes a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

(v) *Subdivision.*

(1) *In general.*

“Subdivision” means the division or redivision by any means of a lot, tract, or parcel of land into 2 or more lots, tracts, parcels, or other divisions of land.

(2) *Inclusions.*

“Subdivision” includes a change in existing lot lines for the purpose, whether immediate or future, of lease, transfer of ownership, building, or lot development.

(w) *Substantial damage.*

(1) *In general.*

“Substantial damage” means damage of any origin sustained by a structure where the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

(2) *Calculation of costs.*

(i) The calculation of these costs must comply with FEMA P-758 {“Substantial Improvement / Substantial Damage Desk Reference”}.

(ii) *See also* § 1-2(x){“Definitions: Substantial improvement”} of this subtitle.

(x) *Substantial improvement.*

(1) *In general.*

(i) “Substantial improvement” means, except as otherwise provided in this subsection, any combination of repairs, reconstruction, rehabilitation, additions, or other improvements to a structure made during the 6-year period immediately preceding a permit application, the aggregate cost of which, together with the cost of the work proposed by the latest permit application, equals or exceeds 50% of the fair market value of the structure before the improvement is started.

(ii) The calculation of these costs must comply with FEMA P-758 {“Substantial Improvement / Substantial Damage Desk Reference”}.

(iii) For purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the structure commences, whether or not that alteration affects the external dimensions of the structure.

(2) *Inclusions.*

“Substantial improvement” includes improvements to a structure that has been substantially damaged, regardless of the actual repair work done.

(3) *Exclusions.*

“Substantial improvement” does not include either:

- (i) an improvement of a structure that is required by a condemnation or violation notice, order, or citation to secure safe living conditions in compliance with State or City health, sanitary, or safety code specifications; or
- (ii) an alteration of an historic structure if the alteration will preclude the structure's continued designation as an historic structure as approved by the Executive Director of the Historic and Architectural Preservation.

(y) *Water & Science Administration.*

“Water & Science Administration” means the Water & Science Administration of the Maryland Department of the Environment.

(z) *Wetland.*

“Wetland” means any land that is:

- (1) considered a “private wetland” or a “State wetland” under Title 9 {“Wetlands and Riparian Rights”} of the State Natural Resources Article; or
- (2) defined as a “wetland” by the U.S. Fish and Wildlife Service Identification and Classification Procedures.

(aa) *Wet floodproofing.*

See “floodproofing”.

(City Code, 1976/83, art. 7, §3; 2000, art. 7 §1-1(part).)

(Ord. 88-188; Ord. 92-134; Ord. 11-516; Ord. 14-208; Ord. 14-283; Ord. 16-503; Ord. 21-020.)

§ 1-4. {Reserved}

§ 1-5. Rules of construction.

(a) *In general.*

In interpreting and applying this Division I, the following rules of construction apply.

(b) *Captions or headings.*

The captions or headings of the various sections and subsections:

(1) are for convenience of reference only, intended to summarize the statutory provisions that follow; and

(2) are not law and are not to be taken as affecting the meaning or effect of the law.

(c) *Conflicting provisions.*

(1) *Division sets minimum requirements.*

In their interpretation and application, the provisions of this Division I must be taken to be the minimum requirements for the promotion of the public health, safety, and general welfare.

(2) *Most restrictive provision governs.*

If any condition imposed by a provision of this Division I is either more or less restrictive than a comparable condition imposed by any other provision of this Division or by any other law, rule, or regulation of any kind, the condition that is the more restrictive governs.

(d) *Gender.*

Words denoting one gender include and apply to the other genders as well.

(e) *Includes; including.*

“Includes” or “including” means by way of illustration and not by way of limitation.

(f) *Mandatory, prohibitory, and permissive terms.*

(1) *Mandatory terms.*

“Must” and “shall” are each mandatory terms used to express a requirement or to impose a duty.

(2) *Prohibitory terms.*

“Must not”, “may not”, and “no ... may” are each mandatory negative terms used to establish a prohibition.

(3) *Permissive terms.*

“May” is permissive.

(g) *Number.*

The singular includes the plural and vice versa.

(h) *References to other laws.*

Whenever a provision of this Division I refers to any part of the City Code or to any other law, the reference applies to any subsequent amendment of the law referred to, unless the referring provision expressly provides otherwise.

(i) *Severability.*

All provisions of this Division I are severable. If a court determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid or that the application of any part of the provision to any person or circumstances is invalid, the remaining provisions and the application of those provisions to other persons or circumstances are not affected by that decision.

(j) *Time computations.*(1) *Computation of time after an act, event, or default.*

- (i) In computing any period of time prescribed by this Division I, the day of the act, event, or default after which the designated period of time begins to run is not included.
- (ii) If the period of time allowed is more than 7 days, intermediate Saturdays, Sundays, and legal holidays are counted.
- (iii) If the period of time allowed is 7 days or less, intermediate Saturdays, Sundays, and legal holidays are not counted.
- (iv) The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Computation of time before a day, act, or event.*

- (i) In determining the latest day for performing an act that is required by this Division I to be performed a prescribed number of days before a certain day, act, or event, all days preceding that day, including intervening Saturdays, Sundays, and legal holidays, are counted in the number of days so prescribed.
- (ii) The latest day is included in the determination unless it is a Saturday, Sunday, or legal holiday, in which event the latest day is the first preceding day that is not a Saturday, Sunday, or legal holiday.

(Ord. 14-208.)

§ 1-6. Interpretation.

In their interpretation and application, the provisions of this Division I are to be:

- (1) considered as minimum requirements;

(2) liberally construed in favor of proper flood hazard management and Baltimore City; and

(3) considered as neither repealing nor limiting any powers granted by State law.
(*City Code, 1976/83, art. 7, §2; 2000, art. 7, §1-3(a).*) (*Ord. 88-188; Ord. 14-208.*)

§§ 1-7 to 1-8. {Reserved}

§ 1-9. Findings, intent, and design.

(a) *Findings.*

- (1) Certain areas of Baltimore City are subject to periodic inundation that results in loss of life and property, risks to health and safety, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief.
- (2) Flood losses and associated losses are created by structures inappropriately located, inadequately elevated, or otherwise unprotected and vulnerable to floods or erosion or by development that increases flood or erosion damage to other lands or development.
- (3) The biological values of floodplains, particularly tidal and non-tidal wetlands, can be adversely affected by floodplain development.
- (4) Baltimore City has the responsibility under the Flood Hazard Management Act of 1976, Title 5, Subtitle 8 of the State Environment Article, to control floodplain development in order to protect persons and property from danger and destruction and to preserve the biological values and environmental quality of the watersheds or the portions of watersheds under its jurisdiction.
- (5) Baltimore City has the responsibility under the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 to adopt and enforce floodplain management regulations that, at a minimum, meet the requirements of 44 Code of Federal Regulations Parts 55-77 et seq., in order to participate in the National Flood Insurance Program and remain eligible for federally subsidized flood insurance, federal disaster relief, and Federal and State financial assistance.
- (6) Baltimore City contains densely developed tidal shorelines that are and will continue to be in high demand. The science behind climate change acknowledges that sea-level rise and coastal flooding will impact current and future development along the shoreline. Floodplain regulations are meant to protect people and property while making the City more resilient to the impacts from natural disasters and climate change.

(b) *Intent.*

It is, therefore, the intent of the Mayor and City Council by this Division I:

- (1) to protect human life and health;
- (2) to minimize public and private property damage;

- (3) to encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future;
- (4) to protect individuals from unwittingly buying lands and structures that are unsuited for intended purposes because of the flood hazards;
- (5) to protect water supply, sanitary sewage disposal, and natural drainage;
- (6) to reduce financial burdens imposed on the community, its governmental units, and its residents by preventing the unwise design and construction of development in areas subject to flooding;
- (7) to provide for public awareness of the flooding potential; and
- (8) to provide for the biological and environmental quality of the watersheds or the portions of watershed located in Baltimore City.

(c) *Design.*

This Division I provides a unified comprehensive approach to floodplain management that addresses the requirements of the following Federal and State programs concerned with floodplain management:

- (1) the National Flood Insurance Program and the President's Executive Order 11988 of May 27, 1977, on floodplain management;
- (2) the State Waterway Construction Permit Program;
- (3) the State Wetlands Permit Program;
- (4) the U.S. Army Corps of Engineers' Section 10 and Section 404 Permit Programs; and
- (5) the State Coastal Zone Management Program.

(d) *Warning and disclaimer of liability.*

(1) *Warning.*

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur, and flood heights may be increased by man-made or natural causes. These regulations do not imply that land outside of the special flood hazard areas or uses that are permitted within those areas will be free from flooding or flood damage.

(2) *Disclaimer of liability.*

These regulations shall not create liability on the part of the City of Baltimore, any of its officers or employees, the Maryland Department of the Environment (MDE), or the Federal

Emergency Management Agency (FEMA) for any flood damage that results from reliance on these regulations or any administrative decision lawfully made hereunder.

(City Code, 1976/83, art. 7, §2; 2000, art. 7, §1-2.) (Ord. 88-188; Ord. 14-208; Ord. 21-020.)

§ 1-10. Short title.

This Division I may be cited as the “Baltimore City Floodplain Management Code”.

(City Code, 1976/83, art. 7, §1; 2000, art. 7, §1-4.) (Ord. 88-188; Ord. 14-208.)

SUBTITLE 2
FLOODPLAIN DISTRICT

§ 2-1. Establishment of district.

(a) *City to establish.*

The City must establish a Floodplain District and an official floodplain map to include all areas subject to inundation by floodwaters.

(b) *Bases.*

- (1) The bases of this delineation must be, at a minimum, the data contained in the most recent Flood Insurance Study for Baltimore City, and illustrated in the Flood Insurance Rate Map. The Flood Insurance Rate Map illustrates both the most recently adopted Special Flood Hazard Areas and the Flood Resilience Area.
- (2) The base-flood elevation, as determined in the Flood Insurance Study, is graphically delineated on the official floodplain map.
- (3) Where field-surveyed topography or digital topography indicates that ground elevations are above the base-flood elevation in a Special Flood Hazard Area, then the area is considered in the Special Flood Hazard Area until FEMA issues a Letter of Map Change.
- (4) Where field-surveyed topography or digital topography indicates that ground elevations are below the closest applicable flood-protection elevation, even in areas not delineated on the FIRM as a Regulated Flood Hazard Area, the area is considered to be a Regulated Flood Hazard Area.

(c) *District as overlay to zoning.*

The Floodplain District is an overlay on any zoning district, as provided in the Zoning Code of Baltimore City.

(City Code, 1976/83, art. 7, §4(a); 2000, art. 7, §2-1.)

(Ord. 88-188; Ord. 92-134; Ord. 99-547; Ord. 11-516; Ord. 14-208; Ord. 14-307; Ord. 21-020.)

§ 2-2. Subdistricts.

(a) *In general.*

- (1) The Floodplain District comprises the subdistricts set forth in this section.
- (2) In all floodplain districts, the flood-protection elevation is calculated as follows:
 - (i) In the tidal floodplain areas, it is the height and geographic extent of the 0.2% annual chance flood in the tidal area plus freeboard.
 - (ii) In the non-tidal floodplain areas, it is the extent of the 0.2% annual chance flood, and the height of the 1% annual chance flood plus freeboard.

(b) *Floodway.*

The Floodway is that part of the Floodplain District that is reserved to convey a base-flood discharge so that the cumulative increase in the water surface elevation of the base-flood discharge is no more than the height designated by FEMA in the Flood Insurance Study.

(c) *Floodway Fringe.*

(1) The Floodway Fringe comprises those lands within the Floodplain District that:

- (i) are subject to inundation by a base flood; and
- (ii) lie beyond the Floodway (where a floodway has been determined), or in areas where detailed study data, profiles, and base-flood elevations have been established.

(2) The Floodway Fringe appears on the Flood Insurance Rate Map as Zone AE.

(d) *Approximated Floodplain.*

(1) The Approximated Floodplain comprises those lands within the Floodplain District that:

- (i) are subject to inundation by a base flood; and
- (ii) lie in:
 - (A) areas for which a detailed study has not been performed, but a base floodplain boundary has been approximated; or
 - (B) areas that are subject to shallow flooding.

(2) A base-flood elevation must be established after consideration of any flood elevation and floodway data available from Federal, State, or other sources.

(3) The Approximated Floodplain appears on the Flood Insurance Rate Map as Zones A and AO.

(e) *Coastal Floodplain.*

(1) The Coastal Floodplain, also referred to as tidal floodplain, comprises those lands within the Floodplain District that:

- (i) due to high tides, hurricanes, tropical storms, and steady onshore winds, are subject to coastal or tidal inundation by a base flood; and
- (ii) lie in areas where detailed study data are available.

(2) The Coastal Floodplain appears on the Flood Insurance Rate Map as Zones A and AE, and includes areas encompassed by transects delineated by FEMA in the Flood Insurance Study.

(In Zone AE, a designation on the FIRM indicating “Limit of Moderate Wave Action” refers to the landward limit of waves of 1.5 feet or more in height.)

(f) *Coastal High Hazard Area.*

- (1) The Coastal High Hazard Area is the area within a special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area that is subject to high velocity wave action from storms or seismic sources. This area is designated on FIRMs as velocity zones V, VO, VE, or V1-30, and includes areas encompassed by transects delineated by FEMA in the Flood Insurance Study.
- (2) The Coastal High Hazard Area appears on the Flood Insurance Rate Map as Zones V and VE.

(g) *Flood Resilience Area.*

See § 1-3(c) {“Definitions: Flood Resilience Area”} of this Division I.

(City Code, 1976/83, art. 7, §4(b); 2000, art. 7, §2-2.)
(Ord. 88-188; Ord. 92-134; Ord. 11-516; Ord. 14-208; Ord. 14-283; Ord. 21-020.)

§ 2-3. Official map.

(a) *In general.*

- (1) The official floodplain map is the most current Flood Insurance Rate Map, as prepared by the Federal Emergency Management Agency.
- (2) The official floodplain map:
 - (i) must be maintained by the Planning Department; and
 - (ii) is incorporated by reference as part of this Division I.

(b) *Bases.*

The minimum bases for establishing Regulated Flood Hazard Areas and their respective flood elevations are as follows:

- (1) the most recent revision of the Flood Insurance Study for the City of Baltimore, dated June 16, 2021;
- (2) the accompanying Flood Insurance Rate Map; and
- (3) all subsequent amendments and revisions to the FIRM.

(City Code, 1976/83, art. 7, §4(c); 2000, art. §2-3.)
(Ord. 88-188; Ord. 92-134; Ord. 11-516; Ord. 14-208; Ord. 21-020.)

§ 2-4. Flood elevations.*(a) Nontidal floodplain.*

- (1) Regulated Flood Hazard Areas in the nontidal floodplain are designated on the FIRM as “Special Flood Hazard Areas”.
- (2) The flood elevations for these areas correspond to the base-flood elevations specified in the Flood Insurance Study.

(b) Tidal floodplain.

- (1) Regulated Flood Hazard Areas in the tidal floodplain are designated on the FIRM as Zones AE, V, VE, and X.
- (2) The flood elevations for Zones V and VE are as shown in the Flood Insurance Study’s Table 4 {“Transect Data”}, under the column heading “Zone Designation and BFE”.
- (3) The flood elevations for Shaded Zone X (“areas of 0.2% annual chance flood”) and for Zones A and AE are those shown in the Flood Insurance Study’s Table 4 {“Transect Data”}, under the column heading “0.2% Annual Chance”.

(c) Flood elevations not provided by FIRM or FIS.

To establish flood elevations for Regulated Flood Hazard Areas that do not have these elevations shown on the Flood Insurance Rate Map or in the Flood Insurance Study, the Floodplain Manager may:

- (1) provide the best available data for flood elevations;
- (2) require the applicant to obtain available information from Federal, State, or other sources; or
- (3) require the applicant to establish Regulated Flood Hazard Areas and design-flood elevations as set forth in § 2-5 {“Changes to District”} of this subtitle. (*City Code, 1976/83, art. 7, §4(c)(part); 2000, art. 7, §2-3(a)(part).*) (*Ord. 14-208; Ord. 21-020.*)

§ 2-5. Changes to District.*(a) When authorized.*

The delineation of the Floodplain District and its subdistricts may be revised, amended, or modified by the City, in compliance with the requirements of the National Flood Insurance Program and the Maryland Department of the Environment, if:

- (1) there are changes through natural or other causes to flood elevations and boundaries; or
- (2) changes are indicated by detailed hydrologic and hydraulic information and studies.

(b) *Notice of changes.*

As soon as practicable, but not later than 6 months after changes become known, the Planning Department must notify the Federal Insurance Administrator of the changes by submitting technical and scientific data in accordance with 44 Code of Federal Regulations, Part 65.

(c) *Required Federal and State approvals.*

All changes are subject to the review and approval of the Federal Emergency Management Agency and the Maryland Department of the Environment.

(*City Code, 1976/83, art. 7, §4(d); 2000, art. 7, §2-4.*) (*Ord. 88-188; Ord. 11-516; Ord. 14-208.*)

§ 2-6. Unmapped streams.(a) *Minimum flood protection setback.*

If development is proposed in the vicinity of an unmapped stream that has no delineated base floodplain, a minimum of a 25-foot flood protection setback from the stream's bank may be used.

(b) *State permits.*

State permits may be required. Applicants should request the State Water & Science Administration for a determination of whether its permit requirements apply.

(c) *Variances.*

Variances may be applied for under Subtitle 5 {"Floodplain Variances"} of this Division I. (*City Code, 1976/83, art. 7, §4(f); 2000, art. 7, §2-6.*) (*Ord. 92-134; Ord. 11-516; Ord. 14-208; Ord. 21-020.*)

§ 2-7. Floodplain Manager.(a) *Duties of Planning Department.*

The Planning Department is responsible to ensure compliance with the National Flood Insurance Program.

(b) *Planning Director to appoint Manager.*

The Planning Director is responsible for appointing staff to carry out the duties of the Floodplain Manager.

(c) *Duties of Floodplain Manager.*

The Floodplain Manager is responsible for:

- (1) overseeing and implementing the City's floodplain program;

- (2) responding to all requests and inquiries by the Administrator of the National Flood Insurance Program;
 - (3) reviewing applications to determine whether the proposed uses and other activities will be reasonably safe from flooding;
 - (4) reviewing elevation certificates and requiring incomplete or deficient certificates to be corrected; and
 - (5) keeping all files required by the National Flood Insurance Program.
- (City Code, 2000, art. 7 §2-7.) (Ord. 11-516; Ord. 14-208.)*

**SUBTITLE 3
DEVELOPMENT REGULATIONS**

Part 1. Overview

§ 3-1. In general.

(a) *New construction and substantial improvements.*

(1) In order to prevent excessive damage to structures, all new construction and substantial improvements to existing structures in the Floodplain District must comply with:

- (i) the regulations and restrictions of this subtitle; and
- (ii) except as otherwise provided in this Division I, the design and construction standards of:
 - (A) ASCE 24 {"Flood Resistant Design and Construction"}; and
 - (B) ASCE 7 {"Minimum Design Loads for Buildings and Other Structures"}, Chapter 5 {"Flood Loads"}.

(2) Where flood elevation data are used, the applicant must provide to the Planning Department:

- (i) floodproofing elevations for all new construction and all substantial improvements to an existing structure; and
- (ii) corresponding elevation certificates.

(b) *Projects overlapping subdistricts or elevations.*

If a proposed structure or substantial improvement is sited in 2 different subdistricts or in a subdistrict with 2 different flood elevations, the most restrictive regulation or higher flood elevation prevails.

(c) *Classification of structures.*

For the purpose of applying appropriate requirements, structures are classified according to ASCE 24, Table 1-1 {"Classification of Structures for flood Resistant Design and Construction"}.

(City Code, 1976/83, art. 7, §5(intro); 2000, art. §3-1.) (Ord. 88-188; Ord. 11-516; Ord. 14-208; Ord. 21-020.)

Part 2. Districtwide Regulations

§ 3-2. In general.

In the entire Floodplain District, the following regulations and restrictions apply.

(City Code, 1976/83, art. 7, §5(a)(intro); 2000, art. 7, §3-2.) (Ord. 88-188; Ord. 14-208.)

§ 3-3. Conformance to programs, plans, and BFR Codes.**(a) Permit programs.**

The approval of any development must conform with the requirements of the permit programs of:

- (1) the State Water & Science Administration; and
- (2) all other applicable Federal, State, and City agencies.

(b) Building, Fire, and Related Codes.

The approval of any development must conform with all applicable requirements of the Baltimore City Building, Fire, and Related Codes Article.

(c) Management plans.

Where flood control and watershed management plans exist, all development must be consistent with those plans.

(City Code, 1976/83, art. 7, §5(a)(1), (2); 2000, art. 7, §3-3.) (Ord. 88-188; Ord. 11-516; Ord. 14-208; Ord. 21-020.)

§ 3-4. Residential structures.**(a) Elevation.**

- (1) Every new or substantially improved residential structure, including a manufactured home, must have its lowest floor elevated to at least the flood-protection elevation.
- (2) The elevation of the lowest floor and the lowest elevation of machinery serving the structure must be certified on an elevation certificate after the lowest floor and machinery are in place.
- (3) Every new or substantially improved residential structure must meet the requirements of § 3-14 {"Enclosures below lowest floor or flood-protection elevation"} of this subtitle.

(b) Placement.

Every proposed structure must be placed on the lot so as to avoid location in the floodplain as much as possible.

(c) Basements.

Basements are not permitted in new structures and substantial improvement of existing structures (including repair of substantial damage).

(d) *Enclosures below flood-protection elevation.*

Enclosures below the flood-protection elevation shall be:

- (1) used solely for parking of vehicles, limited storage and building access;
- (2) constructed using flood damage-resistant materials; and
- (3) provided with flood openings that meet the criteria listed under § 1-3(a) {"Definitions: Floodproofing"} of this Division I.

(e) *Expansions in tidal and nontidal floodplains.*

Any horizontal expansion that increases the footprint and that is less than substantial must also have the lowest floor elevated to at least the flood-protection elevation.

(City Code, 1976/83, art. 7, §5(a)(3); 2000, art. 7, §3-4.) (Ord. 92-134; Ord. 11-516; Ord. 14-208; Ord. 21-020.)

§ 3-5. Nonresidential or mixed use structures.(a) *In general.*

- (1) Every new or substantially improved nonresidential structure must be either:
 - (i) elevated to at least the flood-protection elevation; or
 - (ii) dry or wet floodproofed.
- (2) Basements are prohibited for any new nonresidential structure in the tidal and nontidal floodplains.
- (3) Every new or substantially improved nonresidential structure must meet the requirements of § 3-14 {"Enclosures below lowest floor or flood-protection elevation"} of this subtitle.
- (4) The elevation of the lowest floor of the improvement must be certified on an elevation certificate after the lowest floor is in place.
- (5) In mixed-use structures, areas below the flood-protection elevation may not be used for residential use even if the area is floodproofed.

(b) *Floodproofing option.*

- (1) Floodproofing designs for existing structures must ensure that areas below the flood-protection elevation are watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy, as described in § 1-3(a) {"Definitions: Floodproofing"} of this Division I.
- (2) If the floodproofing option is chosen, a floodproofing certificate must be completed by a licensed professional engineer or professional architect who has reviewed the design and

specifications and certifies that the nonresidential structure will meet this standard. A Use and Occupancy permit cannot be approved until the floodproofing certificate is submitted.

(c) *Expansions in tidal and nontidal floodplains.*

In tidal and nontidal floodplains, any horizontal expansion that increases the footprint and that is less than substantial must also have the lowest floor elevated to at least the flood-protection elevation.

(City Code, 1976/83, art. 7, §5(a)(3-a); 2000, art. 7, §3-5.) (Ord. 92-134; Ord. 11-516; Ord. 14-208; Ord. 21-020.)

§ 3-6. Less than substantial improvement.

(a) *In general.*

If the construction, reconstruction, or modification of any structure constitutes less than a substantial improvement:

- (1) the installation of any electric, plumbing, or mechanical systems must comply with § 3-10 {"Electric, plumbing, and mechanical systems"} of this subtitle; and
- (2) those parts of the improvement below the flood-protection elevation must:
 - (i) be floodproofed; and
 - (ii) otherwise comply with the design and construction standards of ASCE 24.

(b) *Exceptions.*

(1) Routine maintenance, repairs, and the in-kind replacement of mechanical, electrical, and plumbing systems are exempt from the requirements of this section.

(2) For in-kind replacement, the systems must be elevated to the maximum extent possible to avoid or minimize flood damage.

(City Code, 1976/83, art. 7, §5(a)(4); 2000, art. 7, §3-6.) (Ord. 88-188; Ord. 11-516; Ord. 14-208.)

§ 3-7. Impacts on habitat.

All development must be undertaken in a manner that minimizes adverse impacts on aquatic and terrestrial habitat and their related flora and fauna.

(City Code, 1976/83, art. 7, §5(a)(6); 2000, art. 7, §3-7.) (Ord. 88-188; Ord. 14-208.)

§ 3-8. Design, anchoring, and materials.

(a) *In general.*

All construction and improvements must be:

- (1) designed, constructed, connected, and anchored to prevent flotation, collapse, or lateral movement of the structure, in accordance with the standards for new construction and substantial improvements specified in ASCE 24, § 1.5.1 {"General"};
- (2) constructed and placed on the lot so as to offer the minimum obstruction to the flow and height of floodwaters;
- (3) constructed with material and utility equipment resistant to flood damage; and
- (4) constructed by methods and practices that minimize flood damage.

(b) *Materials below the flood-protection elevation.*

Unless the structure is dry floodproofed to the flood-protection elevation, materials used below that elevation must be resistant to floodwater damage, as specified in:

- (1) FEMA Technical Bulletin 2, "Flood Damage-Resistant Materials Requirements for Buildings Located in Special Flood Hazard Areas in accordance with the National Flood Insurance Program"; and
- (2) ASCE 24, § 5.0 {"Materials"}.

(c) *Tanks.*

Tanks must be designed and installed as specified in ASCE 24, § 7.4.1 {"Tanks"}.

(d) *Elevators.*

For installation in any structure located in any floodplain subdistrict, elevators must be designed and installed:

- (1) as specified in ASCE 24, § 7.5 {"Elevators"}; and
- (2) as specified in FEMA Technical Bulletin 4: Technical Bulletin 4, Elevators in Buildings Located in Special Flood Hazard Areas.

(City Code, 1976/83, art. 7, §5(a)(7); 2000, art. 7, §3-8.) (Ord. 88-188; Ord. 14-208; Ord. 21-020.)

§ 3-9. Landscape design.

(a) *Ground cover.*

Adequate ground cover must be provided for soil stabilization within the Floodplain District.

(b) *Land contours and plant material.*

Land contours must be designed and plant material chosen to direct surface runoff away from structures and not increase surface runoff onto neighboring properties.

(City Code, 1976/83, art. 7, §5(a)(8); 2000, art. 7, §3-9.) (Ord. 88-188; Ord. 14-208.)

§ 3-10. Electric, plumbing, and mechanical systems.*(a) In general.*

Except as otherwise provided in subsection (b) of this section, electric, plumbing, and mechanical systems and their attendant components and equipment, including heaters, furnaces, generators, heat pumps, air conditioners, distribution panels, toilets, showers, sinks, duct work, and other permanent electrical, plumbing, or mechanical installations, are only permitted at or above the flood-protection elevation.

(b) Exceptions.

- (1) Subsection (a) of this section does not apply to a system that is designed and installed, in accordance with ASCE 24, to prevent water from entering or accumulating within its components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding to the flood-protection elevation.
- (2) In addition, electrical wiring systems for 1- and 2-family dwellings must conform to the requirements of the Baltimore City Residential Code for One- and Two-Family Dwellings, Part VIII {"Electrical"}, for wet locations.
- (3) Subsection (a) of this section does not apply to routine maintenance, repairs, and the in-kind replacement of mechanical, electrical and plumbing systems in less than substantial improvement projects.

*(City Code, 1976/83, art. 7, §5(a)(9), (10); 2000, art. 7, §3-10.)
(Ord. 88-188; Ord. 11-516; Ord. 14-208; Ord. 21-020.)*

§ 3-11. Storage.

Materials and products that are buoyant, flammable, or explosive, or that in times of flooding could be injurious to human, animal, or plant life may not be stored below the flood-protection elevation.

(City Code, 1976/83, art. 7, §5(a)(11); 2000, art. 7, §3-11.) (Ord. 88-188; Ord. 11-516; Ord. 14-208; Ord. 21-020.)

§ 3-12. Fill.*(a) In general.*

(1) In the Coastal High Hazard Area:

- (i) fill is prohibited for structural support; but
- (ii) placement of nonstructural fill is allowed to the extent provided in this section and in ASCE 24, § 4.5.4 {"Use of Fill"}.

(2) In the Coastal Floodplain:

- (i) fill material must meet the requirements of this section; and
- (ii) structural fill must comply with all applicable provisions of ASCE 24.

(b) *Maximum fill amount.*

The placement of more than 600 cubic yards of fill per acre in the floodplain is prohibited except by variance.

(c) *Required alternate consideration.*

(1) Elevating a structure by other methods must be considered unless 600 cubic yards or less of fill are required.

(2) An applicant must demonstrate that:

- (i) fill is the only alternative to raising the structure to at least the flood-protection elevation; and
- (ii) the amount of fill used will not affect the flood storage capacity or increase flooding onto neighboring properties.

(d) *Affect on adjacent properties.*

Fill may be used only to the extent to which it does not adversely affect adjacent properties.

(e) *Materials.*

- (1) Fill may consist of soil or rock materials only.
- (2) Landfills, dumps, and sanitary soil fills are not permitted.

(f) *Compacting standards.*

Fill material must be compacted in accordance with the standard proctor test method issued by the American Society for Testing and Materials (ASTM Standard D-698) to provide the necessary stability and resistance to erosion, scouring, or settling.

(g) *Slopes.*

Fill slopes may be no steeper than 1 vertical to 2 horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Department of Public Works.

(h) *Hydrologic and hydraulic analyses.*

- (1) If structures on adjacent properties are known or determined to be subject to flooding under current conditions, the Floodplain Manager may require submission of hydrologic and hydraulic analyses to adequately demonstrate the effects of the proposed fill.

(2) A hydrologic and hydraulic analysis requirement does not apply to projects located in the Coastal Floodplain or tidal portion of the Flood Resilience Area.

(City Code, 1976/83, art. 7, §5(a)(12); 2000, art. 7, §3-12.) (Ord. 88-188; Ord. 92-134; Ord. 14-208; Ord. 21-020.)

§ 3-13. Accessory structures.

(a) *In general.*

Accessory structures shall be limited to no more than 300 square feet in total floor area.

(b) *Requirements.*

Accessory structures:

(1) shall comply with the elevation requirements and other requirements of § 3-14 {"Enclosures below the first floor or flood-protection elevation"} of this subtitle; or

(2) shall:

(i) be useable only for parking of vehicles or limited storage;

(ii) be constructed with flood damage-resistant materials below the flood-protection elevation;

(iii) be constructed and placed to offer the minimum resistance to the flow of floodwaters;

(iv) be anchored to prevent flotation;

(v) have electrical service and mechanical equipment elevated to or above the flood-protection elevation; and

(vi) have flood openings that meet the criteria described in § 1-3(a) {"Definitions: Floodproofing"} of this Division I.

(City Code, 1976/83, art. 7, §5(a)(14); 2000, art. 7, §3-13.)

(Ord. 88-188; Ord. 92-134; Ord. 11-516; Ord. 14-208; Ord. 21-020.)

§ 3-14. Enclosures below lowest floor or flood-protection elevation.

(a) *In general.*

New construction and substantial improvements of fully enclosed areas below the lowest floor or below the flood-protection elevation:

(1) are limited to floodproofed areas usable solely for parking vehicles, limited storage, and building access, as specified in §§ 1-3(a) {"Definitions: Floodproofing"}, § 3-4 {"Residential structures"}, and 3-5 {"Non-residential and mixed-used structures"} of this Division I; or

- (2) must be designed to meet or exceed the minimum criteria described in § 1-3(a) {"Definitions: Floodproofing"} of this Division I for dry floodproofing and wet floodproofing.

(b) *State regulations.*

The State may have different, more stringent requirements set forth in COMAR 26.17.03 {"Construction on Nontidal Waters and Floodplains"}.
(City Code, 1976/83, art. 7, §5(a)(14); 2000, art. 7, §3-14.)
(Ord. 88-188; Ord. 92-134; Ord. 04-672; Ord. 11-516; Ord. 14-208; Ord. 21-020.)

§ 3-15. Watercourses.

(a) *In general.*

- (1) For any proposed development that involves alteration of a watercourse, unless waived by MDE, the applicant shall develop hydrologic and hydraulic engineering analyses and technical data reflecting such changes, and submit such technical data to the Floodplain Administrator and to FEMA. The analyses shall be prepared by a licensed professional engineer in a format required by MDE and by FEMA for a Conditional Letter of Map Revision and a Letter of Map Revision upon completion of the project.
- (2) Submittal requirements and fees shall be the responsibility of the applicant.

(b) *Submission requirements.*

Alteration of a watercourse may be permitted only upon submission, by the applicant, of the following:

- (1) a description of the extent to which the watercourse will be altered or relocated;
- (2) a certification by a licensed professional engineer that the flood-carrying capacity of the watercourse will not be diminished;
- (3) evidence that adjacent communities, the U.S. Army Corps of Engineers, and MDE have been notified of the proposal, and evidence that the notifications have been submitted to FEMA; and
- (4) evidence that the applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of the watercourse so that the flood carrying capacity will not be diminished.

(c) *Agreement with City.*

- (1) The Floodplain Administrator may require the applicant to enter into an agreement with the Mayor and City Council specifying the maintenance responsibilities.
- (2) If an agreement is required, the permit shall be conditioned to require that the agreement be recorded on the deed of the property which shall be binding on future owners.

(City Code, 1976/83, art. 7, §5(a)(15-a); 2000, art. 7, §3-15.) (Ord. 92-134; Ord. 11-516; Ord. 14-208; Ord. 21-020.)

§ 3-16. Flood protection setback.

(a) *Watercourse with floodplain.*

- (1) A minimum 25-foot flood protection setback must be maintained from the edge of the banks of any watercourse delineated on the floodplain map or FIRM as having a floodplain.
- (2) To prevent erosion, natural vegetation must be maintained in this area.
- (3) Where natural vegetation does not exist along the water course and conditions for replanting are suitable, high priority must be given to planting trees in the setback area to stabilize banks and to enhance aquatic resources.

(b) *Stream with no floodplain.*

- (1) A minimum 25-foot flood-protection setback must be maintained from the top of the bank of any stream that has no designated floodplain.

- (2) Natural vegetation must be maintained and, if needed, trees planted.

(City Code, 1976/83, art. 7, §5(a)(15-b); 2000, art. 7, §3-16.) (Ord. 92-134; Ord. 14-208; Ord. 21-020.)

§ 3-17. Utilities and facilities.

(a) *In general.*

In the entire Floodplain District, the design, placement, and construction of all public and private utilities and facilities must meet:

- (1) the requirements of this section; and
- (2) all applicable requirements of ASCE 24.

(b) *Design and floodproofing.*

- (1) New or replacement water supply systems, on-site disposal systems, or sanitary sewage systems must be designed and floodproofed:

- (i) to eliminate or minimize infiltration of floodwaters into the systems and discharges from the systems into floodwaters; and

- (ii) to avoid impairment during flooding and minimize flood damage.

- (2) All gas, electrical, and other facility and utility systems must be located, constructed, and floodproofed to eliminate or minimize flood damage.

(c) *Sewage systems.*

- (1) All pipes connected to sewage systems must be sealed to prevent leakage.
- (2) Cesspools and seepage pits are prohibited.
- (3) Septic tanks are permitted if they are securely anchored to resist buoyant forces during inundation.

(d) *New storm drainage facilities.*

All new storm drainage facilities within or leading to or from the Floodplain District must be adequately designed, floodproofed, and installed to:

- (1) eliminate or minimize property damage resulting from the floodwaters of a base flood; and
- (2) minimize adverse environmental impacts of their installation and use.

(City Code, 1976/83, art. 7, §5(a)(16); 2000, art. 7, §3-17.)
(Ord. 88-188; Ord. 92-134; Ord. 11-516; Ord. 14-208.)

§ 3-18. Nontidal AE Zones without designated floodways.

New development is not permitted within a nontidal AE Zone that is without a designated floodway, unless it is demonstrated that the cumulative effect of all past and projected development will not increase the base-flood elevation by more than 1 foot.

(City Code, 2000, art. 7, §3-19.) (Ord. 11-516; Ord. 14-208.)

§ 3-19. Recreational vehicles.(a) *“Recreational vehicle” defined.*

In this section, “recreational vehicle” means a vehicle that is:

- (1) built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) designed to be self-propelled or to be permanently towable by a light duty truck; and
- (4) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

(b) *Treatment of recreational vehicles.*

All recreational vehicles in the Floodplain District must be:

- (1) elevated and anchored as required by applicable State and Federal laws; or

(2) fully licensed and highway ready.

(City Code, 2000, art. 7, §3-20.) (Ord. 11-516; Ord. 14-208.)

§ 3-20. Temporary structures or storage.

(a) *“Temporary structure” defined.*

In this section, “temporary structure” a structure erected, installed, and used for a period not to exceed 180 days.

(b) *Application for permit.*

In addition to the requirements of § 4-2 {“Development Permits: Applications”} of this Division I, an application for the placement or erection of a temporary structure or for the temporary storage of any goods, materials, or equipment must specify the duration of the temporary use.

(c) *Structures.*

The temporary structure:

- (1) must be designed and constructed to prevent flotation, collapse, or lateral movement resulting from hydrodynamic loads and hydrostatic loads during conditions of a base flood;
- (2) must have electric service installed in compliance with the Baltimore City electric code;
- (3) must comply with all other requirements of the applicable State and City permit authorities; and
- (4) if in a Floodway, all necessary Federal and State permits must be obtained.

(d) *Storage.*

Storage in a temporary structure may not include any hazardous materials.

(Ord. 14-208; Ord. 21-020.)

§ 3-21. Letter of Map Change.

(a) *Scope of section.*

This section applies to any property owner requesting mapping changes.

(b) *Letter of Map Change.*

A Letter of Map Change is an official FEMA determination, by letter, that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study.

(c) *Letter of Map Amendment (LOMA).*

A Letter of Map Amendment is an amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property or structure is not located in a special flood hazard area.

(d) *Letter of Map Revision (LOMR).*

A Letter of Map Revision is a revision based on technical data that may show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. A Letter of Map Revision Based on Fill (LOMR-F), is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

(e) *Conditional Letter of Map Revision (CLOMR).*

A Conditional Letter of Map Revision is a formal review and comment as to whether a proposed flood protection project or other project comply with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A Conditional Letter of Map Revision Based on Fill (CLOMR-F) is a determination that a parcel of land or proposed structure that will be elevated by fill would not be inundated by the base flood if fill is placed on the parcel as proposed or the structure is built as proposed. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; on submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA, to revise the effective FIRM.

(f) *Issuance of permits.*

If a proposed development is contingent upon a map change, no permits will be issued for the development until the Letter of Map Revision (LOMR) has been issued by FEMA. The proposed development must be compliant with all pertinent requirements of Division I of Article 7.

(Ord. 21-020.)

§ 3-22. {Reserved}***Part 3. Floodway Regulations*****§ 3-23. In general.**

In the Floodway, the following regulations and restrictions apply.
(City Code, 1976/83, art. 7, §5(b)(intro); 2000, art. 7, §3-21.) (Ord. 88-188; Ord. 14-208.)

§ 3-24. New private principal structures prohibited.

New construction of private principal structures, whether residential, commercial, or industrial, is prohibited.

(City Code, 1976/83, art. 7, §5(b)(1); 2000, art. 7, §3-22.) (Ord. 88-188; Ord. 92-134; Ord. 14-208; Ord. 14-307.)

§ 3-25. All development requires offset.

Public infrastructure and environmental projects taking place on public land that aim to improve drainage and water quality are permitted in the floodway if:

- (1) the development complies with all otherwise applicable requirements of this Division I;
- (2) the effect of that development on flood heights is fully offset by accompanying stream modification; and
- (3) the development is approved by all appropriate local authorities, the State Water & Science Administration, and the U.S. Army Corps of Engineers.

*(City Code, 1976/83, art. 7, §5(b)(2); 2000, art. 7, §3-23.)
(Ord. 88-188; Ord. 92-134; Ord. 11-516; Ord. 14-208; Ord. 21-020.)*

§ 3-26. Engineering report.

- (a) *Report required.*

Any proposal to offset the effect of development in the Floodway by construction of stream modifications must be documented by an engineering report, prepared by a licensed professional engineer, that fully evaluates the effects of the construction and is submitted with the application for a building permit.

- (b) *Basis.*

As the basis of analysis, the report must use the base flood and floodway data prepared by the Federal Emergency Management Agency.

*(City Code, 1976/83, art. 7, §5(b)(3)(1st and 2nd sens.); 2000, art. 7, §3-24.)
(Ord. 88-188; Ord. 11-516; Ord. 14-208.)*

§ 3-27. Map revision.

Any development in the floodway that proposes to increase the water surface elevation or change the delineation of the floodway requires a Conditional Letter of Map Revision and a Letter of Map Revision as described in § 3-21 {"Letter of map change"} of this subtitle.

*(City Code, 1976/83, art. 7, §5(b)(3)(2nd par.); 2000, art. 7, §3-26.)
(Ord. 88-188; Ord. 92-134; Ord. 11-516; Ord. 14-208; Ord. 21-020.)*

§ 3-28. Alternative analysis.*(a) Required for permit.*

Before a permit may be issued for any allowed development in the Floodway, the applicant must prepare and submit to the Planning Department an alternative analysis in accordance with this section.

(b) Scope of analysis.

The alternative analysis must demonstrate that:

- (1) no reasonable alternative exists outside of the Floodway;
- (2) the encroachment in the Floodway is the minimum necessary;
- (3) the development will withstand a base flood without significant damage; and
- (3) on the basis of hydrologic and hydraulic analyses, prepared by a licensed professional engineer in accordance with the requirements of the Federal Emergency Management Agency and the Maryland Department of the Environment, the development:
 - (i) will not result in any increase in the base-flood elevation; and
 - (ii) will neither increase downstream or upstream flooding or erosion nor significantly contribute to debris.

*(City Code, 1976/83, art. 7, §5(b)(3)(3rd par.) and (3-a); 2000, art. 7, §3-27.)
(Ord. 88-188; Ord. 92-134; Ord. 11-516; Ord. 14-208.)*

§ 3-29. Changes to existing structures.

EDITOR'S NOTE: This section, along with the rest of this Division I, was amended by Ordinance 14-208. Initially, however, the specific changes to this section were inadvertently omitted from the section's codification here. The following text has since been corrected to incorporate all changes made by Ord. 14-208.

(a) Substantial improvements.

(1) An existing structure in the Floodway may be substantially improved only:

- (i) by variance;
- (ii) if the structure can be brought into conformance with this Division I without increasing its existing footprint; and
- (iii) if all residential uses of the structure are provided egress outside of the base flood.

(2) Substantial improvement of a nonconforming structure, regardless of location, may only be undertaken in compliance with this Division I and any other applicable law.

(b) *Substantial damage or proposed replacement.*

- (1) In the event of substantial damage or proposed replacement, the applicant must submit an alternative analysis to determine if the structure can be relocated to a less hazardous site.
- (2) Where replacement structures cannot be relocated, they must be limited to the footprint of the previous structure.
- (3) Any replacement structure must meet all applicable requirements of this Division I.

(c) *Elevation or floodproofing.*

The modification, alteration, repair, reconstruction, or improvement of any nonconforming structure amounting to less than a substantial improvement must be elevated or floodproofed to the greatest extent possible.

(d) *Nuisance to be eliminated.*

Uses or their adjuncts that are or become nuisances may not be permitted to continue.
(*City Code, 1976/83, art. 7, §5(b)(4); 2000, art. 7, §3-28.*) (*Ord. 88-188; Ord. 92-134; Ord. 14-208.*)

§ 3-30. Prohibited structures.(a) *Manufactured homes or buildings.*

The placement of any manufactured homes or buildings is prohibited.

(b) *Fences, enclosures, etc.*

The following may not be placed or caused to be placed in the Floodway:

- (1) fences, except 2-rail or single-cable fences; and
- (2) any enclosures or materials (including fill) that:
 - (i) might impede, retard, or change the direction of the flow of water;
 - (ii) will catch or collect debris carried by water; or
 - (iii) is placed where the natural flow of stream or floodwaters would carry enclosures or materials downstream to the damage or detriment of public or private property in or adjacent to the floodplain.

(*City Code, 1976/83, art. 7, §5(b)(5), (6); 2000, art. 7, §3-29.*) (*Ord. 88-188; Ord. 14-208.*)

§§ 3-31 to 3-32. {Reserved}

Part 4. Other Subdistrict Regulations

§ 3-33. Approximated Floodplain.

(a) *In general.*

In the Approximated Floodplain (Zones A and AO), the following additional regulations apply.

(b) *Use of available data.*

In the enforcement of this Division I, the Planning Department must obtain, review, and reasonably use any base-flood elevation and floodway data available from Federal, State, or other sources, such as the U.S. Army Corps of Engineers, the Soil Conservation Service, the State Water & Science Administration, or any regional planning organization.

(c) *When data unavailable.*

When the base-flood elevation is not known, the Planning Department, in consultation with the State Water & Science Administration, must evaluate each site and establish an approximate base-flood elevation.

*(City Code, 1976/83, art. 7, §5(c); 2000, art. 7, §3-31.)
(Ord. 88-188; Ord. 11-516; Ord. 14-208; Ord. 21-020.)*

§ 3-34. Coastal Floodplain and Flood Resilience Area.

In the Coastal Floodplain and the Flood Resilience Area, the regulations specified in ASCE 24, § 4.0 {"Coastal High Hazard Areas and Coastal A Zones"} apply.

(City Code, 1976/83, art. 7, §5(d); 2000, art. 7, §3-32.) (Ord. 88-188; Ord. 14-208.)

§ 3-35. Coastal High Hazard Area.

(a) *In general.*

In the Coastal High Hazard Area (Zones V and VE):

- (1) the regulations of this section apply; and
- (2) except as otherwise provided in this Division I, the regulations specified in ASCE 24, § 4.0 {"Coastal High Hazard Areas and Coastal a Zones"} also apply.

(b) *Land below base flood level.*

No land below the level of the base flood may be developed unless the new construction or substantial improvement:

- (1) is located landward of the reach of mean high tide;
- (2) is elevated on adequately anchored pilings or columns to resist flotation, collapse, and lateral movement due to the effects of base-flood wind and water loads acting

simultaneously on all building components, and the bottom of the lowest horizontal structural members of the lowest floor (excluding the pilings or columns) is elevated to at least the flood-protection elevation;

- (3) has been certified by a licensed professional engineer or professional architect that it is securely anchored to adequately anchored pilings or columns so as to withstand velocity waters and hurricane wave wash and that it will meet the requirements of item (2) of this subsection;
- (4) has no basement and has the space below the lowest floor free of obstructions (which space may not be used for human habitation, but may be used solely for parking, building access, or limited storage) and is constructed with breakaway walls, as that term is defined in ASCE 24, § 1.2 {"Definitions"}; and
- (5) does not utilize fill for structural support of structures.

(c) *Required showings.*

No new development in the Coastal High Hazard Area may be permitted unless the applicant demonstrates that:

- (1) the encroachment into the Coastal High Hazard Area is the minimum necessary;
- (2) the development will withstand, without damage, the wind and water loads attendant a base flood; and
- (3) the development will not create an additional hazard to existing structures.

(d) *Existing structures.*

An existing nonconforming structure located on land below the level of the base flood may not be expanded, vertically, horizontally, or otherwise, unless:

- (1) the foundation system is certified by a licensed professional engineer or professional architect as capable of supporting the existing structure and the proposed improvements during a base flood; and
- (2) all construction is in full compliance with this and all other applicable laws.

(e) *Manufactured homes or buildings.*

The placement of manufactured homes or buildings is strictly prohibited.

(f) *Record management.*

For all new construction and every substantially improved structure in the Coastal High Hazard Area, the developer must submit and the Floodplain Manager must maintain on file an elevation certificate that certifies the elevation of the bottom of the lowest horizontal structural member of the lowest floor.

(g) *Recreational vehicles.*

(1) In this subsection, “recreational vehicle” has the meaning stated in § 3-19 {“Recreational vehicles”} of this subtitle.

(2) In the Coastal High Hazard Area, recreational vehicles are prohibited.
(*City Code, 1976/83, art. 7, §5(e); 2000, art. 7, §3-33.*)
(*Ord. 88-188; Ord. 92-134; Ord. 11-516; Ord. 14-208; Ord. 14-283.*)

SUBTITLE 4
DEVELOPMENT PERMITS

§ 4-1. Permit required.

A Building permit issued by the Building Official under the Baltimore City Building Code:

(1) is required for all development in the Floodplain District; and

(2) may be granted only after necessary permits from the State Water & Science Administration and all other applicable Federal, State, and City agencies have been obtained and verified by the Planning Department.

(City Code, 1976/83, art. 7, §6(intro); 2000, art. 7, §4-1.) (Ord. 88-188; Ord. 11-516; Ord. 14-208; Ord. 21-020.)

§ 4-2. Applications.

(a) *From and to whom submitted.*

The application for the permit must be submitted by the owner or authorized agent of the owner to the Building Official.

(b) *Required information.*

The application must contain, in addition to the information otherwise required by the Building Official for a building permit, the following information:

(1) the name and address of the applicant;

(2) the name and address of the owner of land on which development is proposed;

(3) the name and address of the contractor;

(4) the site location;

(5) a plan of the site showing the size and location of the proposed development, as well as any existing structures;

(6) plans, drawn to scale, that show the location, dimensions, and NAVD elevation of the site in relation to:

(i) the stream channel or shoreline, as the case may be; and

(ii) the Floodplain District delineation;

(7) a summary description of the proposed work and estimated cost; and

(8) copies of all necessary permits from the State Water & Science Administration and all other applicable Federal, State, and City agencies.

(c) *Conditional information.*

(1) Depending on the type of development or structure involved, the Floodplain Manager may require:

(i) that an elevation certificate for the proposed development be submitted with the application; and

(ii) that the following information be shown on plans submitted with the application:

(A) the size of each proposed structure and the position on the lot where it is to be constructed;

(B) the elevations of the proposed final grading and lowest floor and the existing ground and base-flood elevation, as certified by a licensed land surveyor or professional engineer; and

(C) the method of elevating the proposed structure, including details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, and the like.

(2) These plans must be prepared by a licensed professional engineer or professional architect.

(d) *Appraisals for existing structures.*

If substantial improvement to an existing structure is proposed, an appraisal must be submitted by a professional real estate appraiser of the fair market value of the existing structure, less land value.

(City Code, 1976/83, art. 7, §6(a); 2000, art. 7, §4-2.) (Ord. 88-188; Ord. 11-516; Ord. 14-208; Ord. 14-307; Ord. 21-020.)

§ 4-3. Plans for subdivisions or new development.(a) *Plan drawing required.*

(1) Every proposal for the subdivision of land or for new development must include a plan that shows the location of all existing and proposed public and private utilities, facilities, drainage structure, and road access.

(2) If the base-flood elevation has been determined by the Flood Insurance Study or other reliable source, as provided in § 2-3 {"Official map"} of this Division I, that flood elevation must be delineated on the plan.

(3) If the proposal involves more than 5 lots or more than 5 acres and the base-flood elevation has not been determined for the land area, the developer must determine the base-flood elevation and delineate that flood elevation on the plan. If hydrologic and hydraulic engineering analyses are submitted, they must be certified in accordance with the requirements of the Maryland Department of the Environment and the Federal Emergency Management Agency.

(b) *Certification and review.*

All plans must be certified by a licensed professional engineer or professional architect and reviewed by the Department of General Services to assure that:

- (1) all proposals are consistent with the need to minimize flood damage;
- (2) all necessary permits have been received from the State Water & Science Administration and appropriate Federal agencies;
- (3) all public and private utilities and facilities (including sewer, water, telephone, electric, gas, etc.) are located, constructed, and floodproofed to minimize or eliminate flood damage;
- (4) adequate drainage is provided to reduce exposure to flood hazards;
- (5) during a base flood, at least 1 access point provides safe vehicular access to and egress from the subdivision or new development; and
- (6) adequate measures have been taken to minimize adverse environmental impacts of the proposed development.

(City Code, 1976/83, art. 7, §6(b); 2000, art. 7, §4-3.) (Ord. 88-188; Ord. 11-516; Ord. 14-208; Ord. 21-020.)

§ 4-4. Conformance to codes required.

A permit may be granted only after it has been determined that the proposed work will be in conformance with the requirements of this and all other applicable laws.

(City Code, 1976/83, art. 7, §6(c); 2000, art. 7, §4-4.) (Ord. 88-188; Ord. 14-208.)

§ 4-5. Alteration of watercourse.(a) *Notices required.*

- (1) When the proposed development includes the relocation or alteration of a watercourse, evidence must be presented as part of the permit application that all adjacent communities and the State Water & Science Administration have been notified by certified mail and have approved of the proposed alteration or relocation.
- (2) Copies of these notifications must then be forwarded to the Federal Emergency Management Agency, Federal Insurance Administration.

(b) *Assurances of flood-carrying capacity.*

In addition, the developer must assure the City, in writing, that the flood-carrying capacity within the altered or relocated portion of the watercourse in question will be preserved.

(City Code, 1976/83, art. 7, §6(d); 2000, art. 7, §4-5.) (Ord. 88-188; Ord. 11-516; Ord. 14-208; Ord. 21-020.)

§ 4-6. Changes to application, permit, etc.

After the issuance of a building permit by the Building Official, no changes of any kind may be made to the application, permit, or any of the plans, specifications, or other documents submitted with the application without the written consent or approval of the Building Official.

(City Code, 1976/83, art. 7, §6(e); 2000, art. 7, §4-6.) (Ord. 88-188; Ord. 14-208.)

§ 4-7. Inspections; permit revocation.

(a) *Inspections by City and State.*

(1) During the construction period, the Building Official must inspect the premises to determine that the work is progressing in compliance with the permit and with all applicable laws.

(2) The premises are also subject to inspection by the State Water & Science Administration.

(b) *Revocation of permit.*

If the Building Official determines that the work is not in compliance with the permit and all applicable laws or that there has been a false statement or misrepresentation by the applicant, the Building Official, on instruction from the Planning Department, may revoke the permit and report that fact to the State Water & Science Administration.

(City Code, 1976/83, art. 7, §6(f); 2000, art. 7, §4-7.) (Ord. 88-188; Ord. 11-516; Ord. 14-208; Ord. 21-020.)

§ 4-8. Requisites for occupancy permit.

(a) *Elevation Certificate.*

An occupancy permit issued by the Building Official:

(1) is required for all new construction and substantial improvements in the Floodplain District; and

(2) may not be issued until the Building Official has been provided with an elevation certificate that certifies the “as-built” elevations of the new construction or substantial improvements.

(b) *Dry Floodproofing Certificate.*

When applicable, a dry floodproofing certificate is also required prior to the approval of the occupancy permit.

(City Code, 1976/83, art. 7, §6(g); 2000, art. 7, §4-8.) (Ord. 88-188; Ord. 11-516; Ord. 14-208; Ord. 21-020.)

§ 4-9. Record of permit actions.*(a) Required.*

A record of all permit actions in the Floodplain District, including all permits from applicable Federal, State, and City agencies, must be maintained by the Planning Department and must be made available on the request of the Federal Emergency Management Agency or the State Water & Science Administration during periodic assessments of Baltimore City's participation in the National Flood Insurance Program.

(b) Contents.

This record must include, at a minimum:

- (1) the date the permit was issued;
- (2) the "as-built" lowest floor elevation of all new construction or substantial improvement;
- (3) a copy of all other elevation certificates submitted under this Division I;
- (4) the issuance date of any occupancy permit; and
- (5) any map amendments issued by the Federal Emergency Management Agency.

(City Code, 1976/83, art. 7, §6(h); 2000, art. 7, §4-9.) (Ord. 88-188; Ord. 11-516; Ord. 14-208; Ord. 21-020.)

**SUBTITLE 5
FLOODPLAIN VARIANCES**

§ 5-1. In general.

Applications for variances may be considered by the Planning Department, after a review by the City agencies responsible for stormwater management and erosion control, for the following:

- (1) functionally dependent uses;
- (2) all necessary City utilities in the Floodway or the Coastal High Hazard Area; and
- (3) substantial improvements to an existing structure in the Floodway.

(City Code, 1976/83, art. 7, §7(a); 2000, art. 7, §5-1.) (Ord. 88-188; Ord. 92-134; Ord. 14-208; Ord. 21-020.)

§ 5-2. Prohibited variances.

A variance may not be granted for:

- (1) the placement of fill in the Floodway or the Coastal High Hazard Area unless approved by appropriate Federal and State agencies;
- (2) new construction of any principal structure in the Floodway or the Coastal High Hazard Area; or
- (3) manufactured homes or buildings within the Floodway and Coastal High Hazard Area.

(City Code, 1976/83, art. 7, §7(b); 2000, art. 7, §5-2.) (Ord. 88-188; Ord. 14-208.)

§ 5-3. Considerations; Findings of fact.

- (a) *Request for MDE comments.*

The Floodplain Manager must:

- (1) request the NFIP State Coordinator, Maryland Department of the Environment, to comment on variance applications; and
- (2) submit those comments, when received, to the Director of the Planning Department.

- (b) *Factors to consider.*

In considering a variance application, the Planning Department must consider and make findings of fact on all evaluations, relevant factors, and requirements specified in this Division I, including:

- (1) the danger that materials may be swept onto other lands to the injury of others;
- (2) the danger to life and property due to flooding or erosion damage;

- (3) the susceptibility of the proposed development and its contents to flood damage and the effect of that damage on the individual owner;
- (4) the importance of the services to the community provided by the proposed development;
- (5) the availability of alternative locations for the proposed use that are not subject to or are subject to less flooding or erosion damage;
- (6) the need of a waterfront location for the proposed use and whether the proposed use is a functionally dependent use;
- (7) the compatibility of the proposed use with existing and anticipated development;
- (8) the relationship of the proposed use to the comprehensive plan for that area;
- (9) the safety of access to the property in times of flood for passenger vehicles and emergency vehicles;
- (10) expected heights, velocity, duration, rate of rise, and sediment transport of floodwaters and the effects of wave action, if applicable, expected at the site;
- (11) the costs of providing government services during and after flood conditions, including maintenance and repair of public utilities and facilities, such as streets, bridges, and sewer, gas, electrical, and water systems;
- (12) the comments provided by NFIP State Coordinator; and
- (13) the intent of environmental projects taking place on public land, including associated benefits and co-benefits.

(Ord. 14-208; Ord. 21-020.)

§ 5-4. Limitations on granting variances.

The Planning Department may make an affirmative decision on a variance request only on:

- (1) a showing of good and sufficient cause;
- (2) a determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property (for which determination, increased cost or inconvenience of meeting the requirements of this Division I does not constitute an “exceptional hardship”);
- (3) a determination that the granting of a variance for development within a designated floodway, or within a Special Flood Hazard Area with base-flood elevations but no designated floodway, will not result in increased flood heights beyond that which is allowed by this Division I;

(4) a determination that the granting of a variance will not result in additional threats to public safety, extraordinary public expense, nuisances, fraud or victimization of the public, or conflict with existing local laws;

(5) a determination that the structure or other development is protected by methods to minimize flood damage; and

(6) a determination that the variance is the minimum necessary to afford relief, considering the flood hazard.

(City Code, 1976/83, art. 7, §7(c); 2000, art. 7, §5-3.) (Ord. 88-188; Ord. 11-516; Ord. 14-208.)

§ 5-5. Applications.

(a) *In general.*

The application for a variance must be submitted to the Planning Department and, to the greatest extent possible, must comply with the provisions of this Division I.

(b) *Notices to applicant.*

(1) The Planning Department must notify the applicant, in writing:

(i) of the increased premium rates for flood insurance; and

(ii) that construction below the level of the base flood increases risks to life and property.

(2) This notification must be maintained as part of the record required in § 5-7 {"Record of variance actions"} of this subtitle.

(City Code, 1976/83, art. 7, §7(e), (f); 2000, art. 7, §5-5.) (Ord. 88-188; Ord. 11-516; Ord. 14-208.)

§ 5-6. Agreement not to convert accessory structures.

The owner of any accessory structure for which a variance is granted must sign an agreement that the structure will never be converted to any use other than for parking vehicles or limited storage, and the deed restriction must be recorded with the Land Records.

(City Code, 1976/83, art. 7, §7(g); 2000, art. 7, §5-6.) (Ord. 88-188; Ord. 14-208; Ord. 21-020.)

§ 5-7. Record of variance actions.

A record of all variance actions, including the justification for their issuance, must be:

(1) maintained by the Planning Department;

(2) included in the bi-annual report submitted to the Federal Insurance Administrator; and

(3) available on request to the Federal Emergency Management Agency or its authorized agent during periodic assessments of Baltimore City's participation in the National Flood Insurance Program.

(City Code, 1976/83, art. 7, §7(h); 2000, art. 7, §5-7.) (Ord. 88-188; Ord. 14-208.)

§ 5-8. {Reserved}**§ 5-9. Notice on deed.**

Notice of the flood hazard and the variance action must be placed on the deed that conveys title to land on which construction has occurred under this subtitle.
(*City Code, 1976/83, art. 7, §7(j); 2000, art. 7, §5-9.*) (*Ord. 88-188; Ord. 92-134; Ord. 14-208.*)

**SUBTITLE 6
ADMINISTRATION**

§ 6-1. Municipal non-liability.

The granting of a permit or approval is not a representation, guarantee, or warranty of any kind and does not create or impose any liability on the City, its officials, employees, or agents. *(City Code, 1976/83, art. 7, §9 ; 2000, art. 7, §6-1.) (Ord. 88-188; Ord. 14-208.)*

§ 6-2. Administrative fees.

(a) *City may impose.*

The City may impose additional application fees commensurate with those costs incurred in the processing, review, and evaluation of permit applications for development in Floodplain District.

(b) *Costs included.*

The costs covered by the fees may include:

- (1) consultant fees for certification of as-built condition of structures;
- (2) Floodplain District and subdistrict delineations;
- (3) environmental impact characterizations;
- (4) staff assignments; and
- (5) other related costs.

(City Code, 1976/83, art. 7, §10 ; 2000, art. 7, §6-2.) (Ord. 88-188; Ord. 14-208.)

**SUBTITLE 7
ENFORCEMENT**

§ 7-1. Compliance required.

(a) *In general.*

No structure or other development may be located, erected, constructed, reconstructed, improved, repaired, extended, converted, enlarged, or altered except in full compliance with this Division I and all other applicable Federal, State, and City laws, rules, and regulations.

(b) *Noncompliance presumed without documentation.*

A structure or other development without the required design certifications, elevation certificates, or other evidence of compliance is presumed to be noncompliant with and in violation of this Division I until the required documentation is provided.

(c) *Noncompliant structures as public nuisance.*

Any structure or other development that is located, erected, constructed, reconstructed, improved, repaired, extended, converted, enlarged, or altered in violation of this Division I or of any other applicable Federal, State, and City law, rule, or regulation is declared to be a public nuisance and abatable as such.

(City Code, 1976/83, art. 7, §8 (3rd par.) ; 2000, art. 7, §7-1.) (Ord. 88-188; Ord. 11-516; Ord. 14-208; Ord. 14-307.)

§ 7-2. {Reserved}

§ 7-3. Violation notice; Stop work order.

(a) *In general.*

If the Floodplain Manager finds that any development or person has failed to comply with or otherwise has violated any provision of this Division I, any provision of a rule or regulation adopted under this Division I, or any term or condition of a permit issued under this Division I, the Floodplain Manager may issue a violation notice and, for ongoing activities, a stop work order to:

- (1) the person responsible for the violation or that person's authorized agent;
- (2) the developer or owner of the development or that person's authorized agent; and
- (3) on-site personnel.

(b) *Service.*

The violation notice must be served:

- (1) in person;

- (2) by certified or registered mail; or
- (3) if the identity or whereabouts of the person responsible, developer, or owner is unknown, by posting a copy of the notice in a conspicuous place in or on the property.

(c) *Contents.*

The violation notice must:

- (1) describe the nature of the violation;
- (2) describe the remedial action needed to correct the violation; and
- (3) specify a reasonable period of time within which to complete the remedial action.

(Ord. 14-208.)

§ 7-4. Enforcement of notice or order.

(a) *In general.*

If a violation is not promptly discontinued or abated, or if the violation notice or order is not complied with promptly, the Floodplain Manager may institute or cause to be instituted any appropriate legal proceeding.

(b) *Types of proceedings.*

Enforcement proceedings may include:

- (1) injunctive or other equity proceedings;
- (2) criminal prosecution, including a prosecution initiated by a prepayable criminal citation under City Code Article 19, § 71-2 {"Prepayable criminal citations"}; and
- (3) administrative proceedings, including one initiated by a prepayable environmental citation under City Code Article 1, § 40-14 {"Violations to which subtitle applies"}.

(c) *Remedies not exclusive.*

In pursuing a violation, the Floodplain Manager may use any 1 or more available remedies or enforcement actions. The initiation of any 1 remedy or enforcement action does not preclude pursuing any other remedy or enforcement action authorized by law. Neither damages, irreparable injury, nor the lack of an adequate remedy at law is a prerequisite to enforcement in equity.

(Ord. 14-208.)

SUBTITLE 8
ADMINISTRATIVE AND JUDICIAL REVIEW

§ 8-1. Administrative review – In general.

(a) *Right of appeal.*

Any person aggrieved by the action of the Floodplain Manager or other official charged with the enforcement of this Division I, whether as the result of the disapproval of an application, the issuance of a violation notice, an alleged failure to properly enforce this Division I, or otherwise:

- (1) may appeal the action to the Planning Director; and
- (2) on timely request, is entitled to a hearing on that appeal..

(b) *When and how taken.*

The appeal must:

- (1) be in writing;
- (2) state clearly the grounds on which the appeal is based;
- (3) if the person aggrieved desires a hearing on the appeal, contain an express statement to that effect; and
- (4) be filed with the Director within 10 days of the action in dispute.

(Ord. 14-208; Ord. 14-307.)

§ 8-2. Administrative review – Delegation of hearing authority.

(a) *In general.*

Hearings may be conducted by:

- (1) the Planning Director; or
- (2) a hearing officer designated by the Planning Director.

(b) *Scope of delegation.*

The Director may delegate to a hearing officer the authority to issue:

- (1) proposed or final findings of fact;
- (2) proposed or final conclusions of law;
- (3) proposed or final findings of fact and conclusions of law;

(4) proposed or final orders; or

(5) the final administrative decision of the Department.

(Ord. 14-208.)

§ 8-3. Administrative review – Conduct of hearing.

(a) *Notice.*

(1) The Planning Director must provide all parties reasonable written notice of the hearing.

(2) The notice must state:

(i) the date, time, place, and nature of the hearing;

(ii) the right of a party to be represented, at the party’s own expense, by an attorney or, if permitted by law, other representative;

(iii) the right of a party to call witnesses and submit documents or other evidence under § 8-4 {“Administrative review – Evidence”} of this subtitle; and

(iv) that failure to appear for the scheduled hearing may result in an adverse action against the party.

(b) *Hearings to be open and informal.*

Except as otherwise provided by law or by rule or regulation of the Planning Director, all hearings must be:

(1) open to the public; and

(2) conducted in an orderly but informal manner.

(Ord. 14-208.)

§ 8-4. Administrative review – Evidence.

(a) *In general.*

Except as otherwise provided by this section or by rule or regulation of the Planning Director, formal rules of evidence and trial procedures do not apply.

(b) *Right to submit.*

On a genuine issue of fact, a party is entitled to:

(1) call witnesses;

(2) offer evidence, including rebuttal evidence;

- (3) cross-examine any witness that another party or the Planning Director calls; and
- (4) present summation and argument.

(c) *Scope.*

The Planning Director or hearing officer:

- (1) may admit probative evidence that reasonable and prudent individuals commonly accept in the conduct of their affairs and give probative effect to that evidence;
- (2) may not exclude evidence solely on the basis that it is hearsay;
- (3) must give effect to a privilege recognized by law;
- (4) may receive documentary evidence in the form of copies or excerpts or through incorporation by reference;
- (5) may take official notice of a fact that is judicially noticeable or that is general, technical, or scientific and within the specialized knowledge of the Planning Department; and
- (6) may exclude evidence that is:
 - (i) incompetent;
 - (ii) irrelevant;
 - (iii) immaterial; or
 - (iv) unduly repetitious.

(Ord. 14-208.)

§ 8-5. Administrative review – Final decision.

(a) *Form and contents.*

A final decision must:

- (1) be in writing; and
- (2) contain separate statements of:
 - (i) the findings of fact;
 - (ii) the conclusions of law; and
 - (iii) the decision or order.

(b) *Distribution.*

A copy of the final decision must be mailed or delivered to each party or that party's attorney of record.

(Ord. 14-208; Ord. 14-307.)

§ 8-6. Administrative appeals.

(a) *Appeal to Commission.*

An applicant who is aggrieved by the final site plan decision of the Director of Planning may appeal that decision to the Planning Commission.

(b) *When filed.*

Appeals must be filed within 30 days of the Planning Director's final decision, as specified in § 8-5 {"Administrative review- Final decisions"} of this subtitle.

(c) *Hearing.*

The Planning Commission must review the Director's decision at a public hearing held within 45 days of receiving the appeal.

(Ord. 21-020.)

§ 8-7. Judicial and appellate review.

(a) *Judicial review.*

A party aggrieved by a final decision of the Planning Department under this subtitle may seek judicial review of that decision by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules of Procedure.

(b) *Appellate review.*

A party to the judicial review may appeal the court's final judgment to the Court of Special Appeals in accordance with the Maryland Rules of Procedure.

(Ord. 14-208; Ord. 19-332.)

**SUBTITLE 9
PENALTIES**

§ 9-1. In general.

(a) *In general.*

Any person who violates or fails to comply with any provision of this Division I, any provision of a rule or regulation adopted under this Division I, or any term or condition of a permit issued under this Division I is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than \$500 for each violation.

(City Code, 1976/83, art. 7, §8 (part); 2000, art. 7, §7-5(a).) (Ord. 88-188; Ord. 11-516; Ord. 14-208.)

§ 9-2. Department of Housing and Community Development to enforce.

This Division I may be enforced by the Department of Housing and Community Development in the manner provided in § 104 {“Duties and powers of Building Official”} of the Baltimore City Building Code.

(Ord. 21-020.)

§ 9-3. Each day a separate offense.

(a) *In general.*

Every day that a violation continues is a separate offense.

(b) *Prima facie proof of continuation.*

Proof that a violation exists on any date that follows the issuance of a violation notice constitutes prima facie evidence that the violation has continued throughout the intervening period of time.

(City Code, 1976/83, art. 7, §8 (part); 2000, art. 7, §7-5(b).) (Ord. 88-188; Ord. 11-516; Ord. 14-208; Ord. 21-020.)

§ 9-4. Penalty not a substitute for remediation.

(a) *In general.*

The imposition of a fine or penalty for a violation or noncompliance does not excuse the violation or noncompliance nor permit it to continue.

(b) *Remediation still required.*

All offenders are required to correct or remedy the violation or noncompliance within a reasonable time.

(c) *Penalty not substitute for correcting noncompliance.*

(1) The imposition of a fine or penalty for a violation or noncompliance does not excuse the violation or noncompliance nor permit it to continue.

- (2) All offenders are required to correct or remedy the violation or noncompliance within a reasonable time.

City Code, 1976/83, art. 7, §8 (part); 2000, art. 7, §7-5(c.) (Ord. 88-188; Ord. 11-516; Ord. 14-208; Ord. 21-020.)

EDITOR’S NOTE ON 2021 REVISION: Section 4 of Ord. 21-020 sets forth the general transition rules for the 2021 revised Division I as follows:

“SECTION 4. AND BE IT FURTHER ORDAINED, That:

- (a) this Ordinance applies to all development for which a permit application is filed (or required to be filed) on or after the effective date of this Ordinance *{i.e., May 21, 2021}*;
- (b) except as expressly provided to the contrary in this Ordinance, any transaction, case, proceeding, investigation, or other matter validly begun before *{May 21, 2021}* and affected by or flowing from any law amended or repealed by this Ordinance, and any right, duty, or interest flowing from any ordinance amended or repealed by this Ordinance, remains valid after *{May 1, 2021}* and may be terminated, completed, enforced, or prosecuted as required or permitted by the prior law as though the amendment or repeal has not occurred; and
- (c) if any change in nomenclature involves a change in name or designation of any City agency or official, the successor agency or official has all the powers and obligations granted the predecessor agency or official.”

SUBTITLES 10 TO 20
{RESERVED}

DIVISION II: STORMWATER MANAGEMENT

EDITOR'S NOTE: Ordinance 10-277 substantially amended this Division II, effective May 4, 2010.

**SUBTITLE 21
DEFINITIONS; GENERAL PROVISIONS****§ 21-1. Definitions.****(a) *In general.***

In this Division II, the following terms have the meaning indicated.

(b) *Adverse impact.*

“Adverse impact” means any effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics, or usefulness for human or natural uses, that:

(1) is deleterious; and

(2) either:

(i) is or potentially can be harmful or injurious to human health, welfare, or safety, to property, or to biological productivity, diversity, or stability; or

(ii) unreasonably interferes with the enjoyment of life or property, including outdoor recreation.

(b-1) *Approval.*

(1) *In general.*

“Approval” means a documented action by the Department following a comprehensive review to determine and acknowledge that submitted materials demonstrate compliance with the requirements of a specified stage in a project’s process.

(2) *Exclusions.*

“Approval” does not include an acknowledgment by the Department that material has been received for review.

(c) *Best management practice .*

“Best management practice” means a structural or nonstructural practice designed to store temporarily or treat stormwater runoff in order to mitigate flooding, reduce pollution, and provide other amenities.

(d) *Channel protection storage volume.*

“Channel protection storage volume” means the volume, calculated in accordance with the State’s Design Manual, used to design structural management practices to control stream channel erosion.

(e) *Department.*

“Department” means the Baltimore City Department of Public Works.

(e-1) *Design Guidelines, City.*

“Design Guidelines, City” means the 2010 Baltimore City Stormwater Design Guidelines, and all subsequent additions, revisions, and amendments to it, as adopted by the Department and approved by the State Water Management Administration.

(f) *Design Manual.*

“Design Manual, State” means the 2000 Maryland Stormwater Design Manual and all subsequent additions, revisions, and amendments to it.

(g) *Develop.*

“Develop” means to change the runoff characteristics of a parcel of land in conjunction with residential, commercial, industrial, or institutional construction or alteration.

(h) *Disturb.*

(1) “Disturb” means to:

- (i) clear or remove trees and brush from land;
- (ii) grade, stockpile, remove, excavate, scarify, or fill soil;
- (iii) grub or remove stumps; or
- (iv) strip or remove vegetative surface cover.

(2) “Disturb” does not include:

- (i) mowing of grass;
- (ii) trimming of trees; or
- (iii) other maintenance activities that do not create unvegetated ground.

(i) *Drainage area.*

“Drainage area” means an area, measured in a horizontal plane, that:

- (1) contributes runoff to a single point; and
- (2) is enclosed by a ridge line.

(i-1) *Environmental site design.*

“Environmental site design” means using small-scale stormwater management practices, nonstructural techniques, and better site planning that, in accordance with methods specified in the State’s Design Manual, are used to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources.

(j) *Extreme flood volume.*

“Extreme flood volume” means the storage volume required to control infrequent, large storm events in which overbank flows reach or exceed the boundaries of the 100- year floodplain.

(j-1) *Impervious area.*

“Impervious area” means any surface that does not allow stormwater to infiltrate into the soil surface.

(k) *Includes; including.*

“Includes” or “including” means by way of illustration and not by way of limitation.

(l) *Infiltration.*

“Infiltration” means the passage or movement of water into the soil surface.

(l-1) *Maximum extent practicable.*

“Maximum extent practicable” means stormwater management systems designed so that:

- (1) all reasonable opportunities for using environmental site design planning techniques and treatment practices are exhausted; and
- (2) a structural best management practice is implemented only where absolutely necessary.

(m) *Off-site ... management.*

“Off-site ... management” means the design and construction of a facility necessary to control stormwater from more than one development.

(n) *On-site ... management.*

“On-site ... management” means the design and construction of systems necessary to control stormwater within one development.

(o) *Overbank flood protection volume.*

“Overbank flood protection volume” means the volume, calculated in accordance with the State’s Design Manual, controlled by structural practices to prevent an increase in the frequency of out of bank flooding generated by development.

(p) *Person.*

(1) *In general.*

“Person” means:

- (i) an individual;
- (ii) a partnership, firm, association, corporation, or other entity of any kind; or
- (iii) a receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind.

(2) *Inclusions.*

“Person” includes, except as used in § 28-13 {“Criminal penalties”} of this Division II:

- (i) the Federal government;
- (ii) the State government;
- (iii) any county, municipal corporation, or other political subdivision of the State; or
- (iv) any of the entities, instrumentalities, or other units of these governments.

(p-1) *Planning techniques.*

“Planning techniques” means a combination of strategies employed early in project design to reduce the impact from development and to incorporate natural features into a stormwater management plan.

(q) *Qualitative Control.*

See “Stormwater management – Qualitative control”.

(r) *Quantitative Control.*

See “Stormwater management – Quantitative control”.

(s) *Recharge volume.*

“Recharge volume” means that portion of the water quality volume, calculated in accordance with the State’s Design Manual, used to maintain groundwater recharge rates at development sites.

(t) *Redevelopment.*

“Redevelopment” means any construction, alteration, or improvement that:

- (1) disturbs more than 5,000 square feet of land;
- (2) is performed on a site where:
 - (i) the existing land use is commercial, industrial, institutional, or multi-family residential; and
 - (ii) the existing impervious area of the site is more than 40% of the total area of the site.

(t-1) *Retrofitting.*

“Retrofitting” means the implementation of environmental site design practices, the construction of a structural best management practice, or the modification of an existing structural best management practice in a previously developed area to improve water quality over current conditions.

(u) *Sediment.*

“Sediment” means soils or other surficial materials that are the product of erosion and are transported or deposited by the action of wind, water, ice, gravity, or artificial means.

(v) *Site.*

“Site” means any tract, lot, parcel of land, or area of construction, or combination of tracts, lots, parcels of land, or areas of construction that are:

- (1) in one ownership; or
- (2) in diverse ownership, but where:
 - (i) development is to be performed as part of a unit, subdivision, or project; and
 - (ii) either:
 - A. the tracts, lots, or parcels of land are contiguous; or
 - B. the development is a cooperative public-private undertaking.

(w) *Stabilization.*

“Stabilization” means the prevention of soil movement by any of various vegetative or structural means.

(w-1) *Stormwater.*

“Stormwater” means water that originates from a precipitation event.

(w-2) *Stormwater management system.*

“Stormwater management system” means a system of natural areas, environmental site design practices, stormwater management practices, and any structure through which stormwater flows, infiltrates, or discharges from a site.

(x) *Stormwater management – Qualitative control.*

(1) *In general.*

“Stormwater management” means, for qualitative control, a system of vegetative, structural, and nonstructural practices, natural areas, environmental site design practices, stormwater management measures, and any other structure that reduces or eliminates pollutants that might otherwise be carried by surface runoff.

(2) *Inclusions.*

“Stormwater management” includes, for qualitative control, design parameters for:

- (i) water quality volume; and
- (ii) recharge volume.

(y) *Stormwater management – Quantitative control.*

(1) *In general.*

“Stormwater management” means, for quantitative control, a system of vegetative, structural, and nonstructural practices, natural areas, environmental site design practices, stormwater management measures, and any other structure that controls the increased volume and rate of surface runoff caused by man-made changes to the land.

(2) *Inclusions.*

“Stormwater management” includes, for quantitative controls, design parameters for:

- (i) channel protection storage volume;
- (ii) overbank flood protection volume; and
- (iii) extreme flood volume.

(z) *{Vacant}*

(aa) *Watershed.*

“Watershed” means the total drainage area contributing runoff to a single point.

(bb) *Water quality volume.*

“Water quality volume” means the volume needed, calculated in accordance with the State’s Design Manual, to capture and treat the runoff from 90% of the average annual rainfall at a development site.

(cc) *Wetlands.*

“Wetlands” means an area that has saturated soils or periodic high groundwater levels and vegetation adapted to wet conditions and periodic flooding.

(Ord. 02-367; Ord. 04-672; Ord. 10-277; Ord. 13- 095.)

§ 21-2. Rules of construction.(a) *In general.*

In interpreting and applying this Division II, the following rules of construction apply.

(b) *Captions or headings.*

The captions or headings of the various sections and subsections:

- (1) are for convenience of reference only, intended to summarize the statutory provisions that follow; and
- (2) are not law and are not to be taken as affecting the meaning or effect of the law.

(c) *Conflicting provisions.*(1) *Division sets minimum requirements.*

In their interpretation and application, the provisions of this Division II must be taken to be the minimum requirements for the promotion of the public health, safety, and general welfare.

(2) *Most restrictive provision governs.*

If any condition imposed by a provision of this Division II is either more or less restrictive than a comparable condition imposed by any other provision of this Division or by any other law, rule, or regulation of any kind, the condition that is the more restrictive governs.

(d) *Gender.*

Words denoting one gender include and apply to the other genders as well.

(e) *Mandatory, prohibitory, and permissive terms.*

(1) *Mandatory terms.*

“Must” and “shall” are each mandatory terms used to express a requirement or to impose a duty.

(2) *Prohibitory terms.*

“Must not”, “may not”, and “no ... may” are each mandatory negative terms used to establish a prohibition.

(3) *Permissive terms.*

“May” is permissive.

(f) *Number.*

The singular includes the plural and vice versa.

(g) *References to other laws.*

Whenever a provision of this Division II refers to any part of the City Code or to any other law, the reference applies to any subsequent amendment of the law referred to, unless the referring provision expressly provides otherwise.

(h) *Severability.*

All provisions of this Division II are severable. If a court determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid or that the application of any part of the provision to any person or circumstances is invalid, the remaining provisions and the application of those provisions to other persons or circumstances are not affected by that decision.

(i) *Time computations.*

(1) *Computation of time after an act, event, or default.*

(i) In computing any period of time prescribed by this Division II, the day of the act, event, or default after which the designated period of time begins to run is not included.

(ii) If the period of time allowed is more than 7 days, intermediate Saturdays, Sundays, and legal holidays are counted.

(iii) If the period of time allowed is 7 days or less, intermediate Saturdays, Sundays, and legal holidays are not counted.

(iv) The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Computation of time before a day, act, or event.*

- (i) In determining the latest day for performing an act that is required by this Division II to be performed a prescribed number of days before a certain day, act, or event, all days preceding that day, including intervening Saturdays, Sundays, and legal holidays, are counted in the number of days so prescribed.
- (ii) The latest day is included in the determination unless it is a Saturday, Sunday, or legal holiday, in which event the latest day is the first preceding day that is not a Saturday, Sunday, or legal holiday.

*(Ord. 02-367.)***§ 21-3. Incorporation by reference.**(a) *In general.*

For purposes of this Division II, the following documents are incorporated by reference:

- (1) the State's Design Manual, which serves as the official City guide for stormwater management principles, methods, and practices;
- (2) the USDA Natural Resources Conservation Service Maryland Conservation Practice Standard Pond Code 378 (January 2000); and
- (3) the City's Design Guidelines, which serve to supplement the State's Design Manual as it relates to stormwater management principles, methods, and practices in the City.

(b) *Defined terms.*

- (1) Terms used in the State's Design Manual have the meanings ascribed to them in the Design Manual or otherwise by the State Water Management Administration.
- (2) These terms include, among others:

- (i) "Agricultural land management practices".
- (ii) "Aquifer".
- (iii) "Detention structure".
- (iv) "Direct discharge".
- (v) "Extended detention".
- (vi) "Grade".

(Ord. 02-367; Ord. 10-277.)

§ 21-4. Purpose, goal, etc.

(a) *Purpose.*

The purpose of this Division II is to:

- (1) protect, maintain, and enhance the public health, safety, and general welfare through the management of stormwater;
- (2) protect public and private property from damage;
- (3) reduce the adverse effects of development;
- (4) reduce stream channel erosion, pollution, siltation, and sedimentation;
- (5) reduce local flooding;
- (6) restore, enhance, and maintain the chemical, physical, and biological integrity of streams; and
- (7) maintain after development, as nearly as possible, pre-development runoff characteristics.

(b) *Goal.*

The goal of this Division II is to manage stormwater by:

- (1) using environmental site design to the maximum extent practicable; and
- (2) using structural best management practices and alternative practices only when necessary.

(c) *Authority.*

This Division II is adopted under the authority of State Environment Article, Title 4, Subtitle 2.

(d) *Application.*

This Division II applies to all new and redevelopment projects that have not received final approval for erosion and sediment control and stormwater management plans by May 4, 2010. (Ord. 02-367; Ord. 10-277.)

§ 21-5. Administration.

(a) *In general.*

The Baltimore City Department of Public Works is responsible for administering and enforcing this Division II.

(b) *Rules and regulations.*

Subject to Title 4 {“Administrative Procedure Act – Regulations”} of the City General Provisions Article, the Department may adopt rules and regulations to carry out this Division II.

Editor’s Note: By authority of Ordinance 20-431, Section 5, the Director of Legislative Reference, in consultation with the Law Department, has conformed the text of this subsection to refer to and reflect the requirements of the recently-enacted Administrative Procedure Act that, effective January 15, 2021, governs the proposal, adoption, and publication of administrative rules and regulations.

(Ord. 02-367; Text Conformed 02/16/21.)

§ 21-6. Scope.(a) *In general.*

Except as specified in subsection (b) of this section, this Division II applies to all development within the corporate limits of Baltimore City.

(b) *Exemptions.*

The following activities are exempt from this Division II:

- (1) agricultural land management practices that employ methods and procedures to further crop and livestock production and conservation to conserve related soil and water resources;
- (2) a single-family detached dwelling if:
 - (i) the activity does not disturb more than 2,500 square feet of land area; and
 - (ii) the tract, lot, or parcel has not previously been the subject of an exemption under this item (2);
- (3) construction, grading, or development (other than for single-family dwellings) if:
 - (i) the activity does not disturb more than 5,000 square feet of land; and
 - (ii) the tract, lot, or parcel has not previously been the subject of an exemption under this item (3);
- (4) a single-family dwelling that disturbs more than 2,500 square feet of land area but less than 5,000 square feet of land area, subject to the payment of a “small-project” fee established under § 25-2 {“Fees”} of this Division II; and
- (5) development that the State Water Management Administration determines will be regulated under specific state laws that provide for managing stormwater runoff.

(Ord. 02-367; Ord. 10-277.)

**SUBTITLE 22
STORMWATER MANAGEMENT PLANS**

§ 22-1. Phased plans required.

Except as otherwise expressly provided in this Division II, no person may develop any land unless:

(1) the project is a single-lot residential construction that establishes stormwater management measures in accordance with a standard stormwater management plan prepared in accordance with the City’s Design Guidelines and approved by the Department; or

(2) the person:

(i) establishes stormwater management measures that control or manage runoff from the development; and

(ii) incorporates those measures into phased stormwater management plans approved by the Department.

(Ord. 02-367; Ord. 10-277.)

§ 22-2. Design and construction.

These stormwater management measures must:

(1) meet the requirements of the State’s Design Manual, this Division II, and the City’s Design Guidelines; and

(2) be constructed according to:

(i) an approved plan for new development; or

(ii) the policies stated in § 23-7 of this Division II for redevelopment.

(Ord. 02-367; Ord. 10-277.)

§ 22-3. Minimum control requirements.

(a) *In general.*

The minimum control requirements for these management measures are as provided in this section and the State’s Design Manual.

(b) *Volume sizing criteria.*

(1) The criteria in the State’s Design Manual for environmental site design to the maximum extent practicable and the use of environmental site design planning techniques and treatment practices must be exhausted before any structural best management practice or alternative practice is implemented.

(2) Stormwater management plans for development projects subject to this Division II must be designed using environmental site design sizing criteria, recharge volume, water quality volume, and channel protection storage volume criteria according to the State's Design Manual. The maximum-extent-practicable standard is met when channel stability is maintained, predevelopment groundwater recharge is replicated, nonpoint source pollution is minimized, and structural stormwater management practices or alternative practices are used only if determined to be absolutely necessary.

(c) *10-year frequency storm event.*

Runoff from the 10-year frequency storm event must be controlled in accordance with the State's Design Manual if the Department determines that additional stormwater management is necessary because historical flooding problems exist and downstream floodplain development and conveyance system design cannot be controlled.

(d) *Additional control requirements.*

The Department may require more than the minimum control requirements of the State's Design Manual if:

- (1) hydrologic or topographic conditions warrant; or
- (2) flooding, stream channel erosion, or water quality problems exist downstream from a proposed project.

(e) *Alternative minimum controls.*

With the approval of the State Water Management Administration, the Department may adopt alternative minimum control requirements that will:

- (1) implement environmental site design to the maximum extent practicable; and
- (2) control flood damages, accelerated stream erosion, water quality, and sedimentation.

(f) *Consistency with FHMA plans.*

Where applicable, stormwater management and development plans must be consistent with watershed management plans and flood management plans approved by the State Water Management Administration under the Flood Hazard Management Act of 1976.

(Ord. 02-367; Ord. 10-277.)

§ 22-4. Environmental site design; Structural practices.

(a) *In general.*

(1) In designing stormwater management measures, the following must be used, either alone or in combination:

- (i) environmental site design techniques and practices; and

- (ii) structural practices.
- (2) The applicant must demonstrate that environmental site design has been implemented to the maximum extent practicable before the use of a structural best management practice or alternative practice may be considered in developing the stormwater management plan.
 - (3) Stormwater management measures, their selection, basic design criteria, methodologies, and construction specifications:
 - (i) must comply with the State's Design Manual and the City's Design Guidelines; and
 - (ii) are subject to approval of the Department and the State Water Management Administration.
 - (4) Environmental site design techniques and practices and structural stormwater management measures used to satisfy the minimum control requirements of § 22-3 of this subtitle:
 - (i) must have easements, as described in § 25-1(b)(1) of this Division II, recorded in the land records of Baltimore City;
 - (ii) must have a recorded inspection and maintenance agreement, as described in § 27-3 of this Division II; and
 - (iii) may not be altered without the Department's prior approval.
- (b) *Environmental site design planning techniques and practices.*
- (1) The following planning techniques must be applied according to the State's Design Manual to satisfy the applicable minimum control requirements of § 22-3 of this subtitle:
 - (i) preserving and protecting natural resources;
 - (ii) conserving natural drainage patterns;
 - (iii) minimizing impervious area;
 - (iv) reducing runoff volume;
 - (v) using environmental site design practices to maintain 100% of the annual predevelopment groundwater recharge volume;
 - (vi) using green roofs, permeable pavement, reinforced turf, and other alternative surfaces;
 - (vii) limiting soil disturbance, mass grading, and compaction;
 - (viii) clustering development; and
 - (ix) other practices approved by the Department.

(2) The following environmental site design treatment practices must be designed according to the State's Design Manual and the City's Design Guidelines to satisfy the applicable minimum control requirements established in § 22-3 of this subtitle:

- (i) disconnection of rooftop runoff;
- (ii) disconnection of non-rooftop runoff;
- (iii) sheetflow to conservation areas;
- (iv) rainwater harvesting;
- (v) submerged gravel wetlands;
- (vi) landscape infiltration;
- (vii) infiltration berms;
- (viii) dry wells;
- (ix) micro-bioretenion;
- (x) rain gardens;
- (xi) swales;
- (xii) enhanced filters; and
- (xiii) other practices approved by the Department.

(3) The use of environmental site design planning techniques and treatment practices may not conflict with existing State or local laws, ordinances, regulations, or policies.

(c) *Structural stormwater management measures.*

(1) The following structural stormwater management practices must be designed to satisfy the applicable minimum control requirements of § 22-3 of this subtitle.

- (i) stormwater management ponds;
- (ii) stormwater management wetlands;
- (iii) stormwater management infiltration;
- (iv) stormwater management filtering systems;
- (v) stormwater management open channel systems; and
- (vi) other practices provided in the State's Design Manual.

(2) In selecting structural practices, consideration must be given to the performance criteria specified in the State's Design Manual for:

- (i) general feasibility;
- (ii) conveyance;
- (iii) pretreatment;
- (iv) treatment and geometry;
- (v) environment and landscaping; and
- (vi) maintenance.

(3) Structural practices must accommodate the unique hydrologic or geologic regions of the site.

(d) *Alternative practices.*

(1) Alternative structural and nonstructural stormwater management practices may be used for new development water quality control if they:

- (i) meet the performance criteria established in the State's Design Manual; and
- (ii) are approved by the State Water Management Administration.

(2) Practices used for redevelopment projects must be approved by the Department.

(e) *Impact analysis.*

(1) For the purposes of modifying the minimum control requirements or design criteria, the applicant must submit to the Department an analysis of the impacts of stormwater flows downstream in the watershed.

(2) The analysis must include the hydrologic and hydraulic calculations necessary to determine the impact of hydrograph timing modifications of the proposed development upon a dam, highway, structure, or natural point of restricted streamflow.

(3) The point of investigation is to be established, with the Department's concurrence, downstream of the first downstream tributary whose drainage area equals or exceeds the contributing area to the project or stormwater management facility.

(Ord. 02-367; Ord. 10-277.)

§ 22-5. Contents of plan.

(a) *In general.*

(1) For any proposed development, the applicant must submit phased stormwater management plans to the Department for review and approval.

(2) At a minimum, plans must be submitted for the concept, site development, and final stormwater management construction phases of project design.

(3) Each plan must:

- (i) include the minimum content specified in § 22-3 {"Minimum control requirements"} of this subtitle; and
- (ii) meet the requirements of the State's Design Manual, the City's Design Guidelines, and § 22-4 {"Environmental site design; Structural practices"} of this subtitle.

(b) *Concept plan.*

(1) The applicant must submit a concept plan that provides sufficient information for an initial assessment of the proposed project and whether stormwater management can be provided according to § 22-4 {"Environmental site design; Structural practices"} of this subtitle and the State's Design Manual.

(2) Plans submitted for concept approval must include the following, minimum information:

(i) a map that shows, at a scale specified by the Department:

- A. site location;
- B. existing natural features;
- C. water and other sensitive resources;
- D. topography; and
- E. natural drainage patterns;

(ii) the anticipated location of all:

- A. impervious areas;
- B. buildings;
- C. roadways;
- D. parking;
- E. sidewalks;
- F. utilities; and
- G. other site improvements;

(iii) the location of:

- A. the proposed limit of disturbance;
- B. erodible soils;
- C. steep slopes; and
- D. areas to be protected during construction;

(iv) preliminary estimates of:

- A. stormwater management requirements;
- B. the selection and location of environmental site design practices to be used; and
- C. the location of all points of discharge from the site;

(v) a narrative that supports the concept design and describes how environmental site design will be implemented to the maximum extent practicable; and

(vi) any other information the Department requires.

(c) *Site development plan.*

(1) After approval of the concept plan, the applicant must submit, unless exempted by the Department, at the Department's discretion, site development plans that reflect comments received during the previous review phase.

(2) Plans submitted for site development approval must be of sufficient detail to allow site development to be reviewed.

(3) These plans must include the following, minimum information:

(i) all information provided during the concept plan review phase;

(ii) final site layout, including:

- A. exact impervious area locations and acreages;
- B. proposed topography;
- C. delineated drainage areas at all points of discharge from the site; and
- D. stormwater volume computations for environmental site design practices and quantity control structures;

(iii) a narrative that:

- A. supports the site development design;
- B. describes how environmental site design will be used to meet the minimum control requirements; and
- C. justifies any proposed structural stormwater management or alternative practice measure; and

(iv) any other information the Department requires.

(d) *Final stormwater management plans.*

- (1) After site development approval, the applicant must submit final stormwater management plans that reflect the comments received during the previous review phase.
- (2) Stormwater management plans submitted for final approval must be in the form of construction drawings, in sufficient detail to allow all approvals and permits to be issued, and accompanied by a report that includes sufficient information to evaluate the effectiveness of the proposed runoff control design.

(e) *Waivers and variances.*

The plan must be accompanied by an application for any waiver or variance sought under Subtitle 23 or Subtitle 24.

(*Ord. 02-367; Ord. 10-277; Ord. 13- 095.*)

§ 22-6. Report for final plan.

The report submitted for final stormwater management plan approval must contain the following, minimum information:

- (1) a brief narrative description of the project;
- (2) geotechnical investigations, including soil maps, borings, site specific recommendations, and any additional information necessary to evaluate the final stormwater management design;
- (3) descriptions of all water courses, impoundments, and wetlands on or adjacent to the site or into which stormwater directly flows;
- (4) drainage area maps that show pre- development and post-development runoff flow path segmentation and land use;
- (5) hydrologic computations of the applicable environmental site design and unified sizing criteria, according to the State's Design Manual, for all points of discharge from the site;
- (6) hydraulic computations for all environmental site design practices and structural stormwater management measures to be used;

(7) structural computations;

(8) volume sizing computations, according to the State's Design Manual, that support the final stormwater management design; and

(9) any other information that the Department requires.

(Ord. 02-367; Ord. 10-277.)

§ 22-7. Construction drawings for final plan.

(a) *In general.*

The construction drawings submitted for final stormwater management plan approval must include the following:

(1) a vicinity map;

(2) a topography survey that shows existing and proposed contours, including the area necessary to determine downstream analysis for proposed stormwater management facilities;

(3) any proposed improvements, including the location of buildings or other structures, impervious surfaces, storm drainage facilities, and all grading;

(4) the location of existing and proposed structures and utilities;

(5) any easements and rights-of-way;

(6) the delineation, if applicable, of:

(i) the 100-year floodplain; and

(ii) any on-site wetlands;

(7) structural and construction details, including representative cross sections, for all components of:

(i) the proposed drainage system or systems; and

(ii) stormwater management facilities;

(8) all necessary construction specifications;

(9) a sequence of construction;

(10) data for:

(i) total site area;

(ii) disturbed area;

- (iii) new impervious area; and
- (iv) total impervious area;
- (11) a table that shows the environmental site design and unified sizing criteria volumes required by the State's Design Manual;
- (12) a table of materials to be used for stormwater management facility planting;
- (13) all soil boring logs and locations;
- (14) a maintenance inspection and maintenance activity schedule;
- (15) a proposed construction and inspection schedule;
- (16) an as-built certification signature block, to be executed after the project is completed; and
- (17) any other information that the Department requires.

(b) *Certification of compliance.*

The applicant must certify on the drawings that all grading, drainage, construction, and development will be done in strict accordance with the approved plan.

(Ord. 02-367; Ord. 10-277.)

§ 22-8. Preparation of plan.

(a) *In general.*

The design of all stormwater management plans must be prepared by a professional engineer, professional land surveyor, or landscape architect licensed in the State.

(b) *Professional engineer only.*

If stormwater best management practices require a dam safety permit from the Maryland Department of the Environment or small pond approval from the City, the plan must be prepared by a professional engineer licensed in the State.

(Ord. 02-367; Ord. 10-277.)

§ 22-9. Easements for runoff.

(a) *Easement.*

If a stormwater management plan involves directing some or all runoff from the site, the applicant is responsible for obtaining from adjacent property owners any needed easements or property interests for water flow.

(b) *Plan creates no right.*

Approval of a stormwater management plan does not create or affect any right to direct runoff onto adjacent property without that property owner's permission.
(*Ord. 02-367; Ord. 10-277.*)

§ 22-10. Review and approval of plan.

(a) *Review and comment.*

- (1) The Department must perform a comprehensive review of the plans for each phase of site design to determine compliance with this Division II.
- (2) For each plan phase, coordinated comments will be provided that reflect input from all appropriate agencies, including Planning, Zoning, and Public Works.
- (3) At each phase of project design, comments from the Department and other appropriate agencies must be addressed by the applicant and approval received before subsequent submissions.

(b) *Conditions.*

In approving a plan, the Department may impose any conditions that it considers necessary or appropriate to:

- (1) ensure compliance with this Division II; and
- (2) preserve the public health and safety.

(c) *Notification.*

After the Department has completed its comprehensive review for each phase of site design, the Department must notify the applicant of:

- (1) the Department's approval of the plan;
- (2) the Department's disapproval of the plan, together with:
 - (i) the reasons for disapproval; and
 - (ii) any modifications that the Department requires for approval; or
- (3) if no decision has yet been made:
 - (i) the status of the review process; and
 - (ii) the anticipated date of completion.

(d) *Endorsement.*

A stormwater management plan is not valid until the plan has been endorsed and dated by the Department.

(Ord. 02-367; Ord. 10-277.)

SUBTITLE 23
WAIVERS

§ 23-1. Quantitative control waiver.

(a) *In general.*

Except as provided for in § 23-5 {“Phased development projects”} of this subtitle, the Department may grant a waiver of quantitative control requirements, applied to the existing impervious cover on the site, for a project if:

(1) environmental site design has been implemented to the maximum extent practicable; and

(2) 1 or another of the following applies:

(i) the project is within an area for which a watershed management plan has been developed consistent with § 23-6 of this subtitle;

(ii) the project has a direct, concentrated discharge of stormwater:

A. to tidal waters;

B. to tidally influenced receiving wetlands; or

C. to connected closed storm drainage systems of adequate capacity, as provided in subsection (b) of this section;

(iii) the project is an in-fill development to which all of the following apply:

A. the project is located in an area designated as a priority funding area under State Finance and Procurement Article Title 5, Subtitle 7B;

B. the economic feasibility of the project is tied to the planned density allowed under the City’s Zoning Code;

C. implementation of stormwater management regulations adopted by the State in 2009 would result in a loss of planned density allowed under the City’s Zoning Code;

D. the area is served by existing public water, sewer, and stormwater conveyances;

E. the quantitative waiver is applied only to the impervious cover that previously existed on the site;

F. environmental site design to the maximum extent practicable is used to meet the full water quality treatment requirements for the entire development; and

G. environmental site design to the maximum extent practicable is used to provide full quantity control for all new impervious surfaces;

- (iv) the applicant demonstrates through engineering analysis that unmanaged 10-year and 100-year storm events for the proposed development will not cause erosion, flooding, or an adverse impact on the receiving waters or downstream stormwater conveyance system; or
- (v) the Department determines that circumstances exist that prevent the reasonable implementation of quantity control practices.

(b) *Closed drainage systems.*

For purposes of subsection (a)(2)(ii)C of this section, hydrologic and hydraulic investigations must show that the receiving storm drainage system can accommodate anticipated storm water flows from the project site without downstream flooding or stream-bank erosion.

(Ord. 02-367; Ord. 10-277.)

§ 23-2. Qualitative control waiver.

Except as provided for in § 23-5 {“Phased development projects”} of this subtitle, the Department may grant a waiver of qualitative control requirements for a project if:

- (1) the project will return the disturbed area to a predevelopment runoff condition, such as pipeline or conduit projects, certain landscaping projects, certain maintenance projects, and certain underground projects;
- (2) the project is an in-fill development project (that is, a development on vacant, bypassed, or underutilized land within an existing developed area) for which:
 - (i) environmental site design has been implemented to the maximum extent practicable; and
 - (ii) it has been demonstrated that other best management practices are not feasible;
- (3) the project is a redevelopment project for which the requirements of § 23-7 of this subtitle are satisfied; or
- (4) the Department determines that circumstances exist that prevent the reasonable implementation of environmental site design to the maximum extent practicable.

(Ord. 02-367; Ord. 10-277.)

§ 23-3. Conditions of waiver.

(a) *Case-by-case.*

A waiver may be granted only on a case-by-case basis, after considering the cumulative effects of the Department’s waiver policy.

(b) *Impact.*

A waiver may be granted only if it reasonably ensures that the development will not adversely impact stream quality.

(c) *Fee in-lieu.*

The Department may require a person who is granted a waiver to pay a fee in-lieu-of on-site management.

(Ord. 02-367.)

§ 23-4. Applications.

(a) *In general.*

The application for a waiver must:

- (1) be in the form that the Department requires;
- (2) contain the descriptions, drawings, and other information needed to evaluate the proposed waiver;
- (3) contain any other information that the Department requires; and
- (4) be submitted to the Department with the applicant's proposed stormwater management plan.

(b) *Separate applications for additions, etc.*

A separate application is required for subsequent additions, extensions, or modifications to a development.

(Ord. 02-367; Ord. 10-277.)

§ 23-4.1. Public notices and comment.

(a) *Website notice.*

- (1) When an application for a waiver is submitted, the Department shall prepare and post on its website, available for download, a public notice of the application.
- (2) The public notice shall include:
 - (i) the applicant's name and address;
 - (ii) a description of the location and nature of the activity for which the application is made;
 - (iii) the name, address, and telephone number of the office within the Department from which persons may obtain information about the application;

- (iv) a statement that any further notices about actions on the application will be posted on the Department's website;
- (v) a description of how persons may submit information or comments about the application; and
- (vi) the date when the public comment period closes, not to exceed 30 days, and by which information or comments must be received by the Department.

(b) *Mail and email notices.*

The Department also shall mail or email public notices to:

- (1) all contiguous property owners;
- (2) the City Councilmember in whose district the property is located; and
- (3) persons who have submitted information or comments about the application.

(c) *Comments.*

Comments on an application must be submitted in writing to the Department before the close of the public comment period, as specified in the public notice.

(Ord. 10-277.)

§ 23-5. Phased development projects.

The Department may grant a quantitative and qualitative control waiver for a phased development project if:

- (1) by May 4, 2010, a stormwater system has been constructed that is designed to meet:
 - (i) the regulatory requirements for stormwater adopted in 2000 by the Maryland Department of the Environment; and
 - (ii) the requirements of this Division II, as in effect on July 27, 2002; or
- (2) for future phases of a phased development project that are constructed after May 4, 2010:
 - (i) the regulatory requirements for stormwater adopted in 2009 by the Maryland Department of the Environment cannot be met; and
 - (ii) the applicant demonstrates that all reasonable efforts were made to incorporate environmental site design into these phases of the development.

(Ord. 10-277.)

§ 23-6. Watershed management plan.*(a) In general.*

- (1) The Department may develop an overall watershed management plan for the purpose of implementing different policies for waivers and redevelopment.
- (2) If the Department establishes a watershed management plan for a specific watershed, the Department may develop quantitative control waivers and redevelopment provisions that differ from § 23-1(a)(2)(ii) through (v) and § 23-7.
- (3) (i) If the Department establishes a watershed management plan for a specific watershed, then the Department may develop separate policies, reviewed and approved by the State Water Management Administration, for providing water quality control.
 - (ii) These separate policies may include:
 - A. retrofitting;
 - B. stream restoration;
 - C. pollution trading;
 - D. design criteria based on watershed management plans developed under § 23-6(b) of this Division II;
 - E. payment of offset fees that are dedicated exclusively to provide for stormwater management within the same watershed as the proposed development; or
 - F. other policies developed by the Department.

(b) Requisites.

For this purpose, the watershed management plan must:

- (1) include detailed hydrologic and hydraulic analyses to determine hydrograph timing;
- (2) include an evaluation of both quantity and quality management and of opportunities for environmental site design implementation;
- (3) include a cumulative impact assessment of current and proposed watershed development;
- (4) identify existing flooding conditions and receiving stream channel conditions;
- (5) be prepared at a reasonable scale;
- (6) specify where on-site or off-site quantitative and qualitative controls are to be implemented;

(7) be consistent with the General Performance Standards for Stormwater Management in Maryland, found in Section 1.2 of the State's Design Manual; and

(8) be approved by the State Water Management Administration.

(Ord. 02-367; Ord. 10-277.)

§ 23-7. Redevelopment.

(a) *In general.*

(1) Stormwater management plans are required for all redevelopment, unless otherwise specified by watershed management plans developed under § 23-6(b) of this subtitle.

(2) Stormwater management measures must be consistent with the State's Design Manual.

(b) *Waived requirements.*

Unless otherwise specified by the Department, a redevelopment project need not comply with requirements of the State's Design Manual for:

(1) recharge volume;

(2) channel protection storage volume;

(3) overbank flood protection volume; and

(4) extreme flood protection volume.

(c) *Applicable requirements – In general.*

(1) All redevelopment projects must, in accordance with the State's Design Manual, reduce existing site impervious areas within the limits of disturbance by at least 50%.

(2) If site conditions prevent the reduction of impervious area, then environmental site design practices must be implemented to the maximum extent practicable for at least 50% of the site's existing impervious area within the limits of disturbance.

(3) If a combination of impervious area reduction and stormwater practice implementation is used, the combined area must equal or exceed 50% of the site's existing impervious area within the limits of disturbance.

(d) *Applicable requirements – Alternatives.*

(1) Alternative stormwater management measures may be used to meet the requirements of subsection (c) of this section if the applicant satisfactorily demonstrates to the Department that:

(i) impervious area reduction has been maximized; and

(ii) environmental site design has been implemented to the maximum extent practicable.

(2) Alternative stormwater management measures include:

(i) an on-site structural best management practice;

(ii) off-site implementation of structural best management practices to provide water quality treatment for an area equal to at least 50% of the existing impervious area within the limits of disturbance; and

(iii) a combination of impervious area reduction, environmental site design implementation, and an on-site or off-site structural best management practice for an area equal to at least 50% of the existing site impervious area within the limits of disturbance.

(e) *Separate policies.*

(1) The Department may develop separate policies for providing water quality treatment for redevelopment projects if the Department determines that the provisions of subsections (c) and (d) of this section have been implemented to the maximum extent practicable.

(2) The Department's criteria for separate policies are outlined in the City's Design Guidelines.

(3) Any separate redevelopment policy must be reviewed and approved by the State Water Management Administration.

(4) These separate policies may include:

(i) a combination of impervious area reduction, environmental site design, and on-site and off-site structural best management practices;

(ii) retrofitting to improve water quality over current conditions by:

A. construction of structural best management practices in a previously developed area; or

B. modification of existing structural best management practices;

(iii) watershed or stream restoration;

(iv) pollution trading;

(v) design criteria based on watershed management plans developed under § 23-6(b) of this subtitle;

(vi) payment of offset fees that are dedicated exclusively for stormwater management within the same watershed as the proposed development;

- (vii) a partial waiver of the treatment requirements if environmental site design is not practicable; or
 - (viii) other practices approved by the Department.
- (5) The Department will determine during the concept design phase which alternative measures may be made available. Prioritization of the alternative measures listed in paragraph (4) of this subsection must be considered after a determination by the Department that it is not practical to meet the 2009 regulatory requirements using environmental site design.
- (6) When determining which alternative measures may be authorized under paragraph (4) of this subsection for a project, the Department may consider whether:
- (i) the redevelopment project is located in an area designated as:
 - A. a priority funding area under State Finance and Procurement Article Title 5, Subtitle 7B;
 - B. a transit oriented development area under State Transportation Article Title 7, Subtitle 1; or
 - C. a base realignment and closure revitalization and incentive zone under State Economic Development Article Title 5, Subtitle 13;
 - (ii) the redevelopment project is necessary to accommodate growth consistent with the City's comprehensive plan for the area in which the project will be located; or
 - (iii) bonding and financing have been secured based on an approval of a redevelopment plan approved by the Department.

(f) *Applicable requirements – Increased impervious area.*

For any net increase in impervious area resulting from the project, stormwater management must be addressed according to the new development requirements of the State's Design Manual.

(*Ord. 02-367; Ord. 10-277.*)

§ 23-8. Administrative waiver.

(a) *In general.*

- (1) An administrative waiver is a decision by the Department to allow construction of a development project to be governed by the provisions of this Division II, as in effect on May 4, 2009.
- (2) An administrative waiver does not include quantitative or qualitative control waivers issued under § 23-1, § 23-2, or § 23-5 of this Division II.

(b) *Preliminary project approval.*

- (1) An administrative waiver may be granted by the Department to a development project that, on or before May 4, 2010, has received preliminary project approval as part of a preliminary or planning review process.
- (2) At a minimum, a preliminary project approval includes:
 - (i) the number of planned dwelling units or lots;
 - (ii) the proposed project density;
 - (iii) the proposed size and location of all land uses for the project;
 - (iv) a plan that identifies:
 - A. the proposed drainage patterns;
 - B. the location of all points of discharge from the site; and
 - C. the type, location, and size of all stormwater management measures based on site-specific stormwater management requirement computations; and
 - (v) any other information that the Department requires.
- (3) An approval granted under this subsection does not require approval of an erosion and sediment control plan as a condition for the approval.

(c) *Expiration.*

Except as provided by subsection (d) of this section, an administrative waiver granted under subsection (b) of this section expires on:

- (1) May 4, 2013, if the development project does not have final erosion and sediment control and final stormwater management approval on or before that date; or
- (2) May 4, 2017, if the development project receives final erosion and sediment control and final stormwater management approval on or before May 4, 2013.

(d) *Extension.*

- (1) Except as provided in paragraph (2) of this subsection, an administrative waiver may not be extended.
- (2) The Department may grant an extension for an administrative waiver only if, by May 4, 2010, a development project:
 - (i) has received a preliminary project approval as provided for in subsection (b) of this section; and

(ii) was subject to:

- A. a development rights and responsibilities agreement;
- B. a tax increment financing approval; or
- C. an annexation agreement.

(3) When an agreement or approval identified in paragraph (2)(ii) of this subsection expires, any administrative waiver that was extended will expire.

(e) *Completion of construction.*

Construction authorized by an administrative waiver granted under this section must be completed, with an occupancy permit issued under the Building Code and a use permit issued under the Zoning Code, on or before either:

(1) May 4, 2017; or

(2) the expiration date specified for any extension granted under subsection (d) of this section.

(Ord. 10-277.)

**SUBTITLE 24
VARIANCES****§ 24-1. When authorized.**

The Department may grant a variance from any requirement of this Division II if, because of exceptional circumstances applicable to the site, strict adherence to that requirement will result in unnecessary hardship and not fulfill the intent of this Division II.
(*Ord. 02-367.*)

§ 24-2. Application for variance.

The application for a variance must:

- (1) be in the form that the Department requires;
- (2) state the specific variance sought;
- (3) explain why the variance is needed;
- (4) contain any other information that the Department requires; and

(5) be submitted to the Department with the applicant's proposed stormwater management plan.
(*Ord. 02-367; Ord. 10-277.*)

§ 24-2.1. Public notices and comment.

(a) *Website notice.*

- (1) When an application for a variance is submitted, the Department shall prepare and post on its website, available for download, a public notice of the application.
- (2) The public notice shall include:
 - (i) the applicant's name and address;
 - (ii) a description of the location and nature of the activity for which the application is made;
 - (iii) the name, address, and telephone number of the office within the Department from which persons may obtain information about the application;
 - (iv) a statement that any further notices about actions on the application will be posted on the Department's website;
 - (v) a description of how persons may submit information or comments about the application; and
 - (vi) the date when the public comment period closes, not to exceed 30 days, and by which information or comments must be received by the Department.

(b) *Mail and email notices.*

The Department also shall mail or email public notices to:

- (1) all contiguous property owners;
- (2) the City Councilmember in whose district the property is located; and
- (3) persons who have submitted information or comments about the application.

(c) *Comments.*

Comments on an application must be submitted in writing to the Department before the close of the public comment period, as specified in the public notice.

(Ord. 10-277.)

§ 24-3. Justification required.

The Department may not grant a variance unless the applicant provides sufficient satisfactory demonstrates that the implementation of environmental site design to the maximum extent practicable has been thoroughly investigated.

(Ord. 02-367; Ord. 10-277.)

§ 24-4. Offset fee.

The Department may require a person who is granted a variance to pay an offset fee to the City.

(Ord. 02-367.)

SUBTITLE 25
PERMITS; FEES; SECURITY

§ 25-1. Approved plan prerequisite to permits.

(a) *Grading and building permits.*

For any development that requires a stormwater management plan under this Division II, a grading or building permit may not be issued unless a final erosion and sediment control plan and a stormwater management plan has been approved by the Department.

(b) *Building permits.*

A building permit may not be issued without:

(1) recorded easements, as needed:

(i) for the environmental site design techniques and practices and structural stormwater management measures, as provided for in the approved stormwater management plan; and

(ii) to provide adequate access for inspection and maintenance from a public right-of-way;

(2) a recorded stormwater management maintenance agreement, as described in § 27-3 of this Division II;

(3) a performance bond; and

(4) all necessary permissions from adjacent property owners.

(*Ord. 02-367; Ord. 10-277.*)

§ 25-2. Fees.

(a) *In general.*

Non-refundable fees will be assessed and collected in advance by the Department for each phase of a development.

(b) *Fee schedule.*

(1) The fees assessed under this Division II are in addition to the usual fees charged for grading or building permits.

(2) Fees shall be assessed for plan reviews, waivers, offsets, stormwater approvals, administration and management of the approval process, inspections, “small-project” exemptions under § 21-6(b)(4) of this Division II, fees in lieu, and the like.

(3) The amount of these fees shall be based on the relative complexity of a project, in accordance with a fee schedule established from time to time by the Board of Estimates. (Ord. 02-367; Ord. 10-277.)

§ 25-3. Performance security.

(a) *Required.*

For any development that requires a stormwater management plan under this Division II, a grading or building permit may not be issued until the applicant posts a surety or cash bond, or other means of security acceptable to the Department.

(b) *Amount.*

The amount of the security may not be less than the total estimated construction cost of the stormwater management facility. This estimate must be prepared by the applicant and submitted with the plan.

(c) *Tenor.*

The security required by this section must provide for forfeiture on failure to:

- (1) complete all work specified in the approved stormwater management plan;
- (2) comply with any provision of this Division II or of any other applicable law or regulation; or
- (3) comply with any applicable time limitations.

(d) *Release.*

The security may not be released until:

- (1) the Department conducts a final inspection of the completed work;
- (2) the applicant submits “as-built” plans to the Department, containing an executed as-built certification block; and
- (3) the Department verifies that the stormwater management facilities:
 - (i) have been completed; and
 - (ii) comply with the approved plan and this Division II.

(Ord. 02-367; Ord. 10-277.)

§ 25-4. Permit suspension or revocation.

After written notice to the permit holder, the Department may suspend or revoke any grading or building permit for any of the following reasons:

- (1) any violation of the conditions of the stormwater management plan approval;
- (2) any change in the site runoff characteristics on which a plan approval or waiver was granted;
- (3) construction not in accordance with the approved plan;
- (4) failure to comply with a correction notice or stop work order issued for the facility; or
- (5) a finding by the Department that an immediate danger exists in a downstream area.
(Ord. 02-367; Ord. 10-277.)

**SUBTITLE 26
INSPECTIONS****§ 26-1. By whom conducted.**

All inspections under this Division II must be:

(1) conducted by an authorized representative of the Department; or

(2) certified by a professional engineer licensed in this State.

(Ord. 02-367; Ord. 10-277.)

§ 26-2. Notices by applicant.

The applicant must notify the Department:

(1) at least 48 hours before starting any work in conjunction with site development;

(2) at least 48 hours before starting any work in conjunction with the stormwater management plan; and

(3) on completion of the project.

(Ord. 02-367; Ord. 10-277.)

§ 26-3. Inspections during construction.

(a) *In general.*

At a minimum, regular inspections must be made and documented, at the stages of construction specified in this section, for each environmental site design planning technique and practice and each structural and nonstructural stormwater management practice.

(b) *Ponds.*

For ponds:

(1) On completion of excavation to sub-foundation and, when required, installation of structural supports or reinforcement for structures, including:

(i) core trenches for structural embankments;

(ii) inlet and outlet structures, anti-seep collars or diaphragms, and watertight connectors on pipes; and

(iii) trenches for enclosed storm drainage facilities;

(2) during placement of structural fill or concrete and installation of piping and catch basins;

- (3) during backfill of foundations and trenches;
- (4) during embankment construction; and
- (5) on completion of final grading and establishment of permanent stabilization.

(c) *Wetlands.*

For wetlands:

- (1) at the stages specified in subsection (b) of this section for pond construction;
- (2) during and after wetland reservoir area planting; and
- (3) during the second growing season to verify a vegetation survival rate of at least 50%.

(d) *Infiltration trenches.*

For infiltration trenches:

- (1) during excavation to subgrade;
- (2) during placement and backfill of underdrain systems and observation wells;
- (3) during placement of geotextiles and all filter media;
- (4) during construction of appurtenant conveyance systems, such as diversion structures, pre-filters and filters, inlets, outlets, and flow distribution structures; and
- (5) on completion of final grading and establishment of permanent stabilization.

(e) *Infiltration basins.*

For infiltration basins:

- (1) at the stages specified in subsection (b) of this section for pond construction; and
- (2) during placement and backfill of underdrain systems.

(f) *Filtering systems.*

For filtering systems:

- (1) during excavation to subgrade;
- (2) during placement and backfill of underdrain systems;
- (3) during placement of geotextiles and all filter media;

(4) during construction of appurtenant conveyance systems, such as flow diversion structures, pre-filters and filters, inlets, outlets, orifices, and flow distribution structures; and

(5) on completion of final grading and establishment of permanent stabilization.

(g) *Open channel systems.*

For open channel systems:

(1) during excavation to subgrade;

(2) during placement and backfill of underdrain systems for dry swales;

(3) during installation of diaphragms, check dams, or weirs; and

(4) on completion of final grading and establishment of permanent stabilization.

(h) *Environmental site design and nonstructural practices.*

For environmental site design and nonstructural practices:

(1) on completion of final grading;

(2) on establishment of permanent stabilization; and

(3) before issuance of an occupancy permit under the Building Code and a use permit under the Zoning Code.

(Ord. 02-367; Ord. 10-277.)

§ 26-4. Inspection reports.

(a) *Reports required.*

Written reports must be made of all inspections conducted during construction.

(b) *Scope.*

Each inspection report must specify:

(1) the date and location of the inspection;

(2) whether the construction complies with the approved stormwater management plan;

(3) any variations from the approved construction specifications;

(4) any violations found; and

(5) any other information that the Department requires.

(c) *Notice to applicant.*

The Department must provide the applicant with the results of each inspection report as soon as possible after the inspection.

(Ord. 02-367; Ord. 10-277.)

§ 26-5. Work stoppage pending inspection.

At the completion of each construction stage for which an inspection is required, no further work may be done until the Department inspects and approves the work completed to date.

(Ord. 02-367.)

§ 26-6. Final inspection.

A final inspection must be conducted after construction is completed.

(Ord. 02-367.)

§ 26-7. As-built certification.

(a) *Required.*

Once construction is complete, the applicant must submit to the Department an as-built plan certification by a professional engineer or professional land surveyor licensed in the State.

(b) *Tenor.*

The certification must certify that the completed stormwater management practices and conveyance systems comply with the specifications contained in the approved plan.

(c) *Contents.*

The certification must include:

(1) a set of drawings that compare the approved stormwater management plan with what has been constructed; and

(2) any other information that the Department requires.

(Ord. 02-367; Ord. 10-277.)

§ 26-8. Notice to State Administration.

(a) *In general.*

For each stormwater management practice completed, the Department must submit a notice of construction to the State Water Management Administration.

(b) *When and how.*

The notice must be submitted:

- (1) within 45 days of construction completion; and
- (2) on the form that the Administration supplies.

(c) *Contents.*

The notice must report, on a site-by-site basis, the type, number, total drainage area, and total impervious area treated by all environmental site design techniques and practices and structural stormwater management practices.

(Ord. 02-367; Ord. 10-277.)

**SUBTITLE 27
MAINTENANCE**

§ 27-1. Maintenance responsibility.

(a) *In general.*

The maintenance of private stormwater management facilities is the responsibility of:

- (1) the owner of the property; and
- (2) any other person in control of the property.

(b) *Scope of responsibility.*

The owner of a property that contains private stormwater management facilities installed under this Division II or any other person in control of that property must, in perpetuity, maintain in good condition and promptly repair and restore all:

- (1) environmental site design practices;
- (2) stormwater management facilities;
- (3) grade surfaces, walls, drains, dams, and structures;
- (4) vegetation;
- (5) erosion and sediment control measures; and
- (6) other protective devices.

(c) *Compliance with plan.*

All maintenance, repairs, and restoration must be in accordance with the approved stormwater management plan.

(*Ord. 02-367; Ord. 10-277.*)

§ 27-2. Maintenance schedule.

(a) *Required.*

A maintenance schedule must be developed for the life of every stormwater management facility or system of environmental site design practices.

(b) *Contents.*

The schedule must specify:

- (1) the maintenance to be completed;

- (2) the time for completing that maintenance; and
- (3) the person responsible for performing that maintenance.

(c) *Schedule to be part of approved plan.*

The maintenance schedule must be printed on the approved stormwater management plan.
(Ord. 02-367; Ord. 10-277.)

§ 27-3. Maintenance agreement.

(a) *Prerequisite for permit.*

Before any grading or building permit may be issued for a project for which a private stormwater management facility is required, the owner must execute an inspection and maintenance agreement binding on all current and subsequent owners of land served by the facility.

(b) *Coverage.*

The agreement must provide for access to the facility, at all reasonable times, for regular inspections by the Department or its authorized representative to ensure that the facility is maintained in proper working condition to meet design standards.

(c) *Performance bond.*

- (1) A performance bond, with amount, terms, and provisions acceptable to the Department, must be provided.
- (2) The agreement must provide for forfeiture of the performance bond if, after written notice by the Department to correct any nonconformance with an approved plan, the owner fails to make satisfactory corrections within a reasonable time, not to exceed 30 days, unless extended for good cause shown.

(d) *Recordation.*

The owner must record the agreement in the land records of Baltimore City.
(Ord. 02-367; Ord. 10-277.)

§ 27-4. Maintenance inspections.

(a) *Periodic inspections required.*

- (1) The Department must periodically inspect all environmental site design practices and structural stormwater management measures to ensure that preventative maintenance is being performed.
- (2) These inspections must be made:
 - (i) at least once during the 1st year of operation; and

(ii) at least once every 3 years following.

(b) *Inspection reports.*

(1) The Department must maintain inspection reports for all stormwater management systems.

(2) These inspection reports must include the following:

(i) the date of inspection;

(ii) the name of the inspector;

(iii) an assessment of the quality of the stormwater management system related to environmental site design treatment practice efficiency and the control of runoff to the maximum extent practicable;

(iv) the condition of:

A. vegetation and filter media;

B. fences and other safety devices;

C. spillways, valves, and other control structures;

D. embankments, slopes, and safety benches;

E. reservoir and treatment areas;

F. inlet and outlet channels and structures;

G. underground drainage;

H. sediment and debris accumulation in storage and forebay areas;

I. any nonstructural practices to the extent practicable; and

J. any other item that could affect the proper function of the stormwater management system; and

(v) a description of needed maintenance.

(Ord. 02-367; Ord. 10-277.)

§ 27-5. Deficiencies.

(a) *Notice of deficiency.*

The department must promptly notify the owner of any deficiencies discovered from a maintenance inspection.

(b) *Owner to correct.*

The owner must correct the deficiencies:

- (1) within 30 days of the notice; or
- (2) by any other time to which the Department and the owner agree.

(c) *Reinspection.*

The Department must conduct a subsequent inspection to ensure completion of all required repairs.

(d) *Enforcement action.*

If repairs are not made or are not done properly, the Department may take any enforcement action authorized by Subtitle 28 of this article or otherwise by law.

(e) *Immediate danger to health or safety.*

(1) If, after an inspection by the Department, the condition of a stormwater management facility is determined to present an immediate danger to the public health or safety, the Department may take whatever action is necessary to protect the public and make the facility safe.

(2) The Department may assess against the owner the costs incurred under this subsection.
(*Ord. 02-367; Ord. 10-277.*)

SUBTITLE 28
ENFORCEMENT; REVIEWS; PENALTIES

§ 28-1. Violation notices.

(a) *Notice required.*

If a violation is found, the Department must provide written notice of the violation to:

- (1) the developer or owner; and
- (2) the on-site personnel.

(b) *Contents.*

A violation notice must describe:

- (1) the nature of the violation; and
- (2) the required corrective action.

(Ord. 02-367.)

§ 28-2. Enforcement of notice.

(a) *In general.*

The Department may take any one or a combination of the following actions to enforce a violation notice.

(b) *Stop work order.*

If a violation persists after issuance of a violation notice, the Department may issue a stop work order for the site.

(c) *Bond forfeiture; other action.*

If reasonable efforts to correct the violation have not been undertaken, the Department may:

- (1) cause the performance bond or other securities to be forfeited; and
- (2) refer the matter for legal action.

(d) *Civil fines.*

- (1) The Department may impose civil fines for minor infractions of this Division II.

- (2) A schedule of fines, not to exceed \$500 for any one offense, shall be established and may be amended from time to time by the Department with the approval of the Baltimore City Board of Estimates.

(Ord. 02-367.)

§§ 28-3 to 28-4. {Reserved}

§ 28-5. Administrative review – In general.

(a) *Right of appeal.*

Any person aggrieved by the action of any official charged with the enforcement of this Division II, whether as the result of the disapproval of an application, the issuance of a violation notice, an alleged failure to properly enforce this Division II, or otherwise:

- (1) may appeal the action to the Director of Public Works; and
- (2) on timely request, is entitled to a hearing on that appeal.

(b) *When and how taken.*

The appeal must:

- (1) be in writing;
- (2) state clearly the grounds on which the appeal is based;
- (3) if the person aggrieved desires a hearing on the appeal, contain an express statement to that effect; and
- (4) be filed with the Director within 10 days of the action in dispute.

(Ord. 02-367; Ord. 14-307; Ord. 19-332.)

§ 28-6. Administrative review – Delegation of hearing authority.

(a) *In general.*

Hearings may be conducted by:

- (1) the Director of Public Works; or
- (2) a hearing officer designated by the Director.

(b) *Scope of delegation.*

The Director may delegate to a hearing officer the authority to issue:

- (1) proposed or final findings of fact;
- (2) proposed or final conclusions of law;

(3) proposed or final findings of fact and conclusions of law;

(4) proposed or final orders; or

(5) the final administrative decision of the Department.

(Ord. 02-367.)

§ 28-7. Administrative review – Conduct of hearing.

(a) *Notice.*

(1) The Director of Public Works must provide all parties reasonable written notice of the hearing.

(2) The notice must state:

(i) the date, time, place, and nature of the hearing;

(ii) the right of a party to be represented, at the party's own expense, by an attorney or, if permitted by law, other representative;

(iii) the right of a party to call witnesses and submit documents or other evidence under § 28-8 of this subtitle; and

(iv) that failure to appear for the scheduled hearing may result in an adverse action against the party.

(b) *Hearings to be open and informal.*

Except as otherwise provided by law or by rule or regulation of the Department, all hearings must be:

(1) open to the public; and

(2) conducted in an orderly but informal manner.

(Ord. 02-367.)

§ 28-8. Administrative review – Evidence.

(a) *In general.*

Except as otherwise provided by this section or by rule or regulation of the Department, formal rules of evidence and trial procedures do not apply.

(b) *Right to submit.*

On a genuine issue of fact, a party is entitled to:

(1) call witnesses;

(2) offer evidence, including rebuttal evidence;

- (3) cross-examine any witness that another party or the Department calls; and
- (4) present summation and argument.

(c) *Scope.*

The Director or hearing officer:

- (1) may admit probative evidence that reasonable and prudent individuals commonly accept in the conduct of their affairs and give probative effect to that evidence;
- (2) may not exclude evidence solely on the basis that it is hearsay;
- (3) must give effect to a privilege recognized by law;
- (4) may receive documentary evidence in the form of copies or excerpts or through incorporation by reference;
- (5) may take official notice of a fact that is judicially noticeable or that is general, technical, or scientific and within the specialized knowledge of the Department; and
- (6) may exclude evidence that is:
 - (i) incompetent;
 - (ii) irrelevant;
 - (iii) immaterial; or
 - (iv) unduly repetitious.

(Ord. 02-367.)

§ 28-9. Administrative review – Final decisions.

(a) *Form and contents.*

A final decision must:

- (1) be in writing; and
- (2) contain separate statements of:
 - (i) the findings of fact;
 - (ii) the conclusions of law; and
 - (iii) the decision or order.

(b) *Distribution.*

A copy of the final decision must be mailed or delivered to each party or that party’s attorney of record.

(Ord. 02-367.)

§ 28-10. {Reserved}

§ 28-11. Judicial and appellate review.

(a) *Judicial review.*

A party aggrieved by a final decision of the Department under this Division II may seek judicial review of that decision by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules of Procedure.

(b) *Appellate review.*

A party to the judicial review may appeal the court’s final judgment to the Court of Special Appeals in accordance with the Maryland Rules of Procedure.

(Ord. 02-367; Ord. 04-672; Ord. 19-332.)

§ 28-12. {Reserved}

§ 28-13. Criminal penalties.

(a) *In general.*

Any person who violates any provision of this Division II or of any rule or regulation adopted under or incorporated into this Division II is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than \$1,000 or imprisonment for not more than 1 year or both fine and imprisonment for each violation.

(b) *Each day a separate offense.*

Each day that a violation continues is a separate offense.

(Ord. 02-367.)

**SUBTITLES 29 TO 30
{RESERVED}**

DIVISION III: SOIL EROSION AND SEDIMENT CONTROL**SUBTITLE 31
DEFINITIONS; GENERAL PROVISIONS****§ 31-1. Definitions.**(a) *In general.*

In this Division III, the following terms shall have the meanings indicated.

(b) *Applicant.*

“Applicant” means the person that executes the necessary forms to apply for a permit or approval to carry out construction of a project.

(c) *Clear.*

“Clear” means to remove the vegetative ground cover while leaving the root mat intact.

(d) *Department.*

“Department” means the Baltimore City Department of Public Works.

(e) *Developer.*

See “Owner; developer”.

(f) *Environmental site design.*

“Environmental site design” means using small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and to minimize the impact of land development on water resources.

(g) *Erosion.*

“Erosion” means the process by which land surface is worn away by the action of wind, water, ice, or gravity.

(h) *Erosion and sediment control.*

“Erosion and sediment control” means a system of structural and vegetative measures that minimizes soil erosion and off-site sedimentation.

(i) *Grade.*

“Grade” means to disturb earth by any one or combination of methods, including excavating, filling, stockpiling, grubbing, or removing root mat or topsoil.

(j) *Includes; including.*

“Includes” or “including” means by way of illustration and not by way of limitation.

(k) *Interested person.*

“Interested person” means a person who has a legal right that could be directly and adversely affected by a specific erosion or sediment control issue.

(l) *Owner; developer.*

(1) *General.*

“Owner” or “developer” means a person:

- (i) undertaking activities covered by this Division III; or
- (ii) for whose benefit activities covered by this Division III are undertaken.

(2) *Exclusions.*

“Owner” or “developer” does not include a general contractor or subcontractor that does not have a proprietary interest in the project.

(m) *Person.*

(1) *In general.*

“Person” means:

- (i) an individual;
- (ii) a partnership, firm, association, corporation or other entity of any kind; or
- (iii) a receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind.

(2) *Inclusions.*

“Person” includes, except as used in § 35-13(b) {“Criminal penalties”} of this Division III:

- (i) the Federal government;
- (ii) the State government;
- (iii) any county, municipal corporation, or other political subdivision of the State; or
- (iv) any of the entities, instrumentalities, or other units of these governments.

(n) *Responsible personnel.*

“Responsible personnel” means any foreperson, superintendent, project engineer, or other individual who is in charge of:

- (1) on-site clearing and grading operations; or
- (2) the implementation and maintenance of an erosion and sediment control plan.

(o) *Sediment.*

“Sediment” means soils or other surficial materials that are the product of erosion and are transported or deposited by the action of wind, water, ice, gravity, or artificial means.

(p) *Site.*

“Site” means any tract, lot, parcel of land, or area of construction, or any combination of tracts, lots, parcels of land, or areas of construction that are:

- (1) in one ownership; or
- (2) in diverse ownership, but where:
 - (i) development is to be performed as part of a unit, subdivision or project; and
 - (ii) either:
 - A. the tracts, lots, or parcels of land are contiguous; or
 - B. the developer is a cooperative public-private undertaking.

(q) *Standards and Specifications.*

“Standards and Specifications” means the *2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control* or any subsequent revisions.

(r) *Stormwater.*

“Stormwater” means water that originates from a precipitation event.

(s) *Stormwater management system.*

“Stormwater management system” means a system of natural areas, environmental site design practices, stormwater management practices, and any structure through which stormwater flows, infiltrates, or discharges from a site.

(Ord. 13-095.)

§ 31-2. Rules of construction.(a) *In general.*

In interpreting and applying this Division III, the following rules of construction apply.

(b) *Captions or headings.*

The captions or headings of the various sections and subsections:

- (1) are for convenience and reference only, intended to summarize the statutory provisions that follow; and
- (2) are not law and are not to be taken as affecting the meaning or effect of the law.

(c) *Conflicting provisions.*(1) *Division sets minimum requirements.*

In their interpretation and application the provisions of this Division III must be taken to be the minimum requirements for the promotion of the public health, safety, and general welfare.

(2) *Most restrictive provision governs.*

If any condition imposed by a provision of this Division III is either more or less restrictive than a comparable condition imposed by any other provision of this Division or by any other law, rule, or regulation of any kind, the condition that is the more restrictive governs.

(d) *Gender.*

Words denoting one gender include and apply to the other genders as well.

(e) *Mandatory, prohibitory, and permissive terms.*(1) *Mandatory terms.*

“Must” and “shall” are each mandatory terms used to express a requirement or to impose a duty.

(2) *Prohibitory terms.*

“Must not,” “may not,” and “no ... may” are each mandatory negative terms used to establish a prohibition.

(3) *Permissive terms.*

“May” is permissive.

(f) *Number.*

The singular includes the plural and vice versa.

(g) *References to other laws.*

Whenever a provision of this Division III refers to any part of the City Code or to any other law, the reference applies to any subsequent amendment of the law referred to, unless the referring provision expressly provides otherwise.

(h) *Severability.*

All provisions of this Division III are severable. If a court determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid or that the application of any part of the provision to any person or circumstances is invalid, the remaining provisions and the application of these provisions to other persons or circumstances is not affected by that decision.

(i) *Time computations.*

(1) *Computation of time after an act, event, or default.*

- (i) In computing any period of time prescribed by this Division III, the day of the act, event, or default after which the designated period of time begins to run is not included.
- (ii) If the period of time allowed is more than 7 days, intermediate Saturdays, Sundays, and legal holidays are counted.
- (iii) If the period of time allowed is 7 days or less, intermediate Saturdays, Sundays, and legal holidays are not counted.
- (iv) The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Computation of time before a day, act, or event.*

- (i) In determining the latest day for performing an act that is required by this Division III to be performed a prescribed number of days before a certain day, act, or event, all days preceding that day, including intervening Saturdays, Sundays, and legal holidays, are counted in the number of days so prescribed.
- (ii) The latest day is included in the determination unless it is a Saturday, Sunday, or legal holiday, in which event the latest day is the first preceding day that is not a Saturday, Sunday or legal holiday.

(Ord. 13-095.)

§ 31-3. Incorporation by reference.(a) *In general.*

For the purposes of this Division III, the following documents are incorporated by reference:

- (1) the *2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control* or any subsequent revisions of it, which serves as the official City guide for soil erosion and sediment control principles, methods, and practices; and
- (2) the City's Erosion and Sediment Control Manual, which supplements the State's Standards and Specifications as it relates to soil erosion and sediment control principals, methods, and practices in the City.

(b) *Defined terms.*

- (1) Terms used in the Standards and Specifications have the meanings ascribed to them in that document or otherwise by the Maryland Department of the Environment.
- (2) These terms include, among others:

- (i) "Adverse impact".
- (ii) "Grading unit".
- (iii) "Maximum extent practicable".
- (iv) "Watershed".

(Ord. 13-095.)

§ 31-4. Purpose, goal, authority.(a) *Purpose.*

The purpose of this Division III is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with land disturbances.

(b) *Goal.*

The goal of this Division III is to minimize soil erosion and prevent off-site sedimentation by using soil erosion and sediment control practices designed in accordance with governing law and regulations.

(c) *Authority.*

This Division III is adopted under the authority of State Environment Article, Title 4, Subtitle 1.
(Ord. 13-095.)

§ 31-5. Administration.(a) *In general.*

The Baltimore City Department of Public Works is responsible for administering and enforcing this Division III.

(b) *Rules and regulations.*

Subject to Title 4 {“Administrative Procedure Act – Regulations”} of the City General Provisions Article, the Department may adopt rules and regulations to carry out this Division III.

Editor’s Note: By authority of Ordinance 20-431, Section 5, the Director of Legislative Reference, in consultation with the Law Department, has conformed the text of this subsection to refer to and reflect the requirements of the recently-enacted Administrative Procedure Act that, effective January 15, 2021, governs the proposal, adoption, and publication of administrative rules and regulations.

(Ord. 13-095; Text Conformed 02/16/21.)

§ 31-6 to 31-8. {Reserved}**§ 31-8. Prohibited conduct generally.**

Except as otherwise provided in this Division III, no person may disturb land without implementing soil erosion and sediment controls in accordance with this Division III and the Standards and Specifications.

(Ord. 13-095.)

§ 31-9. Exemptions.(a) *Definitions.*(1) *In general.*

In this section, the following terms have the meanings indicated.

(2) *Agricultural land management practices.*(i) *In general.*

“Agricultural land management practices” means those methods and procedures used in the cultivation of land to further crop and livestock production and conservation of related soil and water resources.

(ii) *Exclusions.*

“Agricultural land management practices” does not include logging and timber removal operations.

(3) *Best management practice.*

“Best management practice” means a structural device or nonstructural practice designed to temporarily store or treat stormwater runoff in order to mitigate flooding, reduce pollution, and provide other amenities.

(b) *Exempt activities.*

The following activities are exempt from this Division III:

- (1) agricultural land management practices;
- (2) agricultural best management practices;
- (3) clearing or grading activities that disturb less than 5,000 square feet of land area and disturb less than 100 cubic yards of earth; and
- (4) clearing or grading activities that are subject exclusively to State approval and enforcement under State law and regulations.

(Ord. 13-095.)

§ 31-10. Variances.

(a) *When authorized.*

The Department may grant a variance from any requirement of this Division III if, because of exceptional circumstances applicable to the site, strict adherence to that requirement will result in exceptional hardship and not fulfill the intent of this Division III.

(b) *Application for variance.*

The application for variance must:

- (i) be in the form that the Department requires;
- (ii) state the specific variance sought;
- (iii) explain why the variance is needed;
- (iv) contain any other information that the Department requires; and
- (v) be submitted to the Department with the applicant’s proposed site development plan.

(Ord. 13-095.)

SUBTITLE 32
EROSION AND SEDIMENT CONTROL PLANS

§ 32-1. Definitions.

(a) *In general.*

In this subtitle, the following terms have the meanings indicated.

(b) *Approval.*

(1) *In general.*

“Approval” means a documented action by the Department following a comprehensive review to determine and acknowledge that submitted materials demonstrate compliance with the requirements of a specified stage in a project’s development process.

(2) *Exclusions.*

“Approval” does not include an acknowledgment by the Department that material has been received for review.

(c) *Drainage area.*

“Drainage area” means an area, measured in a horizontal plane, that:

- (1) contributes runoff to a single point; and
- (2) is enclosed by a ridge line.

(d) *Stabilization.*

“Stabilization” means the protection of exposed soils from erosion by the application of seed and mulch, seed and matting, sod, other vegetative measures, or structural means.

(Ord. 13-095.)

§ 32-2. Plans required.

Except as otherwise provided in this Division III, no person may grade land without erosion and sediment control plans approved by the Department.

(Ord. 13-095.)

§ 32-3. Review and approval of plans.

(a) *Review and comment.*

- (1) The Department must comprehensively review erosion and sediment control plans for each phase of the site design to determine compliance with this Division III.

- (2) For each plan phase, coordinated comments will be provided that reflect input from all appropriate agencies, including Planning, Zoning, and Public Works.
- (3) At each phase of project design, comments from the Department and other appropriate agencies must be addressed by the applicant and approval received before subsequent submissions.

(b) *Conditions.*

In approving a plan, the Department may impose conditions that the Department considers necessary or appropriate to ensure:

- (1) compliance with this Division III; and
- (2) the preservation of public health and safety.

(c) *Notification.*

After the Department has completed its comprehensive review for each phase of site design, the Department must notify the applicant of either:

- (1) the Department's approval of the plan;
- (2) the Department's disapproval of the plan, together with:
 - (i) the reasons for disapproval; and
 - (ii) any modifications that the Department requires for approval; or
- (3) if no decision has been made:
 - (i) the status of the review process; and
 - (ii) the anticipated date of completion.

(d) *Endorsement.*

- (1) The final erosion and sediment control plan may not be considered approved without the inclusion of the Department's dated signature on the plan.
- (2) Approved plans remain valid for 2 years from the date of approval, unless extended or renewed by the Department.

(e) *"Grandfathering" of approved plans.*

- (1) Any plans that receive final approval after January 9, 2013, must be in compliance with the requirements of this Division III and the Standards and Specifications.

(2) A plan that receives final approval on or before January 9, 2013, may be reapproved under its existing conditions, except for stabilization requirements, if grading activities begin on the site on or before January 9, 2015.

(3) Stabilization practices on all sites must be in compliance with the requirements of this Division III and the Standards and Specifications on or before January 9, 2013, regardless of when an approved erosion and sediment control plan was approved.

(Ord. 13-095.)

§ 32-4. Contents of plans.

(a) *Submission.*

An applicant is responsible for submitting erosion and sediment control plans that meet the requirements of the Department, this Division III, and all other applicable provisions of the Baltimore City Code.

(b) *Tenor of plans.*

The plans must include sufficient information to evaluate:

- (1) the environmental characteristics of the affected areas;
- (2) the potential impacts of the proposed grading on water resources; and
- (3) the effectiveness and acceptability of measures proposed to minimize soil erosion and off-site sedimentation.

(c) *Minimum information.*

At a minimum, applicants must submit the following information for the concept, site development, and final erosion and sediment control phases of project design:

- (1) a letter of transmittal or application;
- (2) a vicinity map indicating north arrow, scale, site location, and other information necessary to easily locate the property;
- (3) plan submittals as specified in § 32-5 {"Concept plan"}, § 32-6 {"Site development plan"}, and § 32-7 Final ... plans"; and
- (4) the name, address, and telephone number of:
 - (i) the owner of the property where the grading is proposed;
 - (ii) the developer; and
 - (iii) the applicant.

(Ord. 13-095.)

§ 32-5. Concept plan.**(a) *In general.***

The applicant must submit a concept plan that provides sufficient information for an initial assessment of the proposed project and whether erosion and sediment control can be provided according to this Division III.

(b) *Minimum contents.*

Plans submitted for concept approval must include:

(1) a map, at a scale specified by the Department, showing:

- (i) the proposed limit of disturbance;
- (ii) topography;
- (iii) existing natural resources;
- (iv) wetlands;
- (v) floodplains;
- (vi) water bodies;
- (vii) highly erodible soils;
- (viii) natural drainage patterns; and
- (ix) any other sensitive areas to be protected during construction;

(2) a general description of the predominant soil types on the site, as described by the appropriate soil survey information available through the local soil conservation district or the USDA Natural Resources Soil Conservation Service;**(3) the anticipated location of all:**

- (i) impervious areas;
- (ii) buildings;
- (iii) roadways;
- (iv) parking;
- (v) sidewalks;
- (vi) utilities; and

(vii) other site improvements; and

(4) any other information that the Department requires.

(Ord. 13-095.)

§ 32-6. Site development plan.

(a) *In general.*

Unless otherwise directed by the Department, after approval of the concept plan, the applicant must submit site development plans that reflect comments received during the previous review phase.

(b) *Minimum contents.*

Plans submitted for site development approval must be of sufficient detail to allow site development to be reviewed and must include:

- (1) all information provided during the concept plan review phase;
- (2) drainage area maps that show, at a minimum scale of 1" = 200':
 - (i) existing, interim, and proposed topography;
 - (ii) proposed improvements;
 - (iii) standard symbols for proposed sediment control features; and
 - (iv) pertinent drainage information, including provisions to protect downstream areas from erosion for a minimum of 200 feet downstream or to the next conveyance system;
- (3) a proposed erosion and sediment control plan that contains:
 - (i) the existing and proposed topography and improvements, at a scale between 1" = 10' and 1" = 50' with 2 foot contours or other approved contour interval;
 - (ii) interim contours for projects with more than minor grading, if required by the Department;
 - (iii) scale, project, and sheet title, and north arrow on each plan sheet;
 - (iv) the limit of disturbance, including:
 - A. limit of grading (grading units, if applicable); and
 - B. initial, interim, and final phases;
 - (v) storm drainage features, including:

- A. existing and proposed bridges, storm drains, culverts, outfalls, etc.;
 - B. velocities and peak flow rates at outfalls for the 2-year and 10-year frequency storm events; and
 - C. site conditions around points of all surface water discharge from the site;
- (vi) any phasing necessary to limit earth disturbances and impacts to natural resources; and
 - (vii) an overlay plan that shows the types and locations of stormwater practices and erosion and sediment control practices to be used;
- (4) a narrative that indicates how proposed erosion and sediment control practices will be integrated with proposed stormwater management strategy using environmental site design in accordance with Division II of this article; and
 - (5) any other information that the Department requires.
- (Ord. 13-095.)

§ 32-7. Final erosion and sediment control and stormwater management plans.

(a) *In general.*

After site development plan approval, the applicant must submit final erosion and sediment control plans and stormwater management plans that reflect the comments received during the previous review phase.

(b) *Minimum contents.*

Plans submitted for final approval must be of sufficient detail to allow all approvals and permits to be issued and must include:

- (1) all information provided during the concept and site development plan review phase;
- (2) erosion and sediment control practices to minimize on-site erosion and prevent off-site sedimentation, including:
 - (i) the salvage and reuse of topsoil;
 - (ii) phased construction and implementation of grading unit(s) to minimize disturbances, both in extent and duration;
 - (iii) location and type of all proposed sediment control practices;
 - (iv) design details and data for all erosion and sediment control practices; and
 - (v) specifications for temporary and permanent stabilization measures, including at a minimum:

A. the “Standard Stabilization Note” on the plan stating:

“Following initial soil disturbance or re-disturbance, permanent or temporary stabilization must be completed within:

1. 3 calendar days as to the surface of all perimeter dikes, swales, ditches, perimeter slopes, and all slopes steeper than 3 horizontal to 1 vertical (3:1); and
2. 7 calendar days as to all other disturbed or graded areas on the project site not under active grading.”;

B. details for areas requiring accelerated stabilization; and

C. maintenance requirements as defined in the Standards and Specifications;

(3) a sequence of construction that:

(i) describes the relationship between the implementation of controls and the maintenance of controls, including permanent and temporary stabilization, and the various stages or phases of earth disturbance and construction; and

(ii) includes the following, at a minimum:

- A. request for a pre-construction meeting with the Department;
- B. clearing and grubbing as necessary for the installation of perimeter controls;
- C. construction and stabilization of perimeter controls;
- D. remaining clearing and grubbing within installed perimeter controls;
- E. road grading;
- F. grading for the remainder of the site;
- F. utility installation and connections to existing structures;
- G. construction of buildings and roads;
- H. other construction;
- I. final grading, landscaping, and stabilization;
- J. installation of stormwater management measures;
- K. obtaining approval by the Department before removal of sediment controls; and

L. removal of sediment controls and stabilization of areas that are disturbed by the removal;

(4) a statement requiring the owner, developer, or representative to contact the Department or its agent at the following stages of the project or in accordance with the approved erosion and sediment control plan, grading permit, or building permit:

(i) before the start of earth disturbance;

(ii) after the installation of perimeter erosion and sediment controls is complete, but before proceeding with any other earth disturbance or grading;

(iii) before the start of another phase of construction or the opening of another grading unit; and

(iv) before the removal of sediment control practices;

(5) certification by the owner or developer that:

(i) any clearing, grading, construction, or development will be done pursuant to the approved erosion and sediment control plan; and

(ii) the responsible personnel involved in the construction project will have, before the project begins, a Certificate of Training from an MDE approved training program for the control of erosion and sediment; and

(iii) the City Department of Public Works, City Department of Housing and Community Development, and Maryland Department of the Environment will be allowed right of entry for periodic on-site evaluation; and

(6) if required by the Department or the Maryland Department of the Environment, certification by a professional engineer, land surveyor, landscape architect, architect, or forester (for forest harvest operations only) registered in the State that the plans have been designed in accordance with erosion and sediment control laws, regulations, and standards; and

(7) any additional information considered appropriate by the Department.

(Ord. 13-095.)

§ 32-8. Modifications to plans.

(a) *In general.*

The Department may approve modifications to approved plans as necessary.

(b) *Who may request.*

Modifications may be requested by the owner or developer or by the Department.

(c) *Minor modifications*

(1) The Department may include in its Erosion and Sediment Control Manual a list of minor modifications that the Department may approve as field revisions.

(2) The Maryland Department of the Environment must approve the list before its implementation.

(Ord. 13-095.)

§ 32-9. Standard erosion and sediment control plan.

(a) *Department may adopt.*

The Department may include in its Erosion and Sediment Control Manual a standard erosion and sediment control plan for activities with minor earth disturbances, such as single-family residences, small commercial and other similar building sites, minor maintenance grading, and minor utility construction.

(b) *Requirements.*

(1) A standard erosion and sediment control plan must meet the requirements of this Division III and the Standards and Specifications.

(2) The Maryland Department of the Environment must approve the standard plan before its adoption.

(Ord. 13-095.)

SUBTITLE 33
PERMITS; FEES; SECURITY

§ 33-1. Approved plan prerequisite to permits.

For any development that requires an erosion and sediment control plan under this Division III, a grading or building permit may not be issued or extended unless a final erosion and sediment control plan has been approved by the Department.

(Ord. 13-095.)

§ 33-2. Fees.

(a) *Payable at each phase.*

Non-refundable fees will be assessed and collected in advance by the Department for each phase of a development.

(b) *Fee schedule.*

(1) The fees assessed under this Division III are in addition to the usual fees charged for grading and building permits.

(2) Fees are assessed for plan reviews, administration and management of the approval process, inspections, and the like.

(3) The amount of the fees are as set forth in the fee schedule established from time to time by the Board of Estimates. The fee schedule shall be based on the relative complexity of a project.

(Ord. 13-095.)

§ 33-3. Performance bond.

(a) *Required.*

For any development that requires an erosion and sediment control plan under this Division III, a grading or building permit may not be issued until the applicant posts a surety or cash bond or other means of security acceptable to the Department.

(b) *Amount.*

(1) The amount of the security must be equal to at least the estimated cost of the installation, maintenance, and removal of the erosion and sediment controls shown on the approved plan.

(2) This estimate must be prepared by the applicant and submitted with the plan.

(c) *Tenor.*

The security required by this section must provide for forfeiture on failure to:

(1) complete all work specified in the approved erosion and sediment control plan;

(2) comply with any provision of this Division III or of any other applicable law, rule, or regulation; or

(3) comply with any applicable time limitations.

(d) *Release.*

The security may not be released until the Department conducts a final inspection of the completed work.

(Ord. 13-095.)

**SUBTITLE 34
INSPECTIONS; INVESTIGATIONS**

§ 34-1. Inspections required.

(a) *In general*

Every active site having an approved erosion and sediment control plan should be inspected for compliance with the plan on an average of once every 2 weeks.

(b) *Plan to be maintained on site.*

The owner or developer must maintain a copy of the approved erosion and sediment control plan on site.

(Ord. 13-095.)

§ 34-2. By whom conducted.

All inspections under this Division III must be conducted by:

(1) the Department; or

(2) the Department's authorized representative.

(Ord. 13-095.)

§ 34-3. Reports on inspections.

(a) *Required.*

The Department must prepare a written report after every inspection.

(b) *Contents.*

The report must describe:

(1) the date and location of the site inspection;

(2) whether the approved plan has been properly implemented and maintained;

(3) practice deficiencies or erosion and sediment control plan deficiencies;

(4) if a violation exists, the type of enforcement action taken; and

(5) if applicable, a description of any modifications to the plan.

(Ord. 13-095.)

§§ 34-4 to 34-5. {Reserved}

§ 34-6. Right of entry.

It is a condition of every grading or building permit that the Department has the right to enter property periodically to inspect for compliance with the approved plan and this Division III.
(Ord. 13-095.)

§ 34-7. Investigations.*(a) On complaint.*

The Department must:

- (1) accept and investigate complaints from interested persons about erosion and sediment control issues;
- (2) conduct an initial investigation within 3 working days from receipt of the complaint;
- (3) notify the complainant of the initial investigation and findings within 7 days from receipt of the complaint; and
- (4) take appropriate action when violations are discovered during the course of the complaint investigation.

(b) On own initiative.

The Department may also undertake, on its own initiative, investigations of suspected erosion and sediment control issues on all properties.

(c) Posting of findings.

The Department must post on its website the Department's findings on all investigations, whether initiated by interested persons or on the Department's own initiative.
(Ord. 13-095.)

SUBTITLE 35
ENFORCEMENT; REVIEWS; PENALTIES

§ 35-1. Violation notices.

(a) *Notice required.*

If a violation is found, the Department must provide written notice of the violation to:

- (1) the owner or developer; and
- (2) the responsible personnel.

(b) *Contents.*

The notice must describe:

- (1) the nature of the violation;
- (2) the required corrective action; and
- (3) the time period within which the violation must be corrected.

(c) *Posting of violation notices.*

The Department must post on its website a copy of all notices of violations issued under this section.

(Ord. 13-095.)

§ 35-2. Enforcement of notice.

(a) *In general.*

Any one or a combination of the following actions may be taken to enforce a violation notice.

(b) *Stop work order.*

If a violation persists after issuance of a violation notice, the Department may issue a stop work order for the site.

(c) *Bond forfeiture; other action.*

If reasonable efforts to correct the violation have not been undertaken, the Department may:

- (1) cause the performance bond or other security to be forfeited; and
- (2) refer the matter for legal action, including pursuit of criminal and civil penalties under § 35-9 of this subtitle.

(d) *Civil liability.*

In addition to any other sanction under this Division III, a person who fails to install or maintain erosion and sediment controls in accordance with an approved plan is liable in a civil action to the City or the State, as the case may be, for damages in an amount equal to double the cost of installing or maintaining the controls.

(Ord. 13-095.)

§ 35-3. Injunctive relief.

Any State or City agency or any interested person may seek an injunction against any person who violates or threatens to violate any provision of this Division III.

§ 35-4. {Reserved}

§ 35-5. Administrative review – In general.

(a) *Right of appeal.*

Any person aggrieved by the action of any official charged with the enforcement of this Division III, whether as the result of the disapproval of an application, the issuance of a violation notice, an alleged failure to properly enforce this Division III, or otherwise:

- (1) may appeal the action to the Director of Public Works;
- (2) on timely request, is entitled to a hearing on that appeal.

(b) *When and how taken.*

The appeal must:

- (1) be in writing;
- (2) clearly state the grounds on which the appeal is based;
- (3) if the person aggrieved desires a hearing on the appeal, contain an express statement to that effect; and
- (4) be filed with the Director within 10 days of the action in dispute.

(Ord. 13-095; Ord. 14-307.)

§ 35-6. Administrative review – Delegation of hearing authority.

(a) *In general.*

Hearings may be conducted by:

- (1) the Director of Public Works; or
- (2) a hearing officer designated by the Director.

(b) *Scope of delegation.*

The Director may delegate to a hearing officer the authority to issue:

- (1) proposed or final findings of fact;
- (2) proposed or final conclusions of law;
- (3) proposed or final findings of fact and conclusions of law;
- (4) proposed or final orders; or
- (5) the final administrative decision of the Department.

(*Ord. 13-095; Ord. 15-331.*)

§ 35-7. Administrative review – Conduct of hearing.(a) *Notice.*

(1) The Director of Public Works must provide all parties reasonable written notice of the hearing.

(2) The notice must state:

- (i) the date, time, place, and nature of the hearing;
- (ii) the right of a party to be represented, at the party's own expense, by an attorney or, if permitted by law, other representative;
- (iii) the right of a party to call witnesses and submit documents or other evidence under § 35-8 of this subtitle; and
- (iv) that failure of a party to appear for the scheduled hearing may result in an adverse action against the party.

(b) *Hearings to be open and informal.*

Except as otherwise provided by law or by rule or regulation of the Department, all hearings must be:

- (1) open to the public; and
- (2) conducted in an orderly but informal manner.

(*Ord. 13-095.*)

§ 35-8. Administrative review – Evidence.*(a) In general.*

Except as otherwise provided by this section or by rule or regulation of the Department, formal rules of evidence and trial procedures do not apply.

(b) Right to submit.

A party is entitled to:

- (1) call witnesses;
- (2) offer evidence, including rebuttal evidence;
- (3) cross-examine any witness that another party or the Department calls; and
- (4) present summation and argument.

(c) Scope.

The Director or hearing officer:

- (1) may admit probative evidence that reasonable and prudent individuals commonly accept in the conduct of their affairs and give probative effect to that evidence;
- (2) may not exclude evidence solely on the basis that it is hearsay;
- (3) must give effect to a privilege recognized by law;
- (4) may receive documentary evidence in the form of copies or excerpts or through incorporation by reference;
- (5) may take official notice of a fact that is judicially noticeable or that is general, technical, or scientific and within the specialized knowledge of the Department; and
- (6) may exclude evidence that is:
 - (i) incompetent;
 - (ii) irrelevant;
 - (iii) immaterial; or
 - (iv) unduly repetitious.

(Ord. 13-095.)

§ 35-9. Administrative review – Final decisions.

(a) *Form and contents.*

The final decision must:

- (1) be in writing; and
- (2) contain separate statements of:
 - (i) the findings of fact;
 - (ii) the conclusions of law; and
 - (iii) the decision or order.

(b) *Distribution.*

A copy of the final decision must be mailed or delivered to each party or that party’s attorney of record.

(Ord. 13-095; Ord. 15-331.)

§ 35-10. {Reserved}

§ 35-11. Judicial and appellate review.

(a) *Judicial review.*

A party aggrieved by a final decision of the Department under this Division III may seek judicial review of that decision by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules of Procedure.

(b) *Appellate review.*

A party to the judicial review may appeal the court’s final judgment to the Court of Special Appeals in accordance with the Maryland Rules of Procedure.

(Ord. 13-095; Ord. 19-332.)

§ 35-12. {Reserved}

§ 35-13. Penalties.

(a) *Civil fines.*

- (1) The Department may impose civil fines for violations of this Division III.
- (2) The amount of the fines are as set forth in the fine schedule established from time to time by the Department with the approval of the Board of Estimates.
- (3) No fine may exceed \$1,000 for any 1 offense.

(b) *Criminal penalties.*

Any person who violates any provision of this Division III or of any rule or regulation adopted under or incorporated into this Division III is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than \$1,000 or imprisonment for not more than 1 year or both fine and imprisonment for each offense.

(c) *Each day a separate offense.*

Each day that a violation continues is a separate offense.
(Ord. 13-095.)

SUBTITLES 36 TO 40
{RESERVED}

DIVISION IV: FOREST AND TREE CONSERVATION

EDITOR’S NOTE: This Division IV was substantially amended by Ordinance 20-401, effective December 28, 2020.

**SUBTITLE 41
PURPOSE; DEFINITIONS; GENERAL PROVISIONS**

§ 41-1. Purpose.

The purpose of this Division IV is to:

- (1) encourage the preservation and enhancement of the City's urban forests;
- (2) replace and increase tree cover in non-forest areas within the City;
- (3) establish procedures, standards and requirements that protect trees and forests during and after development activity and minimize tree loss due to development activity;
- (4) establish procedures, standards and requirements for afforestation, reforestation, and specimen tree mitigation within the City; and
- (5) meet the requirements of the Natural Resources Article, Sections 5-1601 through 5-1612 of the Annotated Code of Maryland.

(Ord. 20-401.)

§ 41-2. Definitions.

(a) *In general.*

In this Division IV, the following terms have the meanings indicated.

(b) *Afforestation.*

“Afforestation” means:

- (1) the establishment of forest cover on an area from which it has always or very long been absent, or
- (2) the planting of open areas which are not presently in forest cover; and
- (3) establishment of a forest according to procedures set forth in the Baltimore City Forest Conservation Manual.

(c) *Baltimore City Forest Conservation Manual.*

“Baltimore City Forest Conservation Manual” (“Manual”) includes the State Forest Conservation Manual and the Baltimore City Forest Conservation Supplement to the State Forest Conservation Manual.

(d) *Clear.*

“Clear” means removal of any woody plant, wherein the stump and root mass are physically removed.

(e) *Critical root zone.*

“Critical root zone” means a circular region measured outward from a tree trunk representing the area of the roots that must be maintained or protected for the tree’s survival. Critical root zone shall be measured as one foot of radial distance for every inch of tree diameter (DBH) measured at 4.5 feet above the ground with a minimum radius of 8 feet. For specimen trees the critical root zone shall be measured as 1.5 feet of radial distance for every inch of tree diameter.

(f) *Cut.*

“Cut” means the removal of a woody plant, wherein the stump and root mass remain in place and intact.

(g) *Declaration of intent.*

“Declaration of intent” means a document whose purpose is to verify that the proposed activity is exempt under the provisions of the Natural Resources Article and this Division IV.

(h) *Department.*

“Department” means the Baltimore City Department of Planning.

(i) *Forest.*

“Forest” includes:

- (1) a biological community dominated by trees and other woody plants covering a land area of 4,000 square feet or greater. This area must have a live tree density of at least 100 trees per acre, with at least 50% of those trees having a 2-inch or greater diameter at 4.5 feet above the ground;
- (2) areas that have been cut, but not cleared; and
- (3) “forest” does not include orchards or Christmas tree plantations.

(j) *Forest conservation.*

“Forest conservation” means the retention of existing forest or the creation of new forest as prescribed by the Department of Planning and the Baltimore City Forest Conservation Manual.

(k) *Forest conservation plan.*

“Forest conservation plan” means a plan approved pursuant to Subtitles 42 and 44 of this Division IV and the requirements of the Baltimore City Forest Conservation Manual.

(l) *Forest stand delineation.*

“Forest stand delineation” means the description of the existing vegetation on a site proposed for development, prepared according to the requirements of the Baltimore City Forest Conservation Technical Manual and this Division IV.

(m) *Person.*

“Person” includes the federal government, the state, any county, municipal corporation, or other political subdivision of the state, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any of their affiliates, or any other entity.

(n) *Reforest; reforestation.*

“Reforest” or “reforestation” means to create a biological community dominated by trees and other woody plants containing at least 100 trees per acre with at least 50% of those trees having the potential of attaining a 2-inch or greater diameter measured at 4.5 feet above the ground within 5 years and includes afforestation or establishment of a forest according to procedures set forth in the Baltimore City Forest Conservation Manual.

(o) *Regulated activity.*

“Regulated activity” means any activity subject to the requirements of § 42-1 of this Division IV.

(p) *Retention.*

“Retention” means the deliberate holding and protecting of existing trees, shrubs, or plants on the site according to established standards in the Baltimore City Forest Conservation Manual.

(q) *Specimen tree.*

“Specimen tree” means a tree having a diameter measured at 4.5 feet above the ground of 20 inches or more or trees having 75% or more of the diameter of the current state champion tree of that species.

(r) *Tree.*

“Tree” means a large, woody plant having 1 or several self-supporting stems or trunks and numerous branches that reach a height of at least 20 feet at maturity.

(*City Code, 1976/83, art. 9A, §1-1(a), (b), (d), (f) - (l), (p) - (s), (v).*) (*Ord. 93-170; Ord. 20-401.*)

§ 41-3. Statutory references.

Whenever a provision of this Division IV refers to any portion of the Maryland Code, the Code of Maryland Regulations {COMAR}, and the State Forest Conservation Manual, the reference applies to any subsequent amendment to that portion of the code, regulations, or manual unless the referring provision expressly provides otherwise.

(*City Code, 1976/83, art. 9A, §1-2.*) (*Ord. 93-170; Ord. 20-401.*)

§ 41-4. Scope of Division – In general.

(1) Except as provided in § 41-5 of this subtitle, this Division IV applies to:

- (i) any person making application for a grading or building permit on a parcel or parcels of land for a total area of 5,000 square feet or greater;
- (ii) any person making application for a subdivision or development plan on a parcel or parcels of land for a total area of greater than 5,000 square feet; and
- (iii) a public utility not exempt under § 41-5(b)(3) of this subtitle.

(2) All subdivision or development plan approvals subject to this Division IV shall be conditioned on approval of a concept Forest Conservation Plan. All grading or building permits subject to this Division IV shall be issued conditioned on approval of and compliance with a Forest Conservation Plan.

(City Code, 1976/83, art. 9A, §2-1.) (Ord. 93-170; Ord. 20-401.)

§ 41-5. Scope of Division – Exemptions.

(a) *Definitions.*

(1) *Commercial logging or timber harvesting operations.*

“Commercial logging or timber harvesting operations” means those activities which result in the cutting and removing of tree stems from a site for commercial purposes, leaving the root mass intact.

(2) *Timber harvesting.*

- (i) “Timber harvesting” means a tree-cutting operation affecting 1 or more acres of forest or developed woodland within a 1-year interval that disturbs 5,000 square feet or more of forest floor.
- (ii) “Timber harvesting” does not include grubbing and clearing of root mass.

(b) *Exempted activities.*

This Division IV does not apply to:

- (1) any highway construction activity that is subject to State Natural Resources Article § 5-103;
- (2) commercial logging and timber harvesting operations, subject to the forest conservation and management program under State Tax-Property Article § 8-211:
 - (i) that were completed before July 1, 1991; or
 - (ii) were completed on or after July 1, 1991, on property which:

- (A) is the subject of a declaration of intent signed by the land owner and approved by the Department of Public Works and the Maryland Department of Natural Resource's Project Forester's Office as provided in COMAR 08.19.01.05; and
 - (B) has not been the subject of an application for a grading permit for development within 5 years after a logging or timber harvesting operation, but after this 5-year period the property shall be subject to this Division IV;
- (3) the cutting or clearing of public utility rights-of-way or land for electric generating stations regulated under State Public Utility Companies Article, Title 7, if:
 - (i) required certificates of public convenience and necessity have been issued in accordance with State Natural Resources Article § 5-1603(f); and
 - (ii) the cutting or clearing of the forest is conducted so as to minimize the loss of forest;
 - (4) routine maintenance or emergency repairs of public utility rights-of-way, if:
 - (i) the right-of-way existed before the effective date of the State or this program; or
 - (ii) the right-of-way's initial construction was approved under this Division IV;
 - (5) any noncoal surface mining regulated under Title 7, Subtitle 6A, of the State Natural Resources Article;
 - (6) any preliminary plan of subdivision or any grading or sediment control plan approved before July 1, 1991;
 - (7) areas covered by the Chesapeake Bay Critical Area Protection Law;
 - (8) a real estate transfer to provide a security, leasehold, or other legal or equitable interest, including a transfer of title, a portion of a lot or parcel, if:
 - (i) the transfer does not involve a change in land use or new development or development, with associated land disturbing activities; and
 - (ii) both the grantor and grantee file a declaration of intent;
 - (9) any activity conducted on a single lot of any size provided that the activity:
 - (i) does not result in the cumulative cutting or clearing of 5,000 square feet or greater of forest; and
 - (ii) does not include an application for a grading or building permit for disturbance of 5,000 square feet or greater; or

(10) an activity required for the purpose of constructing a dwelling house intended for the use of the owner, or a child or a grandchild of the owner, if the activity:

- (i) does not result in the cumulative cutting or clearing of 20,000 square feet or greater of forest;
- (ii) does not include an application for a grading or sediment and erosion control permit of 20,000 square feet or greater; and
- (iii) is the subject of a declaration of intent filed with the Department pursuant to § 42-7 of this Division IV.

(City Code, 1976/83, art. 9A, §1-1(e), (t) and §2-2.) (Ord. 93-170; Ord. 04-672; Ord. 20-401.)

**SUBTITLE 42
GENERAL REQUIREMENTS**

§ 42-1. In general.

(a) *Required delineations, plans, and methods.*

Any person subject to this Division IV:

(1) shall submit to the Department:

- (i) a forest stand delineation for the property on which the development is located according to guidelines set forth in the Baltimore City Forest Conservation Manual and this Division IV; and
- (ii) a forest conservation plan for the property on which the development is located according to guidelines set forth in the Manual and this Division IV; and

(2) shall use methods provided in the Manual to protect retained forest and trees during construction.

(b) *City agencies using state funds.*

If a City agency using state funds makes application to conduct a regulated activity, the provisions of COMAR 08.19.04.01D apply.

(City Code, 1976/83, art. 9A, §3-1.) (Ord. 93-170; Ord. 20-401.)

§ 42-2. Preparation of plans.

The forest stand delineation, the forest conservation plan, including preliminary and final plan, and the afforestation plan shall be prepared by a licensed forester, licensed landscape architect, or other qualified professional as provided in COMAR 08.19.06.01B.

(City Code, 1976/83, art. 9A, §3-2.) (Ord. 93-170.)

§ 42-3. Authorized signatory.

(a) *Who must sign.*

The forest stand delineation, preliminary and final forest conservation plans and afforestation/reforestation plans shall be signed by:

- (1) an officer of the corporation or an authorized agent of a corporation;
- (2) an authorized official of a federal, state, or local government;
- (3) a partner of an association or partnership; or
- (4) an individual applicant.

(b) *Responsibility of signatory.*

The individual who signs an application is responsible for the truth, accuracy, and completeness of all information in the application.

(City Code, 1976/83, art. 9A, §3-6.) (Ord. 93-170.)

§ 42-4. Review.

The Department shall review an application for a forest stand delineation, forestation and deforestation plans, and preliminary and final forest conservation plans to determine whether they are complete and correct, and shall acknowledge receipt of the application in writing by regular first class mail or email.

(City Code, 1976/83, art. 9A, §3-3.) (Ord. 93-170; Ord. 20-401.)

§ 42-5. Completeness of application.

The Department shall consider a forest stand delineation, preliminary and final forest conservation plans, and afforestation plans complete if they contain all of the required information listed in the Baltimore City Forest Conservation Manual.

(City Code, 1976/83, art. 9A, §3-4.) (Ord. 93-170.)

§ 42-6. Notification of completeness.(a) *To be given within 45 days.*

Within 45 calendar days after receipt of the forest stand delineation, the preliminary and final forest conservation plans, and the afforestation plan, the Department shall notify the applicant by mail or email whether the application is complete and correct or if additional information is required.

(b) *Effect of failure to notify.*

If the Department fails to notify the applicant within 45 days, any plan submitted shall be treated as complete and correct.

(c) *Additional information; extension of review.*

The Department may require further information or provide for an additional 15 calendar days for review of an application under extenuating circumstances.

(City Code, 1976/83, art. 9A, §3-5.) (Ord. 93-170; Ord. 20-401.)

§ 42-7. Declaration of intent.(a) *Required for exemption.*

A person seeking an exemption under § 41-4 {§ 41-5} of this Division IV shall file a declaration of intent with the Department.

(b) *Compliance with COMAR.*

The declaration of intent shall be as specified in COMAR 08.19.01.05.

(c) *Effective term.*

The declaration of intent is effective for 5 years.
(*City Code, 1976/83, art. 9A, §3-7.*) (*Ord. 93-170.*)

§ 42-8. Area subject to calculations.

For a grading or building permit application for an area 40,000 square feet or greater in size, only the area of disturbance is subject to reforestation and afforestation calculations, unless the grading or building permit is part of a master plan, development plan, planned unit development, or subdivision for which the entire master plan, development plan, planned unit development, or subdivision is subject to reforestation and afforestation calculations.
(*City Code, 1976/83, art. 9A, §3-8.*) (*Ord. 93-170; Ord. 20-401.*)

SUBTITLE 43
FOREST STAND DELINEATION

§ 43-1. Time for submission.

(a) *In general.*

A forest stand delineation for the affected area shall be submitted:

- (1) at the initial stages of subdivision or site plan approval;
- (2) before a grading or building permit application is submitted; or
- (3) before a sediment and erosion control application is submitted.

(b) *Effect of failure to submit.*

If the forest stand delineation is not submitted at this time, no action will be taken on an application request for subdivision, site plan, building, grading, or sediment and erosion control approval.

(City Code, 1976/83, art. 9A, §4-1.) (Ord. 93-170; Ord. 20-401.)

§ 43-2. Simplified delineation – When authorized.

A simplified forest stand delineation may be submitted for an area:

- (1) when no forest cover will be disturbed during any construction activity;
- (2) when an area is designated to be protected under a long term protective agreement;
- (3) when there is no existing forest on the site; or
- (4) when approved by the Department.

(City Code, 1976/83, art. 9A, §4-2.) (Ord. 93-170.)

§ 43-3. Simplified delineation – Requirements.

The Department shall consider a simplified forest stand delineation complete if it includes:

- (1) a topographic map delineating intermittent and perennial streams and steep slopes over 25%;
- (2) a soils map;
- (3) location of 100-year floodplain; and
- (4) any other information necessary for the Department to review the application.

(City Code, 1976/83, art. 9A, §4-3.) (Ord. 93-170.)

§ 43-4. Effective term.

An approved forest stand delineation may remain in effect for a period not longer than 5 years.
(City Code, 1976/83, art. 9A, §4-4.) (Ord. 93-170.)

SUBTITLE 44
FOREST CONSERVATION PLAN

§ 44-1. Preliminary plan.

(a) *Concurrent review.*

The review of a preliminary forest conservation plan shall be concurrent with the review of the preliminary site plan.

(b) *Modifications.*

A preliminary forest conservation plan may be modified during the different stages of the review process, provided the Department approves the changes.

(City Code, 1976/83, art. 9A, §§5-1, 5-2.) (Ord. 93-170.)

§ 44-2. Retention of existing forest and specimen trees.

In developing a forest conservation plan, the applicant shall give priority to techniques for retaining existing forest and specimen trees on the site. If existing forest or specimen trees on the site subject to a forest conservation plan cannot be retained, the applicant shall demonstrate to the satisfaction of the Department how techniques for retention have been exhausted.

(City Code, 1976/83, art. 9A, §6-1.) (Ord. 93-170; Ord. 20-401.)

§ 44-3. Impacts to specimen trees and forests on adjacent properties.

The Department may only approve clearing or significant critical root zone impacts to specimen trees or forests on adjacent properties if the applicant submits written notification of the proposed clearing or significant critical root zone impacts to the owners.

(Ord. 20-401.)

§ 44-4. Revocation of plan – Grounds.

The Department, its designee, or other responsible agency at the request of the Department, may revoke an approved forest conservation plan, including a reforestation and afforestation plan, if it finds that:

- (1) any provision of the plan has been violated;
- (2) approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, or omission of a relevant or material fact; or
- (3) changes in the development or in the condition of the site necessitate preparation of a new or amended plan.

(City Code, 1976/83, art. 9A, §6-2.) (Ord. 93-170; Ord. 20-401.)

§ 44-5. Revocation of plan – Notice and hearing.

Prior to revoking approval of a forest conservation plan, the Department shall notify the owner and/or developer in writing and provide an opportunity for hearing before the Baltimore City Planning Commission.

(City Code, 1976/83, art. 9A, §6-3.) (Ord. 93-170; Ord. 20-401.)

§ 44-6. Cutting prohibited pending approval.

If a forest conservation plan is required by this Division IV, a person shall not cut, clear, or grade on the development site until the Department has approved the plan. All grading or building permits, and subdivision or development plan approvals shall be issued conditioned on approval of, and compliance with a Forest Conservation Plan.

(City Code, 1976/83, art. 9A, §6-4.) (Ord. 93-170; Ord. 20-401.)

§ 44-7. Approval of plan alteration.

The plan cannot be altered without first obtaining approval from the Department.

(City Code, 1976/83, art. 9A, §6-5.) (Ord. 93-170; Ord. 20-401.)

§ 44-8. Modification of a forest conservation easement.

(a) *Process for reviewing and approving/denying modifications.*

The following review and approval paths will apply to forest conservation easement modifications:

- (1) Expansion of an easement with no reduction to the easement can be reviewed and approved through the standard forest conservation review process.
- (2) Less than 5,000 square feet of modification to an easement of at least 15,000 square feet in size can be reviewed and approved through the standard forest conservation review process.
- (3) 5,000 square feet or greater modification to an easement of at least 15,000 square feet in size must be approved by the Planning Commission.
- (4) Any amount of modification to an easement established as part of a previous approval by the Planning Commission must be approved by the Planning Commission.
- (5) No modification will be permitted to reduce an easement to less than 10,000 square feet in size if the easement is to remain.
- (6) The applicant will need to submit:
 - (i) a new Forest Stand Delineation if the Forest Stand Delineation on record is more than 5 years old;
 - (ii) a new Forest Conservation Plan identifying the proposed easement modification(s); the plan must demonstrate that the proposed modifications

enhance or have no adverse effect on public safety and the public benefit, and enhance or appropriately offset any adverse effect on the conservation attributes of the property;

(iii) information describing how the request meets one or more of the “Conditions and Circumstances Under Which an Easement Modification May Be Considered” and all applicable “Criteria for Approval of an Easement Modification” as listed below; and

(iv) a request to the Planning Commission for Forest Conservation Easement modification, for modifications requiring Planning Commission approval.

(7) Once a request requiring Planning Commission approval has been accepted and scheduled for Planning Commission review, the applicant must meet all Planning Commission hearing requirements.

(b) *Conditions and circumstances under which an easement modification may be considered.*

(1) Expansion of an easement.

(2) Correction of oversight or error.

(3) Modification to address an environmental problem or public safety issue.

(4) Modification to accomplish a public benefit.

(c) *Criteria for approval of an easement modification.*

The applicant must demonstrate that the modified easement will meet state and local forest conservation standards.

(1) In the case of a correction of an oversight or error, the applicant must demonstrate that an oversight or error exists in the recorded easement documents.

(2) In the case of a modification to address an environmental problem or public safety issue, the applicant must demonstrate existence and extent of the environmental or public safety issue.

(3) In the case of a modification to accomplish a public benefit, the applicant must demonstrate and quantify the public benefit that would result from the modification.

(4) In cases where a proposed modification would result in removal of a portion of the existing easement, the applicant must demonstrate that, in identifying the proposed solution, all potential options for retaining the easement intact were exhausted.

(5) In cases where a proposed modification would result in removal of a portion of the existing easement, the applicant must demonstrate that the mitigation proposed meets

the requirements as calculated using the state Forest Conservation Worksheet and that the mitigation proposed follows the required sequence for mitigation as listed under Subtitle 45 of Article 7, Division IV of the City Code. A fee in lieu will only be considered as a last resort.

- (6) Proposals to completely remove or eliminate an easement will not be considered unless the existing easement is replaced with an on- or off-site easement of equivalent quality and of a size determined using the State Forest Conservation Worksheet.
- (7) Equivalent quality will be determined by the Department of Planning through a comparison of the existing and proposed easements, including the presence of priority forest, forest stand maturity, health, and species diversity, and the extent of non-native invasive vegetation.
- (8) No modification will be permitted to reduce an easement to less than 10,000 square feet in size, and minimum dimensions must meet the standards established in the State Forest Conservation Technical Manual.

(d) *Steps following approval of a forest conservation easement modification.*

- (1) Submit a new draft record plat and draft easement agreement for approval. The agreement should cite any terms or conditions associated with approval by the Department or the Planning Commission.
- (2) Provide a draft bond for any on-site or off-site mitigation requirements approved by the Planning Commission and work with the Department of Planning to prepare a draft MOU defining the terms for completing the mitigation and releasing the bond.
- (3) Once the draft bond has been approved, execute the bond and associated MOU and provide the original to the Department of Planning.
- (4) Once the record plat and easement agreement have been approved by the Department of Planning, record the new plat and agreement with the Circuit Court for Baltimore City, Land Records and Licenses Division.
- (5) Satisfy all mitigation requirements required. Notify Department of Planning staff for inspections once mitigation has been installed and again before the two-year maintenance and establishment period concludes. Once all mitigation and maintenance requirements have been satisfied, the Department of Planning will arrange to release the bond.

(Ord. 20-401.)

SUBTITLE 45
REFORESTATION, AFFORESTATION, AND SPECIMEN TREE MITIGATION

§ 45-1. Preference for retention.

After every reasonable effort to minimize the cutting of trees and other woody plants is exhausted in the development of a subdivision plan, and/or grading and sediment control plans, the forest conservation plan shall provide for reforestation, afforestation, and/or specimen tree mitigation. (*City Code, 1976/83, art. 9A, §7-1.*) (*Ord. 93-170; Ord. 20-401.*)

§ 45-2. Required sequence.

(a) *Definitions.*

(1) *Off-site.*

“Off-site” means not on the same property as the activity which is proposed, is occurring, or which has occurred.

(2) *On-site.*

“On-site” means the area located within the legal boundary of the property on which the regulated activity is proposed, is occurring, or has occurred.

(b) *Sequence for reforestation, etc.*

The required sequence for reforestation, afforestation, or specimen tree mitigation, after techniques for retaining existing forest on the site have been exhausted, is as follows:

- (1) on-site reforestation, afforestation, and/or specimen tree mitigation, as specified in the Baltimore City Forest Conservation Manual;
- (2) off-site reforestation, afforestation, and/or specimen tree mitigation within the City shall be as specified for on-site reforestation or specimen tree mitigation;
- (3) use of appropriate credits generated by a forest mitigation bank in the City; and
- (4) payment into the City Forest Conservation Fund.

(*City Code, 1976/83, art. 9A, §1-1(n), (o) and §7-2.*) (*Ord. 93-170; Ord. 20-401.*)

§ 45-3. Reforestation, etc., guidelines; time limits.

(a) *Priority guidelines in Manual.*

Persons required to conduct reforestation, afforestation, or specimen tree mitigation shall follow the priority guidelines outlined in the Baltimore City Forest Conservation Manual.

(b) *Period for reforestation, etc.*

A person required to conduct reforestation, afforestation, or specimen tree mitigation under this Division IV shall accomplish the action within 1 year or 2 growing seasons following the issuance of a grading permit, allowing for phasing in the plan.

(City Code, 1976/83, art. 9A, §7-3.) (Ord. 93-170; Ord. 20-401.)

§ 45-4. Security required.

Before the issuance of a grading or building permit, a person required to conduct afforestation, reforestation, or specimen tree mitigation under this Division IV shall furnish financial security in the form of a bond, an irrevocable letter of credit, or other security approved by the Department, as provided in the Baltimore City Conservation Supplement to the State Conservation Manual.

(City Code, 1976/83, art. 9A, §10-1.) (Ord. 93-170; Ord. 20-401.)

SUBTITLE 46
FOREST CONSERVATION FUND

§ 46-1. Forest Conservation Fund established.

There is hereby created a Baltimore City Forest Conservation Fund that meets the requirements of Natural Resources Article, §5-1610(h-1), Annotated Code of Maryland.
(City Code, 1976/83, art. 9A, §9-1.) (Ord. 93-170; Ord. 20-401.)

§ 46-2. When payments in lieu permitted.

If reforestation, afforestation, or specimen tree mitigation is not possible, and appropriate credits generated by a forest mitigation bank in the City are not available, the applicant may make payment into the Forest Conservation Fund. Payment may be accepted into the Conservation Fund under the following circumstances:

- (1) satisfying all or a portion of the required reforestation, afforestation, or specimen tree mitigation on site is technically infeasible;
- (2) an acceptable planting site cannot be found on other land within Baltimore City; and
- (3) appropriate credits generated by a forest mitigation bank in the City are not available.

(City Code, 1976/83, art. 9A, §8-1.) (Ord. 93-170; Ord. 20-401.)

§ 46-3. Contribution rate.

- (a) *In lieu of reforestation or afforestation.*

A person permitted by § 46-2 of this subtitle to contribute to this fund in lieu of reforestation or afforestation shall make a payment to the Baltimore City Conservation Fund of \$60,000 per acre of the area requiring planting or at a rate determined and adjusted periodically by the Planning Commission and approved by the Board of Estimates.

- (b) *In lieu of specimen tree mitigation.*

A person permitted by § 46-2 of this subtitle to contribute to this fund in lieu of specimen tree mitigation shall make a payment to the Baltimore City Conservation Fund of \$300 per inch of required mitigation, or at a rate as determined and adjusted periodically by the Planning Commission and approved by the Board of Estimates.

(City Code, 1976/83, art. 9A, §9-2.) (Ord. 93-170; Ord. 20-401.)

§ 46-4. When payable.

Money contributed in lieu of afforestation, reforestation, or specimen tree mitigation shall be paid at the time of the issuance of the grading or building permit for the development project.

(City Code, 1976/83, art. 9A, §9-3.) (Ord. 93-170; Ord. 20-401.)

§ 46-5. Period for City reforestation, etc.

(a) *Period for City action.*

The City shall accomplish the reforestation or afforestation for the equivalent number of acres for which the money is deposited within 2 years or 3 growing seasons, whichever is a greater time period, after receipt of the money.

(b) *Refund.*

At the end of that time, any part that has not been used to meet the afforestation or reforestation requirements shall be returned to the person who provided the money.
(*City Code, 1976/83, art. 9A, §9-4.*) (*Ord. 93-170; Ord. 20-401.*)

§ 46-6. Management of Fund.

(a) *In general.*

Money contributed under this title:

- (1) may be used only for reforestation and afforestation, including site identification, acquisition, preparation, management, and maintenance of existing forests, and achieving urban canopy goals;
- (2) shall be deposited in a separate Forest Conservation Fund; and
- (3) shall not revert to the General Fund.

(b) *Site selection.*

Sites selected for use of funds shall be located in the City of Baltimore.
(*City Code, 1976/83, art. 9A, §9-5.*) (*Ord. 93-170; Ord. 20-401.*)

SUBTITLE 47
VARIANCES

§ 47-1. “Variance” defined; When request required.

“Variance” means the process of obtaining approval for a forest conservation plan that does not strictly conform to the standards and requirements set forth in this Division IV. A variance must be requested in advance of approval of a Forest Conservation Plan and in advance of any activity requiring approval of a Forest Conservation Plan.

(City Code, 1976/83, art. 9A, §9-5.) (Ord. 93-170; Ord. 20-401.)

§ 47-2. When authorized.

Variations from this Division IV may be granted by the Planning Commission, if the applicant demonstrates that enforcement would result in unwarranted hardship to the applicant.

(City Code, 1976/83, art. 9A, §11-1.) (Ord. 93-170.)

§ 47-3. Applications.

An applicant for a variance shall:

- (1) describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- (2) describe how enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;
- (3) verify that the granting of the variance will not confer on the applicant a special privilege that would be denied to other applicants;
- (4) verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant;
- (5) verify that the need for the variance is not as a result of a violation of any portion of Division IV;
- (6) verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property;
- (7) verify that the granting of a variance will not adversely affect water quality; and
- (8) such other criteria that, subject to Title 4 {“Administrative Procedure Act – Regulations”} of the City General Provisions Article, the Planning Commission may set by rule or regulation.

Editor’s Note: By authority of Ordinance 20-431, Section 5, the Director of Legislative Reference, in consultation with the Law Department, has conformed the text of this item (8) to refer to and reflect the requirements of the recently-enacted Administrative Procedure Act that, effective January 15, 2021, governs the proposal, adoption, and publication of administrative rules and regulations.

(City Code, 1976/83, art. 9A, §11-2.) (Ord. 93-170; Ord. 20-401; Text Conformed 02/16/21.)

SUBTITLE 48
ENFORCEMENT; PENALTIES

§ 48-1. HCD to enforce.

This Division IV may be enforced by the Department of Housing and Community Development in the manner provided in § 104 {"Duties and powers of Building Official"} of the Baltimore City Building Code.

(City Code, 1976/83, art. 9A, §12-1(a).) (Ord. 93-170; Ord. 02-475; Ord. 13-093.)

§ 48-2. Fines.

(a) *Imposition.*

A person found to be in noncompliance with this Division IV, or the regulations adopted thereunder, the forest conservation plan, or the associated 2-year maintenance agreement, shall be fined a penalty of \$120,000 per acre of the area found to be in noncompliance with required forest conservation, or at a rate as determined and adjusted periodically by the Planning Commission and approved by the Board of Estimates.

(b) *Use of funds.*

Money collected under subsection (a) of this section shall be deposited in the Forest Conservation Fund established by the Director of Finance, and may be used by the City for purposes related to implementing this Division IV.

(City Code, 1976/83, art. 9A, §12-1(b), (c).) (Ord. 93-170; Ord. 20-401.)

§ 48-3. Civil penalties.

(a) *In general.*

In addition, any person who violates any provision of this Division IV or any regulation or order adopted or issued thereunder, is liable for a penalty not exceeding \$1,000 per violation, which may be recovered in a civil action brought by the City.

(b) *Each day a separate offense.*

Each day a violation continues is a separate violation.

(City Code, 1976/83, art. 9A, §12-2.) (Ord. 93-170.)

§ 48-4. Injunctions.

The Department may request the City Solicitor to seek an injunction requiring a person to cease violation of this title and to take corrective action to restore or reforest an area.

(City Code, 1976/83, art. 9A, §12-3.) (Ord. 93-170.)

SUBTITLES 49 TO 50
{RESERVED}

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DIVISION V: CITY PARKS AND TREES

NOTE ON DEPARTMENT OF TRANSPORTATION: Ordinance 03-501 (effective March 17, 2003) established a new “Department of Transportation” {Section 1}. The Ordinance authorizes the Director of the Department to “appoint or employ assistants and employees” and to “delegate to [them] the powers and duties that the Director considers proper” {Section 1}, and transfers to the Department, among other powers, duties, and programs, certain “programs budgeted under the Office of Transportation or the Department of Transportation” {Section 2(b)}. Among the programs transferred was “505 - Park and Street Trees”.

Subsequently, Resolution 04-056 (ratified November 2, 2004) added City Charter Article VII, §§ 114 through 116, establishing the Department of Transportation as one of the City’s Executive Departments {§ 114} and granting to it certain powers and duties over

**Street Construction and Maintenance {§ 116(b)}
Lighting {§ 116(c)}
Conduit System {§ 116(d)}**

– as well as “the additional powers and duties relating to the construction, reconstruction, and maintenance of streets, to transportation, and to traffic ... as are prescribed by law” {§ 116(e)}.

**SUBTITLE 51
DEPARTMENT JURISDICTION**

§ 51-1. Cahill Recreation Center.

The Department of Recreation and Parks is hereby authorized and directed to assume and hereafter exercise, exclusively, control of the property formerly known as Mt. Holly Inn, and all lands adjacent thereto, and all appurtenances thereto, which property was conveyed by Winfield S. Cahill and wife to the Mayor and City Council of Baltimore on July 27, 1939, said property to be hereafter used for park purposes.

(City Code, 1950, art. 30, §1; 1966, art. 21, §1; 1976/83, art. 21, §1.) (Ord. 40-121.)

§ 51-2. Venable Park.

(a) *Department jurisdiction.*

The Department of Recreation and Parks is hereby authorized and directed to assume jurisdiction, for park purposes, over the following described part of Venable Park lying south of Thirty-Third Street:

Beginning for the same at the point formed by the intersection of the south side of Thirty-third Street as condemned and opened 120 feet wide under Ordinance No. 251, approved April 5, 1907, and the east side of Ellerslie Avenue as condemned and opened 66 feet wide under Ordinance No. 134, approved May 10, 1916, and running thence binding on the south side of said Thirty-third Street due East 489.81 feet, thence for lines of division, due South 568.50 feet to intersect the southeast side of Independence Street produced northeasterly, thence reversing said line so produced and binding thereon South 26°-32'-50" West 208.37 feet to intersect the southernmost outline of Venable Park as now surveyed, thence binding on said southernmost outline of Venable Park the two following courses and distances, namely, North 58°-41'-45" West 50.61 feet and North 62°-04'-22" West 498.71

feet to intersect the easternmost side of said Ellerslie Avenue and thence binding on the easternmost side of said Ellerslie Avenue the three following courses and distances, namely, North 26°-32'-50" East 115.08 feet by a line curving to the left with a 339.12 foot radius the distance of 157.13 feet which arc is subtended by a chord bearing North 13°-16'-25" East 155.72 feet and due north 240.53 feet to the place of beginning.

The courses in the above description are all referred to the true meridian established by the City of Baltimore Topographical Survey Commission.

(b) *School Board jurisdiction.*

The Board of School Commissioners is hereby authorized and directed to assume jurisdiction, for school purposes, over all that part of Venable Park lying south of Thirty-Third Street not embraced in the piece or parcel of land described in subsection (a) hereof.

(City Code, 1950, art. 30, §§10, 11; 1966, art. 21, §§12, 13; 1976/83, art. 21, §§10, 11.) (Ord. 41-369.)

§ 51-3. Park Avenue Squares.

The City will:

(1) before July 1, 1897, plant with grass, trees, and shrubs, improve, and thereafter maintain the squares now laid out in the center of Park Avenue; and

(2) at all times thereafter, prevent their being overgrown with weeds or becoming unsightly.

(City Code, 1927, art. 29, §8; 1950, art. 30, §7; 1966, art. 21, §9; 1976/83, art. 21, §8.) (Ord. 1897-056.)

§ 51-4. {Reserved}

§ 51-5. Report on closings and other public-access restrictions.

(a) *Annual report required.*

On or before March 30 of each year, the Department of Recreation and Parks shall submit to the City Council a written report on all closings of and other public-access restrictions imposed on all parks, squares, and recreational facilities operated by or under the auspices of the Department.

(b) *Contents.*

The report shall:

(1) include a summary of all closings and public-access restrictions that occurred during the preceding calendar year; and

(2) specify:

(i) the number of hours of each closing or restriction;

- (ii) whether the closing or restriction was pursuant to a permit and, if so, the type of permit; and
- (iii) whether the closing or restriction was necessitated by an emergency and, if so, the nature of that emergency.

(Ord. 08-074.)

SUBTITLE 52
PROTECTIVE MEASURES

§ 52-1. Obstructions in parks and squares.

(a) *Prohibited conduct.*

No stand or obstruction to the public view shall be erected in any of the public parks or squares of the City or upon the footway belonging to any public building by any person or persons whomsoever (other than the Mayor and City Council of Baltimore).

(b) *Penalties.*

Anyone violating this section shall be fined \$50 for each offense.

(City Code, 1893, art. 37, §14; art. 46, §34; 1927, art. 29, §10; 1950, art. 30, §3; 1966, art. 21, §3; 1976/83, art. 21, §2.) (Ord. 1889-151.)

§ 52-2. Glass containers.

(a) *Prohibited conduct.*

Except as permitted by the Director of the Department of Recreation and Parks permits, a person shall not carry or possess any glass beverage container on any property under the control of the Department of Recreation and Parks.

(b) *Penalties.*

Any person who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$100.

(City Code, 1976/83, art. 19, §30A.) (Ord. 87-894.)

§ 52-3. Defacement, etc., of monuments.

(a) *Prohibited conduct.*

It shall be unlawful for any person to deface, injure, damage, or trespass upon any public or private monument, statue, or memorial, their ornamental figures or sculpture, or the enclosure or railing around them, or any of them, in the City of Baltimore.

(b) *Liability and penalties.*

(1) Any person violating the provisions of this section:

- (i) shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than \$500 for each such violation; and
- (ii) shall, in addition thereto, be liable to pay all expenses in repairing the said defacements, injuries, or damages.

(2) In addition to a fine or in lieu of a fine, a judge may sentence a person convicted under this section to perform community service on behalf of the City of Baltimore, which may include cleaning property of trash and litter.

(City Code, 1879, art. 45, §1; 1893, art. 46, §1; 1927, art. 29, §23; 1950, art. 30, §4; 1966, art. 21, §5; 1976/83, art. 21, §4.) (Ord. 49-629; Ord. 91-664.)

§ 52-4. Mount Vernon Place – Ornamental structures.

It shall not be lawful for any person to erect or set up any portico, steps, or any other ornamental structure whatever, on Mount Vernon Place, a greater distance into the place than 9 feet, measuring from the building line thereof.

(City Code, 1879, art. 45, §43; 1893, art. 46, §21; 1927, art. 29, §27; 1950, art. 30, §5; 1966, art. 21, §6; 1976/83, art. 21, §5.) (Rev. Ords. 1858-059.)

§ 52-5. Mount Vernon Place – Injuring grass or shrubs.

(a) Prohibited conduct.

It shall not be lawful for any person or persons to walk upon or otherwise injure the grass, trees, or shrubbery upon the squares around Washington Monument, known as Mount Vernon Place and Washington Place.

(b) Penalties.

All persons guilty of violating this section shall be subject to a fine of \$1 for every offense; said fines to be collected as other fines and penalties are collected.

(City Code, 1893, art. 46, §23; 1927, art. 29, §28; 1950, art. 30, §6; 1966, art. 21, §7; 1976/83, art. 21, §6.) (Ord. 1882-50.)

§ 52-6. Battle Monument, etc.

(a) Prohibited conduct.

It shall not be lawful for any person or persons whomsoever, or for any body corporate, to deposit or cause to be deposited in the space around the Battle Monument, in Liberty Triangle, McLane Place, or Hopkins Place, any dirt, sand, stones, lumber, tools, or other material.

(b) Penalties.

Any person or persons or body corporate violating the provisions of this section, shall forfeit and pay:

(1) the sum of \$10 for each and every offense; and

(2) the additional sum of \$10 for each and every day that any article or articles deposited upon said space in violation of the provisions of this section shall remain thereon.

(City Code, 1893, art. 46, §36; 1927, art. 29, §31; 1950, art. 30, §8; 1966, art. 21, §10; 1976/83, art. 21, §9.) (Ord. 1892-032; Ord. 14-495.)

§ 52-7. Herring Run Park.

(a) *Prohibited conduct.*

- (1) It is unlawful any person to ride or permit a horse to be in any portion of Herring Run Park, other than on the bridle paths provided for such purpose.
- (2) It is unlawful for any person, firm, or corporation who or which owns or has control of a horse to turn over the animal to the custody of any person in the Park without instructions to keep the animal on the bridle paths as required in this section.

(b) *Penalties.*

A violation of the provisions of this section is a misdemeanor, subject upon conviction to a fine in a maximum amount of \$100.

(City Code, 1966, art. 21, §4; 1976/83, art. 21, §3.) (Ord. 59-1811.)

SUBTITLE 53
TREES ALONG CITY STREETS, ETC.

§ 53-1. Definitions.

(a) *Person.*

The word “person”, whenever used in this subtitle, shall be construed to include individuals, firms, and corporations.

(b) *Tree.*

The word “trees”, as used in this subtitle, shall not be construed to include shrubs which do not grow higher than 15 feet.

(City Code, 1927, art. 45, §185; 1950, art. 35, §101; 1966, art. 26, §104; 1976/83, art. 26 § 109.) (Ord. 12-154; Ord. 46-396.)

§ 53-2. Jurisdiction of Department of Recreation and Parks.

(a) *Regulating planting, etc.*

The Department of Recreation and Parks, in consultation with the Department of Transportation, is authorized and directed to regulate the planting, protection, regulating, and controlling of all trees planted and to be planted in the streets, lanes, or alleys of Baltimore.

(b) *Enforcing protective laws.*

The statutes and ordinances for the protection of trees in the streets, lanes, or alleys shall be strictly observed by the Departments of Public Works, Transportation, General Services, and Recreation and Parks, as well as all other agencies of the City, within their respective authority.

(City Code, 1927, art. 45, §§174, 175(2nd par.); 1950, art. 35, §§91, 92(2nd par.); 1966, art. 26, §§94, 95(2nd par.); 1976/83, art. 26, §§101, 102(2nd par.)) (Ord. 12-154; Ord. 46-396; Ord. 76-139; Ord. 15-435.)

§ 53-3. Additional duties of Department of Recreation and Parks.

It is the duty of the Department of Recreation and Parks:

- (1) to encourage the preservation, culture, and planting of shade and ornamental trees in the City’s streets, lanes, and alleys;
- (2) to prune, spray, cultivate, and otherwise maintain these trees, plants, and shrubbery;
- (3) to trim or direct the time and method of trimming these trees, plants, and shrubbery; and
- (4) to take all other measures that it considers necessary for the control and extermination of insects and other pests and plant diseases that may injuriously affect trees in the City’s streets, lanes, and alleys.

(City Code, 1927, art. 45, §175(1st par.); 1950, art. 35, §92(1st par.); 1966, art. 26, §95(1st par.); 1976/83, art. 26, §102(1st par.)) (Ord. 12-154; Ord. 46-396; Ord. 76-139; Ord. 15-435.)

§ 53-4. Planting and care program.(a) *Program mandated.*

The Department of Recreation and Parks shall initiate and maintain a program of planting and caring for trees along the streets, alleys, lanes, and other public ways and in parks, squares, and other public places of this City.

(b) *Scope and implementation.*

- (1) The program shall include at public expense the full cost of acquiring and planting the trees, including the cost of digging holes and preparing for the planting.
- (2) The size and scope of the program shall be determined from time to time by the amount of funds appropriated and authorized therefor.
- (3) It is the legislative intent that this program be vigorously implemented and pursued, and that a large and increasing number of trees be grown and preserved in and along all such public ways and public places in the entire City.

(c) *Spacing.*

Trees shall be planted and preserved at intervals of not more than 30 feet from the next contiguous tree or trees, except where requested by a property owner.

(d) *Species and varieties.*

Species and varieties shall be planted and preserved as most suitable for the particular area by means of availability, long life, full foliage and limb structure, beauty, and the specific request of property owners, except where the request of the property owner as to variety of the tree is not practicable in the opinion of the City Arborist.

(City Code, 1966, art. 26, §108; 1976/83, art. 26, §113.) (Ord. 65-434.)

§ 53-5. Public notice of tree removal.(a) *Notice required.*

Unless notice is given as required by this section, the City may not:

- (1) remove or destroy a tree along one of the streets, lanes, alleys, or other public ways in this City; or
- (2) permit any person to remove or destroy a tree along one of the streets, lanes, alleys, or other public ways in this City

(b) *Form and content.*

The notice required by § 53-5(a):

- (1) must consist of a durable and legible statement of the intent, affixed to and easily visible on the tree for not less than 5 days immediately preceding the contemplated removal or destruction; and
- (2) must state:
 - (i) the reason for the intended removal or destruction of the tree; and
 - (ii) the person or persons to whom inquiries or protests thereon may be directed.

(c) *Exception for emergency.*

- (1) In the event of an emergency situation, such as a fallen tree or some other condition or occurrence requiring an immediate removal or destruction of a tree along one of these public ways, the City or any person it permits may remove or destroy the tree without complying with the foregoing provisions of this section.
- (2) But in this event, the City or the person it permitted promptly shall notify the City Council of the circumstances, conditions, and justification under which the tree was thus removed or destroyed.

(City Code, 1966, art. 26, §107; 1976/83, art. 26, §112.) (Ord. 64-433; Ord. 11-524.)

§§ 53-6 to 53-10. {Reserved}

§ 53-11. Permit requirements – Planting trees.

(a) *Permit required.*

No person may plant any tree in any street, lane, or alley without:

- (1) first having obtained a written permit issued by the Department of Transportation, in consultation with the Department of Recreation and Parks, setting forth the conditions under which trees will be planted, including their kind and variety; and
- (2) in all respects complying with the conditions of the permit.

(b) *Court-ordered plantings.*

Any person determined by a court of competent jurisdiction to have unlawfully removed or destroyed a tree in any street, lane, or alley and required to replace the tree as directed by such court shall be granted a permit for its replacement as provided in this section.

(City Code, 1927, art. 35, §176; 1950, art. 35, §93; 1966, art. 26, §96; 1976/83, art. 26, §§103, 104A.) (Ord. 12-154; Ord. 46-396; Ord. 76-139; Ord. 90-576; Ord. 15-435.)

§ 53-12. Permit requirements – Treating trees.

(a) *Permit required.*

No person may spray, mulch, fertilize, or otherwise treat, remove, destroy, break, cut, or trim any tree, or any part of a tree, in any street, lane, or alley without first having obtained a written

permit issued by the Department of Transportation, in consultation with the Department of Recreation and Parks.

(b) *Department to direct utilities, etc.*

No cutting or trimming of any tree in any street, lane, or alley in connection with the work of any other City department or of any public service corporation or other person having a right to use the street, lane, or alley may be done except in the manner directed by the Department of Transportation, in consultation with the Department of Recreation and Parks.

(City Code, 1927, art. 45, §177; 1950, art. 35, §94; 1966, art. 26, §97; 1976/83, art. 26, §104.)
(Ord. 12-154; Ord. 46-396; Ord. 76-139; Ord. 15-435.)

§ 53-13. Permit requirements – Impeding roots.

No person may, without first having received a written permit issued by the Department of Transportation, in consultation with the Department of Recreation and Parks, place or maintain upon the ground in any street, lane, or alley, any stone, cement, or other substance that will impede the free entrance of water and air to the roots of any tree without leaving an open space of ground outside the trunk of the tree, in area not less than 16 square feet.

(City Code, 1927, art. 45, §181; 1950, art. 35, §99; 1966, art. 26, §102; 1976/83, art. 26, §107.)
(Ord. 12-154; Ord. 46-396; Ord. 76-139; Ord. 77-310; Ord. 15-435.)

§ 53-14. Permit requirements – Time for completing work.

All work covered by a permit issued under this subtitle shall be completed within 30 days from the date shown on the permit.

(City Code, 1927, art. 45, §184; 1950, art. 35, §100; 1966, art. 26, §103; 1976/83, art. 26, §108.)
(Ord. 12-154; Ord. 46-396; Ord. 76-139; Ord. 15-435.)

§§ 53-15 to 53-20. {Reserved}

§ 53-21. Injuring or defacing trees, etc.

(a) *Horses or other animals.*

No person shall fasten any horse or other animal to any tree or shrub in any street, lane, or alley, nor shall any person cause or permit any horse or other animal to stand or be near enough to any tree, plant, or shrub to bite or rub against it or in any manner injure or deface the same.

(b) *Attaching items.*

Nor shall any person attach or place any rope, wire, sign, poster, handbill, or other thing or substance on any tree or shrub in any street, lane, or alley or on any guard or protection of the same.

(c) *Injuring, etc., protective devices.*

Nor shall any person remove, injure, or misuse any guard or device placed or intended to protect any tree, plant, or shrub now or hereafter in any street, lane or alley.

(City Code, 1927, art. 45, §178; 1950, art. 35, §95; 1966, art. 26, §98; 1976/83, art. 26, §105.)
(Ord. 12-154; Ord. 46-396.)

§ 53-22. Breaking or hurting trees, etc.(a) *In general.*

If any person or persons shall willfully break, pull down, hurt, or destroy any tree or trees, or enclosure around the same, which are now or may hereafter be planted in any of the streets, lanes, or alleys of the City, or in any other public grounds within the City, such person or persons:

(1) shall be subject to a penalty as provided in § 53-26 of this subtitle; and

(2) may be required to replace any such tree or trees or enclosure around the same.

(b) *Exception.*

Provided always, that nothing herein contained shall be so construed as to prevent the Department of Recreation and Parks from removing any tree or trees, or part thereof, which he may deem so situated or in such condition as to render same unsafe or as to obstruct the footways or roadways.

(City Code, 1879, art. 47, §122; 1893, art. 48, §142; 1927, art. 32, §59; 1950, art. 35, §96; 1966, art. 26, §99; 1976/83, art. 26, §106.) (Ord. 50-1243; Ord. 76-139; Ord. 90-576.)

§ 53-23. Inconsistent ordinances.

All ordinances and parts of ordinances heretofore passed which are inconsistent with this subtitle, or any of its provisions, are hereby repealed to the extent of such inconsistency.

(City Code, 1927, art. 45, §186; 1950, art. 35, §102; 1966, art. 26, §105; 1976/83, art. 26, §110.)
(Ord. 12-154; Ord. 46-396.)

§§ 53-24 to 53-25. {Reserved}**§ 53-26. Penalties.**

Any person who violates any provision of §§ 53-11, 53-12, 53-13, 53-21, or 53-22 of this subtitle is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than \$500 for each offense.

(City Code, 1927, art. 45, §187; 1950, art. 35, §103; 1966, art. 26, §106; 1976/83, art. 26, §111.)
(Ord. 12-154; Ord. 46-396; Ord. 76-139; Ord. 90-576; Ord. 15-435.)

SUBTITLE 54
YOUTH ATHLETIC PROTECTION

EDITOR’S NOTE: This subtitle was enacted by Ordinance 19-305, effective October 23, 2020.

§ 54-1. Definitions.

(a) *In general.*

In this subtitle, the following terms have the meanings indicated.

(b) *Abuse.*

“Abuse” has the meaning stated in Title 5, Subtitle 7 of the State Family Law Article {“Definitions: Abuse”}.

(c) *Automated external defibrillator.*

“Automated external defibrillator” means a medical device, approved by the United States Food and Drug Administration that:

- (1) is capable of recognizing the presence or absence in an individual of ventricular fibrillation and rapid ventricular tachycardia;
- (2) is capable of determining, without intervention, whether defibrillation should be performed on an individual;
- (3) on determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual’s heart; and
- (4) delivers an appropriate electrical impulse to a patient’s heart to perform defibrillation.

(d) *Coach.*

“Coach” means an individual over the age of 18 who, whether paid or unpaid:

- (1) is responsible for leading or assisting in leading a youth sports program; and
- (2) has routine and consistent contact throughout an athletic season with youth athletes participating in a youth sports program.

(e) *Concussion.*

“Concussion” means a traumatic injury to the brain causing an immediate, short-lived change in mental status or an alteration of normal consciousness resulting from:

- (1) a fall;
- (2) a violent blow to the head or body; or

(3) the shaking or spinning of the head or body.

(f) *Department*.

“Department” means the Baltimore City Department of Recreation and Parks.

(g) *Facility*.

“Facility” means any outdoor or indoor athletic space under the management of the Department.

(h) *Heat Exhaustion*.

“Heat exhaustion” means a reaction to excessive heat marked by prostration, weakness, and collapse resulting from dehydration.

(i) *Heat stroke*.

“Heat stroke” means a severe illness caused by exposure to excessively high temperatures and characterized by:

- (1) severe headache;
- (2) high fever with a dry, hot skin;
- (3) tachycardia; and
- (4) in serious cases, collapse, coma, or death.

(j) *Neglect*.

“Neglect” has the meaning stated in Title 5, Subtitle 7 of the State Family Law Article {“Definitions: Neglect”}.

(k) *Person*.

“Person” means:

- (1) an individual;
- (2) a receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind; or
- (3) a partnership, firm, association, corporation, or other entity of any kind.

(l) *Sudden cardiac arrest*.

“Sudden cardiac arrest” means a condition in which the heart suddenly and unexpectedly stops beating.

(m) *Youth athlete.*

“Youth athlete” means any individual under the age of 18 who participates in a youth sports program in a non-supervisory role.

(n) *Youth sports program.*

“Youth sports program” means a program or event, including instruction, practice, or competition, organized for youth athletes under the age of 18 years:

(1) conducted by the Department; or

(2) conducted by a recreational athletic organization or any other person required to obtain a permit to use a Department facility.

(Ord.19-305.)

§ 54-2. Mandatory, prohibitory, and permissive terms.

(a) *Mandatory terms.*

“Must” and “shall” are each mandatory terms used to express a requirement or to impose a duty.

(b) *Prohibitory terms.*

“May not” and “no ... may” are each mandatory negative terms used to establish a prohibition.

(c) *Permissive terms.*

“May” is permissive.

(Ord.19-305.)

§ 54-3. Rules and regulations.

Subject to Title 4 {“Administrative Procedure Act – Regulations”} of the City General Provisions Article, the Department must adopt rules and regulations to carry out this subtitle.

Editor’s Note: By authority of Ordinance 20-431, Section 5, the Director of Legislative Reference, in consultation with the Law Department, has conformed the text of this section to refer to and reflect the requirements of the recently-enacted Administrative Procedure Act that, effective January 15, 2021, governs the proposal, adoption, and publication of administrative rules and regulations.

(Ord.19-305; Text Conformed 02/16/21.)

§ 54-4. Training required.

(a) *In general.*

Before acting as a coach for a youth sports program, an individual must have successfully completed within the last 24 months training approved in advance by the Department in:

- (1) concussion risk and management;
- (2) heat exhaustion risk and management;
- (3) heat stroke risk and management;
- (4) operation of an automated external defibrillator;
- (5) sudden cardiac arrest risk and management; and
- (6) identification and reporting of abuse and neglect.

(b) *Permits for facility use.*

The Department may not issue a permit to any youth sports program for the use of any Department facility unless the applicant has submitted adequate documentation that all coaches associated with the program have complied with this section.

(c) *Department to maintain a list.*

In consultation and collaboration with the Baltimore City Department of Health, the Department must maintain a list of training courses or programs that would satisfy the requirements of this section.

(d) *Department training program.*

The Department may collaborate with the Baltimore City Department of Health to develop its own training program to satisfy the requirements of this section.

(e) *Other training programs.*

For the purposes of conducting tournaments or other similar sporting events, the Department must accept training substantially equivalent to the training required by this section from any regional, local, state, or national youth sports organization using a Department facility under a permit issued to another youth sports program.

(Ord.19-305.)

§ 54-5. Removal from play.

(a) *Disqualifying medical condition defined.*

For the purposes of this section, “disqualifying medical condition” means:

- (1) a concussion;
- (2) heat exhaustion;
- (3) heat stroke; or
- (4) sudden cardiac arrest.

(b) *In general.*

A youth athlete who is suspected of sustaining or undergoing a disqualifying medical condition must be immediately removed from physical participation in any athletic activity by a coach or a member of the coach's staff.

(c) *Return to physical participation.*

A youth athlete who has been removed from an athletic activity may not return to physical participation until the youth athlete has been evaluated by a licensed or certified health-care provider and receives written clearance to return to physical participation from that provider.

(Ord.19-305.)

§ 54-6. Automated external defibrillators.

(a) *In general.*

The Department must make an automated external defibrillator available to any youth sports program holding a permit for use of any Department facility.

(b) *No requirement to assist.*

Nothing in this section imposes any duty or obligation on any person to provide assistance with an automated external defibrillator to a victim of a medical emergency.

(Ord.19-305.)

§ 54-7. {Reserved}

§ 54-8. Civil liability of Department, etc.

Nothing in this subtitle may be construed to create, establish, expand, reduce, contract, or eliminate any civil liability on the part of the Department, its employees, any youth sports programs, or any coaches.

(Ord.19-305.)

SUBTITLES 55 TO 60
{RESERVED}

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DIVISION VI: MISCELLANEOUS**SUBTITLE 61
INACTIVE QUARRIES****§ 61-1. Fencing required.***(a) In general.*

All quarries which have been abandoned and are not actively operated shall be enclosed by a fence not less than 6 feet in height.

(b) Manner of construction and materials.

Said fence:

(1) to be constructed in such manner and of such materials as in the judgment of the Commissioner of Housing and Community Development will prevent any persons from entering upon the said quarry; and

(2) to be provided with a gate which shall be securely closed, except at such times when persons duly authorized persons are upon said premises.

*(City Code, 1927, art. 32, §125; 1950, art. 24, §168; 1966, art. 19, §105; 1976/83, art. 19, §123.)
(Ord. 24-231; Ord. 77-573.)*

§ 61-2. Maintenance of fences.*(a) Maintenance required.*

Said fence shall at all times be kept in repair.

(b) Notice of noncompliance.

The Commissioner of Housing and Community Development is authorized and directed to immediately notify the owners, agents, or persons in possession of any such quarry to comply with the terms hereof.

*(City Code, 1927, art. 32, §126; 1950, art. 24, §169; 1966, art. 19, §106; 1976/83, art. 19, §124.)
(Ord. 24-231; Ord. 77-573.)*

§ 61-3. Administrative enforcement.*(a) Commissioner to correct.*

Upon the failure of any such owners, agents, or persons in possession of any abandoned quarry to comply with the terms hereof within 10 days after being notified by the Commissioner of Housing and Community Development, the Commissioner shall forthwith enter upon the said premises and erect a fence or repair an existing fence, as the case may be.

(b) *Costs lien on property.*

The Commissioner is further directed to certify to the collector of taxes the costs of erecting such fence or of making such repairs which shall be a lien upon the property and shall be collected in the same manner as taxes.

*(City Code, 1927, art. 32, §127; 1950, art. 24, §170; 1966, art. 19, §107; 1976/83, art. 19, §125.)
(Ord. 24-231; Ord. 77-573.)*

§ 61-4. Penalties.

Any owners, agents, or persons in possession of any such quarry who shall fail to comply with the terms of this subtitle within 10 days after being notified by the Commissioner of Housing and Community Development to fence any such quarry or repair an existing fence shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned for not more than 30 days or fined not more than \$100 or both, said fine or fines to be collected and disposed of as other fines.

*(City Code, 1927, art. 32, §128; 1950, art. 24, §171; 1966, art. 19, §108; 1976/83, art. 19, §126.)
(Ord. 24-231; Ord. 77-573.)*

SUBTITLE 62
PLASTIC BAG REDUCTION

EDITOR'S NOTE: This subtitle was enacted by Ordinance 20-337 effective January 13, 2021.

§ 62-1. Definitions.

(a) *In general.*

In this subtitle, the following words have the meanings indicated.

(b) *Dealer.*

(1) *“Person” defined.*

In this subsection, “person” means:

- (i) an individual;
- (ii) a partnership, firm, association, limited liability company, corporation, or other entity of any kind;
- (iii) a receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind; or
- (iv) a governmental entity or an instrumentality or unit of a governmental entity.

(2) *“Dealer” defined.*

(i) *In general.*

“Dealer” means any person engaged in the retail sale of goods.

(ii) *Inclusions.*

“Dealer” includes any:

- (A) supermarket;
- (B) convenience store;
- (C) restaurant;
- (D) shop;
- (E) service station; or
- (F) other sales outlet.

(c) *Plastic checkout bag.*

(1) “Plastic checkout bag” means any plastic bag that is:

- (i) supplied by a dealer at the point of sale, pickup, or delivery to carry purchased items; and
- (ii) less than 4 mils thick.

(2) “Plastic checkout bag” does not include a compostable plastic bag that:

- (i) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and
- (ii) is capable of undergoing biological decomposition in a compost site such that the material breaks down into carbon dioxide, water, inorganic compounds, and biomass at a rate consistent with known compostable materials.

*(Ord. 20-337.)***§ 62-2. {Reserved}****§ 62-3. Prohibited conduct.**

Except as provided in § 62-4 {“Exemption: Bags for certain products”} of this subtitle, no dealer may supply customers with plastic checkout bags.

*(Ord. 20-337.)***§ 62-4. Exemption: Bags for certain products.**

This subtitle does not apply to a plastic checkout bag solely used to contain:

- (1) fresh fish and fresh fish products;
- (2) fresh meat and fresh meat products;
- (3) fresh poultry and fresh poultry products;
- (4) otherwise unpackaged fruits, nuts, or vegetables;
- (5) otherwise unpackaged confectionery;
- (6) otherwise unpackaged fresh cheese;
- (7) otherwise unpackaged baked goods;
- (8) ice;
- (9) food and goods obtained at a farmers’ market;

(10) prescription drugs obtained from a pharmacy;

(11) newspapers; or

(12) dry-cleaned goods.

(Ord. 20-337.)

§§ 62-5 to 62-6. {Reserved}

§ 62-7. Data Reporting.

The Baltimore City Department of Information Technology, using available data from the 311 system and the Environmental Control Board, shall publish data on the Open Baltimore web portal that reflects:

(1) the number of complaints received by the City of Baltimore under this subtitle; and

(2) the number of citations issued under this subtitle.

(Ord. 20-337.)

§§ 62-8 to 62-9. {Reserved}

§ 62-10. Enforcement by citation.

(a) *In general.*

In addition to any other civil or criminal remedy or enforcement procedure, this subtitle may be enforced by issuance of an environmental citation as authorized by City Code Article 1, subtitle 40 {"Environmental Control Board"}.

(b) *Process not exclusive.*

The issuance of an environmental citation does not preclude pursuing any other civil or criminal remedy or enforcement action authorized by law.

(Ord. 20-337.)

§ 62-11. Criminal penalties.

(a) *In general.*

Any dealer who violates any provision of this subtitle after having twice received an environmental citation, each resulting in any final disposition other than not guilty, is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than \$1,000 for each offense.

(b) *Each bag a separate offense.*

Each plastic checkout bag supplied to a customer in violation of this subtitle is a separate offense.
(Ord. 20-337.)