

City Council Work Session
Tuesday, November 19, 2013
7:00 p.m.
Council Chambers – Rouss City Hall

AGENDA

1.0 Call to Order

2.0 Public Comments: (Each person will be allowed 3 minutes to address Council with a maximum of 10 minutes allowed for everyone)

3.0 Items for Discussion:

3.1 Presentation: Analysis and Impact of Proposed John Kerr Elementary School Sites – Dale Iman, City Manager; Tim Youmans, Planning Director; Perry Eisenach, Public Services Director; Stu Patz, Consultant. (pages 3-42)

3.2 Discussion of a Proposed Schedule of Events for Implementing a Storm Water Utility – Perry Eisenach, Public Services Director (pages 43-46)

3.3 Discussion of Storm Water Regulatory Issues for Implementing a Storm Water Utility – Perry Eisenach, Public Services Director (pages 47-54)

3.4 O-2013-40: AN ORDINANCE TO AMEND AND RE-ENACT CHAPTER 9 OF THE WINCHESTER CITY CODE PERTAINING TO WATER PROTECTION (*Implementation of applicable provisions of the Virginia Stormwater Management Plan*) - Perry Eisenach, Public Services Director (pages 55-124)

3.5 O-2013-14: Second Reading – AN ORDINANCE TO AMEND AND REENACT ARTICLES 18, 21, AND 23 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SIGNS, VIOLATION AND PENALTY, FEES, AND CORRIDOR ENHANCEMENT TA-13-138 (*Revision to temporary sign provisions and permit requirements*) – Aaron Grisdale, Director of Zoning & Inspections (pages 125-167)

3.6 City Manager Report

- a. Cedar Creek Grade Speed Study
- b. Cedar Creek Grade Entryway Update

4.0 Liaison Reports

5.0 Monthly Reports

5.1 Fire & Rescue Department (pages 168-172)

6.0 Adjourn

Analysis of Potential John Kerr Elementary Sites

10/17/2013

Introduction

In accordance with provisions of the Virginia Public-Private Education Facilities and Infrastructure Act of 2002 (the PPEA), the Winchester Public School Board recently accepted proposals for the construction of the new John Kerr Elementary School (JKES). The PPEA process requires the input of the Affected Local Jurisdiction (the City of Winchester) to determine if the proposed project is compatible with the (i) local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital improvements budget or other governmental spending plan. This report will address all three PPEA requirements as well as provide a synopsis of an economic and market analysis that determines development opportunities at two city sites, and other related factors relating to the proposed construction of a new City elementary school. The analysis of both sites, the undeveloped portion of the JKES property on Jefferson Street and the 9.3-acre Ridgefield Orchard site along the proposed Meadow Branch Avenue extended, rely on common assumptions yet maintain different challenges and outcomes should a new elementary school be located on either site.

Local Comprehensive Plan

The Comprehensive Plan was adopted in 2011 and offers strategic guidance for future public and private redevelopment decisions which will have impacts on the physical form of land development in Winchester.

Jefferson Street Site

Regarding compatibility with the local comprehensive plan, the proposal to rebuild on the Jefferson Street site within an existing residential neighborhood where one 2-lane street would be extended is generally compatible with the adopted Plan. The extension of Nester Drive greatly improves the walkability (and bikability) of the elementary school to the large Williamsburg Heights residential area. The installation of Nester Drive will also benefit high school students walking or biking to JHHS. Chapter Six of the Comprehensive Plan speaks to the importance of multimodal mobility, specifically dealing with school children walking to and from school and reducing the dependency upon automobile use within the City. The Character Map in the adopted Comprehensive Plan calls for continued Civic/Public future development on the current JKES tract. In order to develop the existing JKES site with residential use or any uses other than public facilities, a rezoning would be needed. The proposal to build on the existing JKES site appears to be consistent with much of the walkable community vision as well as many of the goals and objectives contained in the Plan. This existing site, together with the Nester Drive extension provides a safe, convenient, neighborhood based school which would not convert taxable property to nontaxable land use.

Meadow Branch Avenue Site

The C&S document states that the Comprehensive Plan "recognizes the need to construct a new JKES," but this does not appear to be stated anywhere in the adopted Comprehensive Plan. The adopted Comprehensive Plan contains a number of statements, visions, and objectives relevant to the placement of a public elementary school. The Meadow Branch Avenue site situated along a four-lane divided roadway, with a traffic signal, is not compatible with those visions and objectives identified in the

Analysis of Potential John Kerr Elementary Sites

Comprehensive Master Plan. The extension of Meadow Branch Avenue through the Smith and Moffett properties between Amherst Street on the north and Buckner Drive within the Meadow Branch North subdivision to the south offers many opportunities for mixed use, New Urbanism-type development. Proffers associated with prior rezonings of the land commit the developers to roadway and Green Circle Trail improvements as a center spine for development. The neighboring regional medical center makes the site attractive to high-income seniors and healthcare professionals. A variety of housing types, ranging from luxury condominiums to high- and mid-rise retirement housing and assisted living, may be appropriate for the site. While the C&S proposal would situate the new school along a portion of Meadow Branch Avenue where the Green Circle Trail is proposed, most likely on the east (opposite) side of the 4-lane divided roadway, the plans included in the proposal do not show any pedestrian connections to the Trail or the public street out front.

Local Infrastructure Development Plans

Jefferson Street Site

The Jefferson Street site would require a 600 feet extension of Nester Drive, which is designed to be a two-lane street with curb and gutter. Jefferson Street would require a 265 feet extension, and it is a two lane street that requires curb and gutter. This site would require sidewalks on both sides of the new extension as well as pedestrian streetlights. Lastly, the property would require storm water infrastructure and sanitary sewer main extension. The project would be completed in July 2015.

Meadow Branch Avenue Site

The Meadow Branch Avenue site would require a 3,000 feet extension of Meadow Branch Avenue. It is designed to be a four-lane divided roadway that also needs curb and gutter. The new road would require sidewalk on one side of the street and a new section of the Green Circle Trail on the other side of the road. The extension would have a landscaped center median. The new school would have a traffic signal at its entrance, and the extension would have pedestrian streetlights. Lastly, the new road would require storm water infrastructure as well as water and sewer main extensions. The project would be completed in July 2015.

Capital Improvements Budget

The City Capital Improvements Budget is used to plan and account for the financing and construction of capital projects of the general government over a projected five-year period. Financing is provided by a wide variety of funding sources to include general government revenue, bond proceeds, and state shared revenue. Financing sources are identified by project in the City's CIP Budget.

Common Assumptions

Jefferson Street Site

Regardless of the location of the proposed new school, the current JKES will be either vacated and

Analysis of Potential John Kerr Elementary Sites

“mothballed” or renovated for other educational purposes. A future use of the property has not been identified and steps will be taken to promote the preservation of the vacated school. Without a funding plan to ensure preservation of the school, the property may potentially become blighted in the future. Clearly the lack of a plan for future utilization of this facility exists regardless of the selected site for the future JKES.

The current JKES property and adjacent land that is proposed for the new school on the Jefferson Street site is owned by the Handley Board of Trustees. A nonprofit entity, their real estate holdings are exempt from all City property taxes. The Handley Board of Trustees has determined that they cannot sell property for development since it “does not meet the charitable test of Judge Handley’s Will that the Trust Fund shall be used for educational purposes”.

Meadow Branch Avenue Extended Site

This report assumes that the market support for medical office space, assisted living facilities (ALFs), and age-restricted housing in the area nearby the Winchester Medical Center will continue over the next several years. Winchester Medical Center’s growth and financial health has attracted a steady flow of healthcare related development, and this trend is based on population demographics and Winchester’s desirability as a retirement community which is likely to continue in the future. Specifically, current market trends forecast continued need for medical office space, ALFs, and age-restricted housing in Winchester. Development activity for all three types of properties has been substantial in Winchester and surrounding Frederick County over the past years, and the continued development of Winchester Medical Center and related medical facilities is likely to fuel this demand.

Jefferson Street Site

Jefferson Street Site Description of Scenario Based on Assumptions

The current master plan for the JKES site maintains that the Jefferson Street property’s most desirable outcome would be the construction of a new elementary school located on the land adjacent to the existing school. Additionally, the City’s Consolidated Plan supplements this statement by stating in Chapter Six that the City should incorporate a walkable community vision that “allows children to travel to and from school safely while getting some exercise at the same time”. The Jefferson Street site meets this recommendation because the property is surrounded by an established neighborhood with a two-lane road that has sidewalks on both sides. In addition, the Handley Trust has determined that the Jefferson Street site will only accommodate educational uses. Any other usage does not coincide with John Handley’s Will and Testament.

Jefferson Street Site Infrastructure Costs

The Shockley P3 PPEA does not commit the proposer to providing any financial support towards the development of Nester Drive, including right-of-way acquisition and/or utilities. Therefore, the costs for constructing the infrastructure associated with locating the new school at the Jefferson Street site will

Analysis of Potential John Kerr Elementary Sites

be split between the City and Virginia Department of Transportation (VDOT). Specifically, the Nester Drive extension/Jefferson Street extension cost approximately \$1.5 million with \$750,000 being paid by VDOT and the balance being the responsibility of the City. In addition, the utility costs associated with this site must be paid by the City. The sanitary sewer main extension for Nester Drive is estimated to cost approximately \$175,000 and the water/sewer availability fees are estimated at \$24,100. Lastly, the cost of right-of-way acquisition has not been disclosed by the proposer, and this amount will likely remain unknown. In summary, the combined cost for road construction and utility integration for the Jefferson Street site will approximately cost \$1,699,100 with \$949,100 plus the unknown costs for right-of-way acquisition being contributed by the City. An additional breakdown of expense allocation can be found in Attachment B.

Jefferson Street Site Funding Options

Options to fund the nonbudgeted expenses associated with the construction of Nester Drive are limited. The finance department would recommend shifting money from a project that previously exists within our current bond issuance to pay for any increases regarding road development around the new school. The finance director's recommendation is to utilize a maximum amount from other bonded projects of \$1 million for the required improvements. A less desirable option to fund the road/infrastructure improvements would be to utilize cash from an existing capital improvement project. A listing of those projects could be provided if this option is selected. This is not a recommendation from the finance department.

Jefferson Street Site Zoning Requirements

The existing JKES site on Jefferson Street is zoned Education, Institution and Public Use, EIP which is specifically established to support schools and other public and institutional uses. The Shockey P3 PPEA proposal does not require a land rezoning or subdivision approval, except for a subdivision to establish Nester Drive through the Bridgeforth property.

Jefferson Street Site Economic Impact

The Handley Trust will not sell the property for noneducational development purposes. Therefore, economic impact is nonexistent.

Jefferson Street Site Conclusions

- The Handley Board of Trustees has stated that their property must pass the charitable test of Judge Handley's Will that the Trust Fund must be used for educational purposes, and selling the property for development does not meet that requirement
- The Jefferson Street site is properly zoned for JKES development

Analysis of Potential John Kerr Elementary Sites

- The development of Nester Drive will an unbudgeted amount of \$949,100
- The total cost of the required right-of-way acquisition cannot be disclosed by the proposer
- The Jefferson Street site is walkable due to its proximity to established existing neighborhoods
- A plan has not been developed to address the future use of the existing JKES
- The \$1 million estimate for furniture and equipment for the school is unfunded
- Construction would be completed in July 2015

Meadow Branch Avenue Site

Meadow Branch Avenue Site Description of Scenario Based on Assumptions

A study completed by S. Patz and Associates, Inc. identified the three highest and best uses of the Meadow Branch Avenue site as medical office space, assisted living facilities (ALFs), and/or age-restricted housing (See Attachment A, S. Patz, 2013). The proximity of the Meadow Branch Avenue site to Winchester Medical Center makes this site a premier location for supporting development, and each of the proposed development types provide similar net tax revenue to the City.

Attachment A stated that current market trends forecast continued demand for medical office space in the land adjacent to the hospital. Medical office space in Winchester is 100% occupied, and the market warrants 75,000sf +/- additional medical office space. This potential use of the proposed 9.3 acres for the new JKES would generate more than \$200,000 in net tax revenue annually to the City should the property be developed as medical office space.

An additional highest and best use for the Meadow Branch Avenue school site based on assumed market trends is an ALF. Winchester Medical Center's reputation as the premier hospital in the region and Winchester's notoriety as a premier retirement community has attracted various forms of supporting development and a growing elderly population. Market projections between 2013-2018 warrant the creation of 100-120 new ALF beds. Typical ALFs house 80 beds and would require approximately three acres of the nine acre site. In addition, Attachment A states that locating this facility on the Meadow Branch Avenue site would also generate annual net tax revenue for the City in excess of \$200,000, and other than modest expansion plans at the Village at Orchard Ridge, no other ALFs are planned for development in the future. Should this assumed market trend continue, which demographics indicate will occur, this portion of the Meadow Branch Avenue school site would be a beneficial site for an ALF.

The last proposed advantageous use of the Meadow Branch Avenue site based on assumed market trends would be the development of an age-restricted community. These communities within the Winchester/Frederick County region are becoming increasingly popular and yield miniscule vacancy rates. An age-restricted community would consume the entire proposed Meadow Branch Avenue school site and also generate more than \$200,000 in net tax revenue annually. In summary, any mixed-use development including the three identified options will result in annual net tax revenue exceeding \$200,000 to the City or over \$8 million over the life expectancy of the school.

Meadow Branch Avenue Site Infrastructure Costs

The proposed school site on Meadow Branch Avenue utilizes outside funding resources to diminish the City's funding needs for road construction and utility installation. The following estimates assume all right-of-ways are dedicated to the City at no cost. The northern 2/3 of the Meadow Branch extension will cost approximately \$2.64 million with \$1.32 million being paid by Ridgefield Orchard and the remaining being paid by VDOT. The remaining 1/3 of the Meadow Branch Avenue extension will cost \$1.36 million. VDOT will pay \$680,000 of this expense and the City will incur the remaining balance. This site will also require water and sewer main extensions that will approximately cost \$325,000. Ridgefield Orchard will pay \$300,000 of this expense and the adjacent property owner has committed to the remaining balance. In summary the entire infrastructure costs for this proposed site is estimated to be \$4.32 million with \$680,000 to be the responsibility of the City. A breakdown of expense allocation can be found in Attachment C. However, the proposed water and sewer system is not looped which means that the system provides a lack of redundancy and is not a recommended design for adequate fire protection. This system also does not provide an additional source of water to the school should the water main break between Amherst Street and the proposed Meadow Branch Avenue school site. If this were to occur the school would be closed until repairs or accommodations are made.

Meadow Branch Avenue Site Funding Options

Options to fund the nonbudgeted expenses associated with the construction of Meadow Branch extension are limited. The finance department would recommend shifting money from a project that previously exists within our current bond issuance to pay for any increases regarding road development around the new school. The finance director's recommendation is to utilize a maximum amount from other bonded projects of \$1 million for the required improvements. A less desirable option to fund the road/infrastructure improvements would be to utilize cash from an existing capital improvement project. A listing of those could be provided if this option is selected. This is not a recommendation from the finance department.

Meadow Branch Avenue Site Zoning Requirements

Regarding a necessary rezoning, the C&S document notes the existing conditional RB-1 and MR zoning on the majority of the proposed school site as well as the LR zoning on the existing DBL Holdings property that is proposed for merger with the Ridgefield Orchard land. It states that the remaining commercial land would be rezoned B-1. That is a very intensive Central Business District zoning and inconsistent with the Comprehensive Plan.

The project proposed by C&S Design Development requires a rezoning involving multiple property owners, and a realignment of the proposed Meadow Branch Ave extension. The schedule included in Vol II, Section 2 shows a 3.5 month timeframe for approval of the rezoning, a major subdivision, and a site plan. That ambitious schedule can only be done if the City agrees to consider these three actions

Analysis of Potential John Kerr Elementary Sites

concurrently rather than in the typical consecutive manner. The chart notes a 12/10/13 start date and a 3/30/14 end date for 'Site Plan Development and Approval'. If site plan development includes the time that it takes an engineering firm to 'develop' the plan prior to submitting it for formal approval, then the timeframe is unreasonable. As noted above, rezonings require public hearings where conformity with the adopted Comprehensive Plan has to be stated.

Meadow Branch Avenue Site Economic Impact

Per Attachment A, "the Meadow Branch Avenue site will be competitive for medical office space, ALFs, and/or age-restricted housing. Any of the possible uses will generate in excess of \$200,000 in net tax revenue annually. Complete development of the property could include one or more of the identified uses, though the exact mix of the development is undetermined at this time."

Meadow Branch Avenue Site Conclusions

- The highest and best uses of the Meadow Branch Avenue site are a medical office facility, ALF, and/or age-restricted housing
- Any combination of the mixed-use development options on the 9.3 Ridgefield Orchard site would generate net tax revenues in excess of \$200,000 annually
- The Meadow Branch Avenue site would require rezoning to accommodate the proposed JKES
- The extension of Meadow Branch Avenue will require an unbudgeted amount of \$680,000
- Chapter Three, Subsection Seven of the City Comprehensive Plan states that the City should "reduce the conversion of taxable property to non-taxable land uses"
- The Meadow Branch Avenue site is not surrounded by existing residential neighborhoods, thus diminishing walkability
- A plan has not been developed to address the future use of the existing JKES
- The \$1 million estimate for furniture and equipment for the school is unfunded
- Fire protection could be hindered due to the fact that the proposed infrastructure does not incorporate a looped water and sewer system
- Construction would be completed in July 2015

DRAFT

Market and Fiscal Impacts Analysis
Two Potential School Sites
Winchester, Virginia

Prepared For:

Mr. James Deskins
Department of Economic Development
City of Winchester, Virginia

October , 2013

S. Patz and Associates, Inc.
46175 Westlake Plaza
Suite 400
Potomac Falls, Virginia 20165



■ S. PATZ & ASSOCIATES, INC ■
■ REAL ESTATE CONSULTANTS ■

October 14, 2013

Mr. James Deskins
Director
Department of Economic Development
City Hall
15 No. Cameron Street
Winchester, Virginia 22601

Dear Mr. Deskins:

This report is a comparison analysis of the development opportunities at two city sites, and the resulting net tax revenue that would accrue to the City of Winchester from likely site development. Both sites, the undeveloped portion of the John Kerr School property on Jefferson Avenue and the 9.3-acre Ridgefield Orchard site along Meadow Branch Avenue extended, have been identified as possible locations for a new City elementary school. If built, the new elementary school would be constructed for opening by the Fall, 2015 school year.

The development plans for each new school building have been accepted by the City's Department of Public Education. The issue before City staff is whether the selection of one site over the other would remove a viable property that is developable, and the eventual net tax revenue from the property development to the City. The report conclusion shows that would be a definite result.

The John Kerr site is well located for new single family development, if developable. However, site restraints, zoning issues and site covenants precludes any site development for non-educational uses.

On the other hand, our study concluded that the Ridgefield Orchard site, a 9.3-acre property, is marketable for one of three land uses or a mix of these uses. The Meadow Branch Avenue corridor, and the Ridgefield Orchard site, in particular, can support, in time, a new assisted living facility of 80± beds, up to 60,000 (or more) square feet of medical office space, and /or 50± one-story attached age-restricted housing units at sale prices, reported in constant 2013 dollars, of \$300,000.

Mr. James Deskins
October 14, 2013

There are vacant, available sites along Meadow Branch Avenue for new development that are adjacent to the Ridgefield Orchard site. These also could be developed with any of these three uses under study. It is speculative to determine which of the adjacent sites will be developed first and with what land use. However, in time, with the study period to 2020, the Ridgefield Orchard site could be developed with one or more of the identified land uses, and at build-out, would generate \$200,000± in net annual tax revenue.

The detailed market data that supports these findings and conclusions are presented in the attached market analysis. I remain available to continue to assist you with this comparison analysis.

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart M. Patz", written in a cursive style.

Stuart M. Patz
President

SMP/mes
[2227]

Market and Fiscal Analysis

Market and Fiscal Analysis

The purpose of the following study is to evaluate market support for new development at two sites within the City of Winchester that are under planning and review for a new elementary school. Based on the development potential of each site, the magnitude of real estate tax revenue will be calculated for each location, so that City officials can determine which site would best benefit the City in terms of new tax revenues. One new elementary school will be built and both sites have been studied and determined to be competitive locations. The time frame for the start of construction for a new school is late-2013, with about 1.5 years for completion and an opening date prior to the start of the Fall, 2015 school year. Thus, the market analysis shows site development potential for the post-2016 period. After expected site build out, annual tax revenues will be calculated. All data are presented in constant 2013 dollars, which eliminates any factor for inflation.

John Kerr School Site

The current John Kerr School address is 536 Jefferson Street, situated within a single family neighborhood located west of Valley Avenue (U.S. Route 11) and south of U.S. Route 50. The setting is attractive and generally mature, with no recent development in this part of the city. The area to the west of the existing school is currently vacant meadowland (see Map A).

John Kerr School is an existing elementary school located just west of Harper Drive. The site is approximately 15.82 acres in size. We were provided with several site sizes, but for this study, the entire site is judged to be slightly less than 16 acres. The assessed value of the land is \$1,581,500, or \$100,000 per acre. This value excludes the school building and other ancillary buildings on the property.

The following three pages shows pictures of the John Kerr School property and its setting along Jefferson Street. First presented are photos of the existing school

building. The current building is located on the east side of the property and fronts along Jefferson Street. Once a new school is built, this building will remain and possibly be converted into public use.

The second page of photos shows the west side of the property, which is the land planned for the new school, and represents one of the two sites planned for a new school. This land is level, and vacant, except for parking and play fields, and is located off of Jefferson Street.

The third page of photos are views along Jefferson Street. Jefferson Street is a two-lane, tree-lined street with single family homes in the mid-\$300,000's price range.

John Kerr School Elementary School



Two Views of Proposed Site For New John Kerr School





View East Along Jefferson Street from John Kerr School



View West Along Jefferson Street from John Kerr School

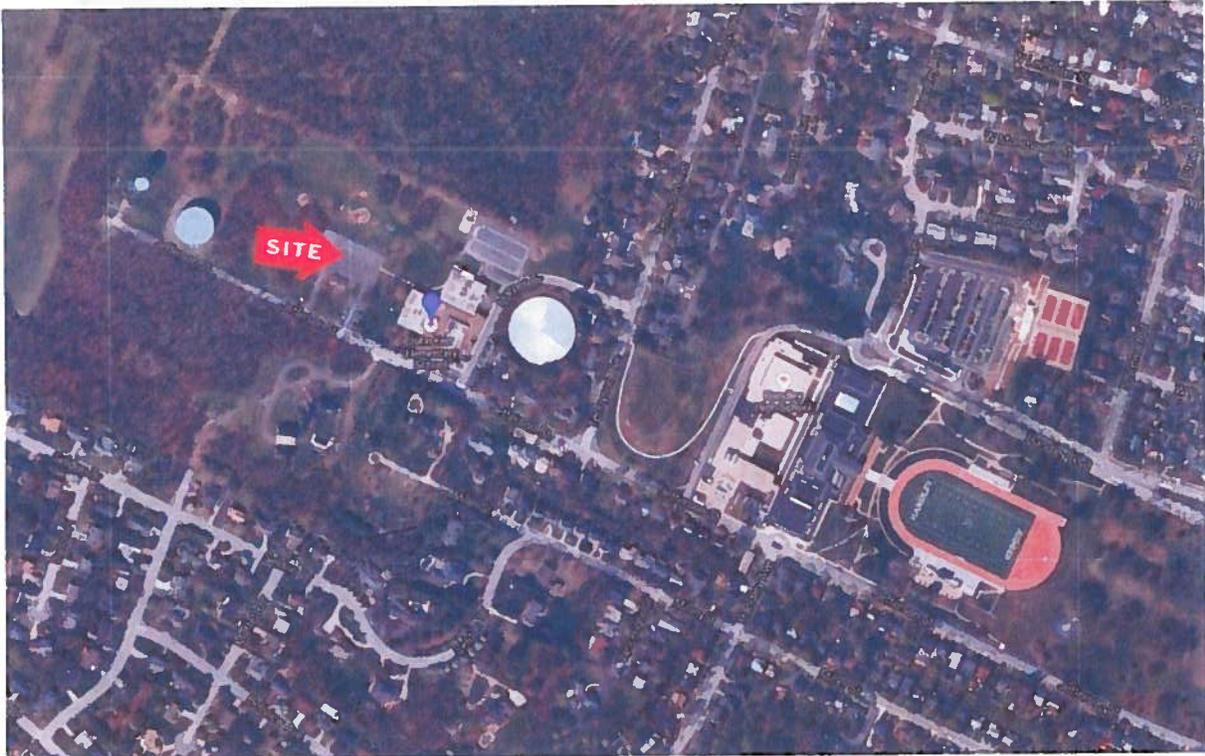
Map A - School Site Locations



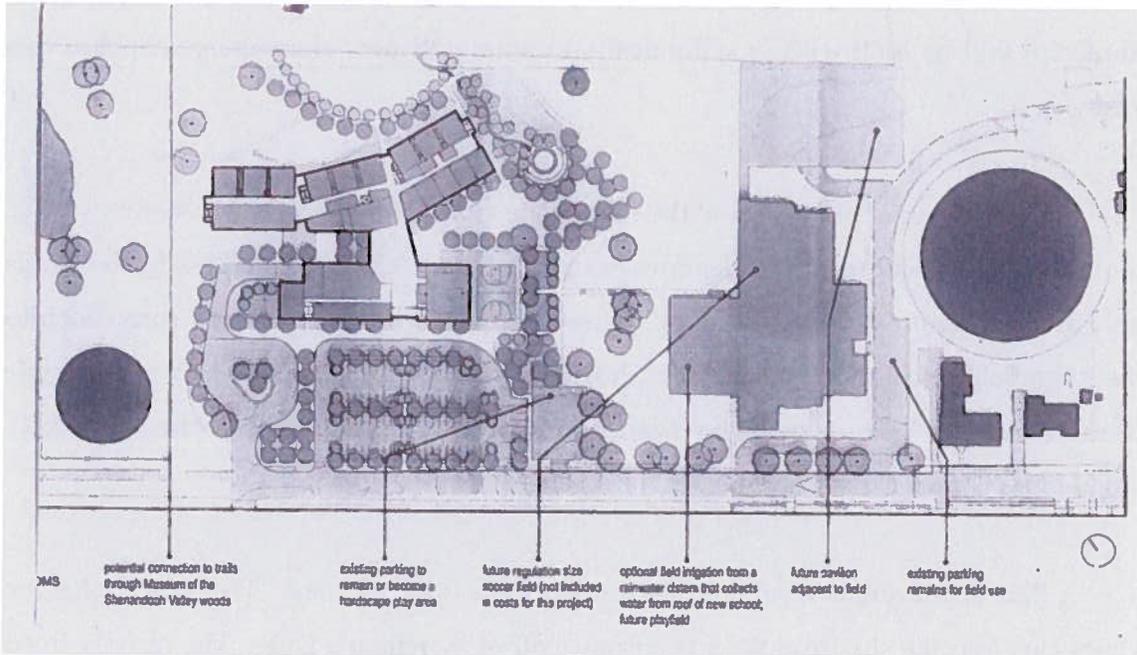
No. 10 - John Kerr School Site-Jefferson Avenue

No. 20 - John Kerr School Site - Meadow Branch Avenue

Map A shows the site location of the existing John Kerr School site and its proximity to the second school site under study for the John Kerr School which is along Meadow Branch Road extended. The aerial shown next provides a better site description. The new school location is to the west of the existing school building. The area west of the school is one of the last large undeveloped sections of the City. The area surrounding the school property is a treed low density residential area.



Next presented is the proposed master plan for the John Kerr School property with the proposed location of the new school building. This is the master plan that was presented to the public regarding this proposal. Under this proposal, the existing school building will remain and the new school will be built on approximately nine acres of land. A separate, new entrance is provided from Jefferson Street.



John Kerr School Property with New School Location

If developable, the identified highest and best use for this site, with or without the existing school building remaining, is single family detached homes. That conclusion is based on our analysis of adjacent land uses, regional access and the defined “competitive position” of the property with the City for other uses. Our review of recent home sales in the neighborhood is \$350,000 to \$450,000. It is likely that 25 homes at this price range can be built on the available land, with City approvals, as described below.

New John Kerr Elementary School Site on Meadow Branch Avenue

The second proposed school site is located along the right-of-way (R-O-W) of the proposed Meadow Branch Avenue extension. The site is shown on the aerial on Page 10. It is a 9.3-acre, vacant, rectangular shaped property. The school to be constructed at this site has the same development timing as for the new school on Jefferson Avenue, and the extension of Meadow Branch Avenue is expected to be completed in time for a

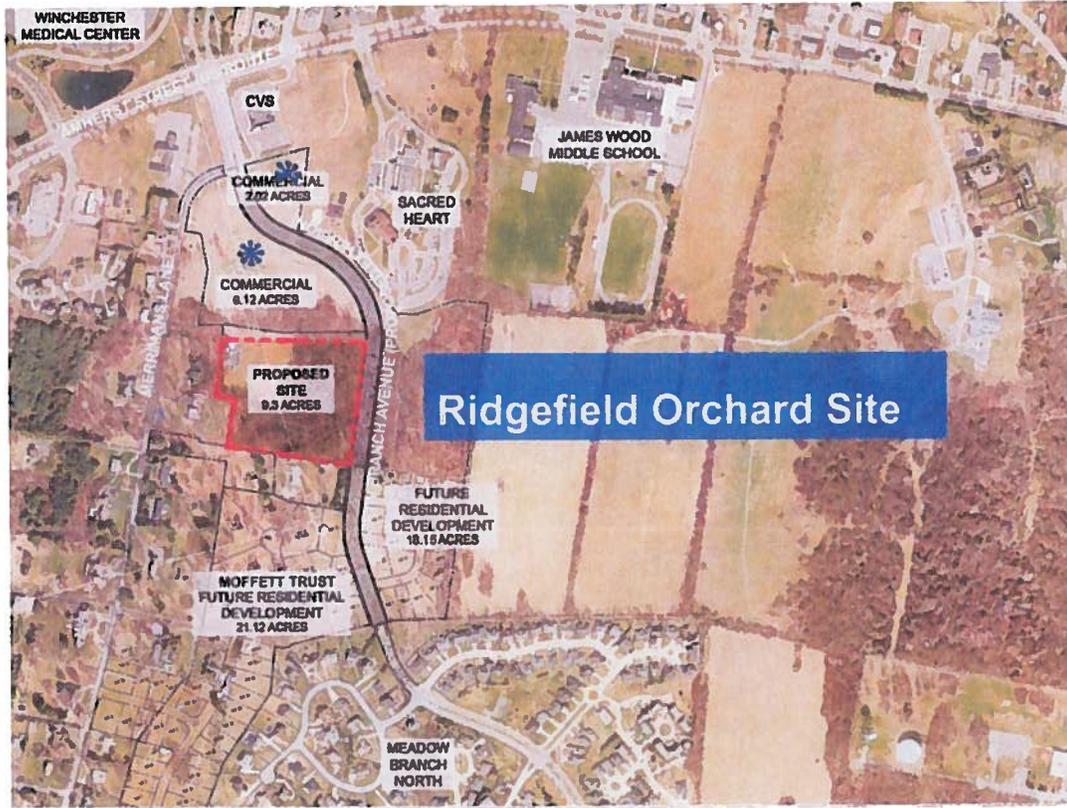
school to open at this location by Fall, 2015. The completion of Meadow Branch Avenue, which is the extension of the street from Buckner Drive north to Amherst Street (U.S. Route 50) will be built with or without the location of a new elementary school at this location.

The following photos show the school site along Meadow Branch Avenue. Once built, the school will front on Meadow Branch Avenue. Currently, access to the site is only available from a gravel road that intersects with Merrimans Lane and runs east into the Ridgefield Orchard property. The photos below show the property that is accessible from Merrimans Lane. This is the meadowland area. The remainder of the site is fully wooded, as shown on the aerial.

Part of the site is level, but the remainder is fully wooded. The two photos are views east into the site from the site entrance off of Merrimans Lane. The heavily treed areas extend east to Meadow Branch Avenue.

John Kerr School Site- Meadow Branch Avenue





The evaluation of the development potential of the school site along Meadow Branch Avenue, if not selected as the preferred site for a new school, is more complicated compared with the analysis of the current John Kerr School site. There is considerable available land for new development along the Meadow Branch Avenue corridor. There are two commercial sites located to the north of the school property. Across Meadow Branch Avenue from the proposed school site, shown with the letters RI, is a 10± acre site that is planned for new apartment unit development. To the south are two sites planned for single family subdivisions.

Thus, there are several options for development of the Ridgefield Orchard site if the new school is not located here. The site location is competitive for:

- Single family detached homes
- Single family attached homes

- An assisted living facility (ALF) given the nearby location of Winchester Medical Center.
- New medical office space, also given the site proximity to the hospital and the sizable number of medical office buildings already existing in this location.

Because there is interest in plans for new apartment units at the adjacent site on the east side of Meadow Branch Avenue, and the two pending single family subdivisions to the immediate south of the planned school site, we limited our highest and best use market study to upscale townhomes for sale, an ALF and medical office space. The reasoning is the direct competition from the development plans of the adjoining sites for apartment unit development and single family subdivisions. Market support is likely not sufficient for directly competing properties. However, the evaluation of the three uses provides sufficient market and fiscal impacts data to evaluate the conclusion that quality development will be feasible at this location.

City officials are aware that our firm has undertaken a considerable number of market studies within Winchester and Frederick County. The competitive market for new single subdivisions and apartment unit development is greater compared with the three uses to be studied for the Meadow Branch Avenue John Kerr school site. Thus, several reasons exist to study development opportunities for just medical office space, and assisted living facility and higher priced attached homes.

Current John Kerr Site Analysis

The best use for the 9± acres of “excess” land at the existing John Kerr School site, if available once the existing school is closed or relocated to the site along Meadow Branch Avenue, is single family homes. A total of 25± homes could be built at this location under a LR residential density, but without a site plan to verify the site’s development capacity.

However, development of this site will be difficult, at best. The property is zoned EIP, Education, Institution and Public Use. The City’s Comprehensive Plan

shows a civic/public use for the property. City staff report that the site is “challenging” due to the difficulty in connecting the site to adjacent streets, other than Jefferson Street. Neighborhood response to the development of the site is not expected to be positive. There is a covenant on the site that may preclude any development. Thus, the conclusion is that the current John Kerr school site cannot be developed for any other use.

However, we do show what the revenue generation to the City would be if single family homes were developed on the property, with a base sales price, plus add-ons, that would average \$400,000. The following chart summarizes a comparison of revenues and cost to the City from a development of this type. The fiscal impacts analysis of a new single family development will not provide net revenues to the city, as shown below, based on the assumptions noted.

Current John Kerr School Site Annual Net Revenues at Site Build Out 1/ (rounded)		
	<u>Per Home Cost/ Revenue Analysis</u>	<u>25-Unit Subdivision Cost- Revenue Analysis</u>
<u>Revenues</u>		
Real Estate Tax Revenue	\$3,800	\$95,000
Other On-Site Tax Revenue	\$1,350	\$750
Off-Site Revenues	<u>\$900</u>	<u>\$22,500</u>
Total Annual Revenues	\$6,050	\$151,250
<u>Costs</u>		
Tax Supported Per Pupil School Costs 2/	\$8,000	\$200,000
Other On-Site Costs 3/	\$2,340	\$58,500
Off-Site	<u>\$210</u>	<u>\$5,250</u>
Total Annual Costs	\$10,500	\$263,750
Net Revenue	(-\$4,500)	(-\$112,500)
Notes: 1/ Based on FY 2013 budget 2/ Based on one school student per housing unit 3/ Based on average of three-person households.		

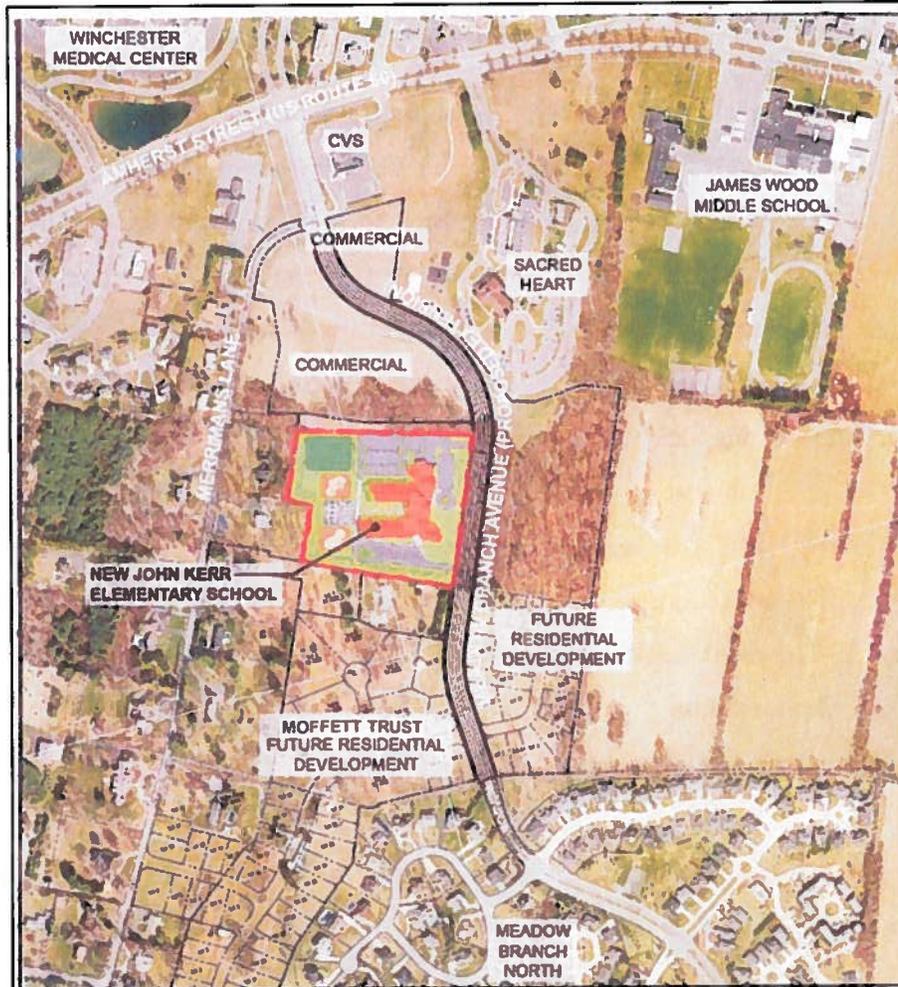
The conclusion related to the potential development of any available land at the current John Kerr School site is that development is not likely to be approved and if development of single family homes occurred, the net tax revenue for the City would be negative.

John Kerr School Site - Meadow Branch Avenue Analysis

There are multiple zoning categories along the Meadow Branch Avenue corridor, primarily MR, medium density residential and, RB 1- Residential/Business. One site is zoned LR, low density residential. These zoning classifications and the concepts for new development along the corridor are evolving, but City staff report that the concept for medical office space and assisted living remain valid as City officials continue to study the corridor. The land uses proposed for study, as noted above, are viable options based on market trends and the City's evolving plans for the area.

Merrimans Lane is developed with large lot, high priced single family homes. The single family homes along the developed portion of Meadow Branch Avenue on the south have middle-priced homes in the \$400,000 range. Thus, if townhomes are built on the Ridgefield Orchard site, they will likely be at a higher price than the market area average, which is in the low- to mid-\$200,000's.

The next aerial shows that, if built, the John Kerr school at this location, as planned, would require the entire 9.3-acre site. Also of note is the two designated commercial sites north of the (proposed) school property. These sites could be built with medical office space, if and when, market support exists. At 10+ acres of commercial land, the two sites could support three new medical office buildings totaling over 100,000 square feet. An alternative for these sites is retail or some other commercial use.



Medical Office Space

This subsection analyzes the development option for medical office space. We did not study other types of office use, as other locations in the City and region are more competitive and that sector of the market is currently oversupplied. The proximity to the hospital makes the north end of the Meadow Branch Avenue corridor ideal for medical office space.

Winchester Medical Center (WMC). The reason for the interest in medical office space, and senior-related housing, in the City is the quality of WMC. WMC has

expanded in recent years and offers comprehensive medical care at its large and expanding campus off of Amherst Street.



Winchester Medical Center (WMC)

Management at WMC completed a major three-year expansion project in 2012 that produced more than 368,000 square feet of new office and medical space and 80,000 square feet of renovated space. This resulted in the creation of approximately 75 new jobs. Project highlights of this expansion include:

- **East Parking Garage** is a five-level, 569-space structure completed in November, 2009 and located behind Hurst Hospitality House on the east side of the campus. The project included an enclosed skywalk between the parking garage and North Tower.
- **Heart & Vascular Center** was complete in April, 2011, and included adding 30 holding beds to total 65 (52 complete, 13 shelled) and one new cardiac catheterization lab for a total of six labs covering 54,400 square feet (25,600 square feet of new and 28,800 square feet of renovated space).

- **Clinical Laboratory.** This 32,600 square foot addition was completed in May, 2011. The project consisted of adding a second story above the existing Imaging Center to more than double the size of the lab.
- The **Emergency Department** was enlarged from 50 to 60 exam rooms with two new resuscitation rooms, plus a new seven-bed rapid assessment area. This totaled 31,180 square feet of new space and 4,380 square feet of renovated space. Construction on this was completed in November, 2011.
- The **Critical Care Unit** was enlarged from 30 to 48 rooms in four 12-bed pods, including the addition of 64,800 square feet of space. Also, 15,930 square feet of a former unit was also renovated. The Critical Care Unit opened in December, 2011.
- **Women & Children's Services.** This project included building flexible education space including a 1,600 square foot conference room, classrooms, and a Dedicated Women's & Children's entrance and lobby with a gift shop. This project included the construction of 68,400 square feet of new space in the North Tower and 22,300 square feet of renovated space. Construction on this portion of the project was completed in July, 2012.

WMC also has early plans to develop a new 47,000± square foot Cancer Center. Currently, some of those departments are in separate buildings within the medical campus. The center would include space for future radiological technology and additional surgical sub-specialties. The Cancer Center could open in late-2014 or early-2015 and be located behind the north tower and next to the outpatient diagnostic center.

In terms of its economic impact, Winchester Medical Center employs 2,214 full-time and 695 part-time employees. Valley Health, the parent company, employs an additional 1,122 employees in Winchester outside of the hospital campus.

Medical Office Building. Table 1 shows that there are 13 medical office buildings in the City with a total of nearly 325,000 square feet of space. In addition, La Rose Development has a 45,000 square foot building under construction and nearing completion at a site to the immediate east of the CVS and with frontage on Amherst Street (see aerial on page 10 and No. 16 on Map B).

The new building is 85% pre sold as a condominium office building with only two suites remaining. The developer reports that he has interest from two other medical tenants for space in other buildings.

Table 2: Characteristics of Medical Office Space, Winchester-Frederick County, VA, October, 2013

<u>Medical</u>	<u>Address</u>	<u>Year Built</u>	<u>Total Space</u>	<u>Vacant Space</u>
Medical Office Bldg I	1870 Amherst St	1988	90,000	0
Shenandoah Valley Orthodontics	1010 Amherst St	1992	4,800	0
1871 Amherst St	1871 Amherst St	1997	3,710	0
Amherst Family Practice	1867 Amherst St	1997	11,040	0
Westside Station LLC	345-347 Westside Station Dr	1997-1999	6,900	0
Brain and Spine Center	1818 Amherst St	1998	12,710	0
Medical Office Bldg. II 2/	190 Campus Blvd	1999	99,540	0
Dermatology Associates	1514 Amherst St	2001	7,420	0
Linden Drive Office Park	142-148 Linden Dr	2004	17,900	0
Westside Professional Center	172-212 Linden Dr	2005	30,000	0
Apple Blossom Family Practice	2913 Valley Ave	2007	15,000	0
Neurodiagnostic Center	905 Cedar Creek Grade	2008	15,000	0
Valley Family Practice and Internal Medicine	812 Amherst Ave	2012	<u>9,730</u>	<u>0</u>
Total			323,750	0

Source: S. Patz & Associates field and telephone survey.

The location of the new office building is also shown on Map B, to follow. Of the 13 medical office buildings shown in Table 1, seven are located along Amherst Street and two are located on Linden Drive, which is also close to the hospital. There are other medical-related tenants scattered throughout the City, some in mature space and some in owner-occupied space. There are also medical office users in general purpose buildings. The overall medical-related space occupancy in the City is likely closer to 400,000 square feet.

The medical office buildings are 100 percent occupied. There appears to be a pent-up demand for additional space, based on the current occupancy rate, the lease-up/sales pace at the new Gateway Office Condominium and the recent request from medical users for new space.

For the 2000 to 2012 period, there were 95,000 square feet of new medical-related office space built. Most of this space was built after 2005. The newest building is 45,000

square feet and will open in late-2013 or early 2014. For the 2005 to 2014 period, lease-up/sales averaged nearly 15,000 square feet per year.

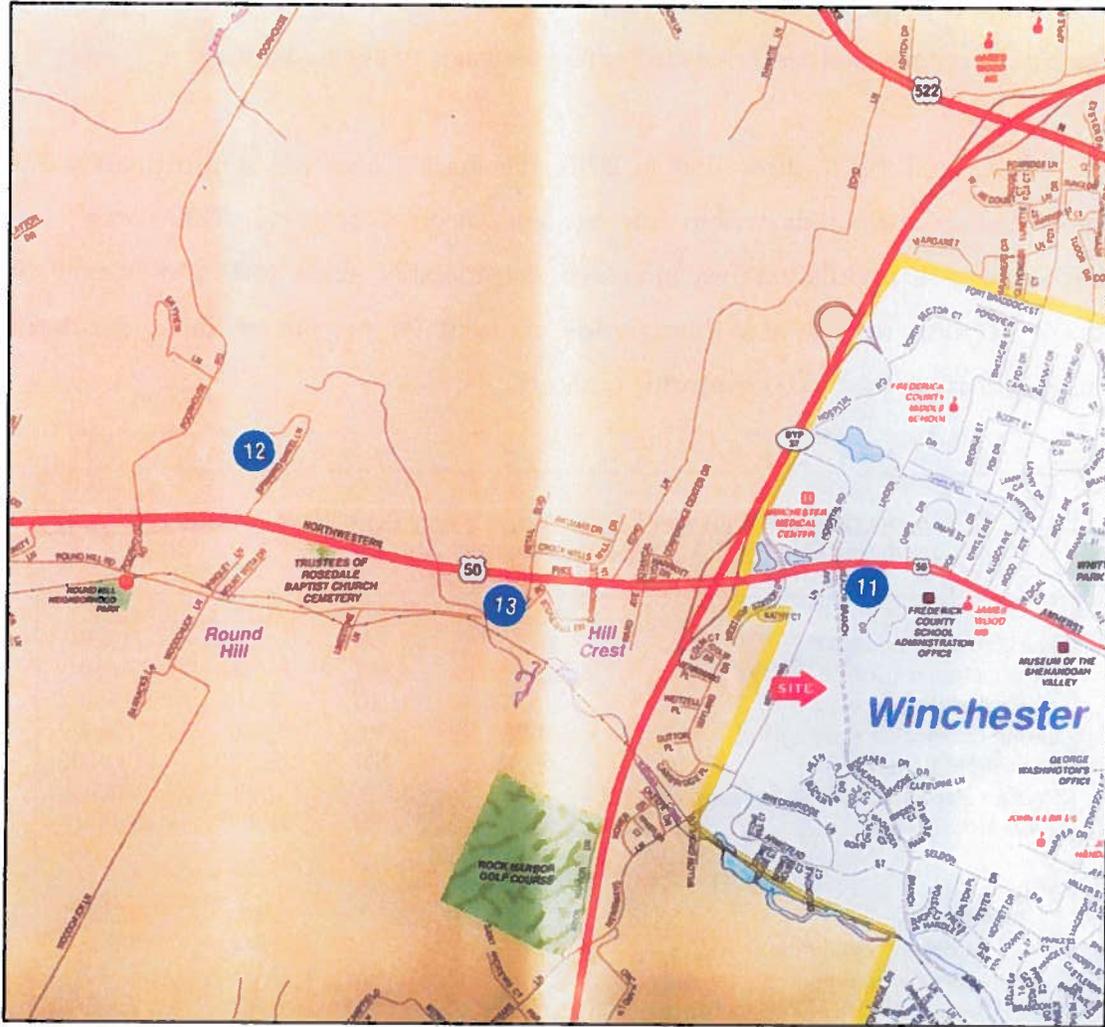
The Ridgefield Orchard site will not be available until 2016. Depending upon the timing of the completion of Meadow Branch Avenue, the adjacent two commercial properties will not be available until 2015 or 2016.

The conclusion regarding market support for new medical office space is that current trends could support 75,000± square feet of new space over the 2015 to 2020 period. Some of this space could be developed on the Ridgefield Orchard property. There is no way of determining which site can be developed first, i.e., one of the two commercial designated sites to the north of the Ridgefield Orchard site, or the Subject site under study. To do a highest and best use study, it is necessary to establish market support. The data presented above does that for medical office space.

Thus, there is demand for new medical office space in the City and over the post-2015 to approximately 2020, approximately 75,000 square feet of new space will be supportable. All or part of this space could be built on the Ridgefield Orchard site. Also, the Subject property may be developed after 2020.

For a 30,000 square foot office building, which requires no more than 3.0 to 3.5 acres of the 9+ acre site, the net fiscal impact to the City will be nearly \$134,000 per year, as shown below. If more medical office space is built on site, the net fiscal benefits will increase at a rate of nearly \$4.50 per square foot.

<u>Summary Net Fiscal Benefit</u>		
<u>30,000 Square Foot Office Building</u>		
(2013 dollars)		
	<u>Per Square Foot</u>	<u>Annual</u>
	<u>Calculation</u>	<u>Net Revenue</u>
On-Site Taxes	\$5.93	\$177,900
On-Site Costs	\$1.47	\$44,100
Net Benefit	\$4.46	\$133,800



Map B- Route 50 West Corridor

This will be a viable use for the Ridgefield Orchard site in time. The newest ALF opened in 2011 on a site located just west of the City, across from the Walmart along U.S. Route 50 (see No. 13 on Map B). It is fully occupied and has been so shortly after opening with 60+ percent of its beds preleased. Additionally, the new Village at Orchard Ridge (No. 12 on Map B) has also been very successful since opening in 2013.

Data in Table 2 present the demographic trends for the older adult population in the greater Winchester area. The purpose of this analysis is to show the magnitude and growth of households headed by a person aged 80+ and with incomes of \$25,000 and

above. This is generally the target market for an ALF, although on-site management at some ALF's reports that residents are 84/85 plus years of age and older.

Data in Table 1 show that in 2013, the market area has approximately 2,000 senior-headed households within this age and income category. This sector of the Winchester area population has increased considerably since 1990 and is now five percent of total market area households. About 70 percent of the older-headed households are in the \$25,000+ income category.

Table 2: <u>Demographic Trends and Projections of Senior Population, Winchester-Frederick County, VA, 1990-2018</u> (Constant 2013 Dollars)				
	1990	2000	2010	2018
Market Area Population	67,670	82,790	104,510	121,030
Winchester City	21,950	23,590	26,200	27,610
Frederick County	45,720	59,210	78,310	93,420
Group Quarters Population	1,220	1,570	1,940	2,120 2/
Household Population	66,450	81,220	102,570	118,910
Persons Per Household	2.60	2.53	2.60	2.53
Total Households	25,550	32,100	39,470	47,000
80+				
Population	1,550	2,260	3,500	4,280
Percent of Total Population	2.3%	2.7%	3.3%	3.5%
Households	980	1,490	2,380	3,340
Percent of Total Households	3.8%	4.6%	6.0%	7.1%
Within Income Category 1/	460	960	1,660	2,440
Percent of Total Households	1.8%	3.0%	4.2%	5.2%
Percent 80+	46.9%	64.4%	69.7%	73.1%
Notes: 1/ Annual incomes exceeding \$25,000. 2/ Includes planned additions to on-campus beds at Shenandoah University.				
Source: 1990, 2000 and 2010 Census, U.S. Census Bureau, U.S. Department of Commerce; Weldon Cooper Center for Public Service S. Patz & Associates, Inc.				

Assisted Living Facilities. The Winchester area currently has six facilities with AL beds. Two of these, Westminster-Canterbury and Village of Orchard Ridge are CCRC's (continuing care retirement communities) with an abundance of independent living (IL) apartment units and a modest number of AL beds. In total, there are 367 ALF beds in the market area, with a 93± percent occupancy rate. The newest of these ALF's is

Spring Arbor, located west of the City on Route 50 (see Map B). However, the larger Village at Orchard Ridge opened in mid-2013 with 245 “beds”, or apartment units. Most of these are independent living apartment units.

Table 3 : Characteristics of Assisted Living Facilities by Type of Care, Winchester-Frederick County, August, 2013		
	<u>Year Opened</u>	<u>Total Beds</u>
Amerisist of Stephens City	2002	39
Hilltop House Assisted Living	1985/90/08 2/	90
Westminster-Canterbury	1987/2004	60
Spring Arbor of Winchester	2011	80
Village at Orchard Ridge	05/2013	19
Willows at Meadow Branch	1998/10 3/	79
Total 1/		367

Notes: 1/ Three other assisted living facilities in the market area -- Apple Manor, Bon Air Stephens City, and Royal Haven are mature and “affordable” ALF’s.
 2/ Expansion with 35 beds opened in April, 2008.
 3/ Renovation was completed in 2010.

Source: S. Patz & Associates field and telephone survey.

Of the ALF’s, Amerisist is small and located in Stephens City. Hilltop House was expanded by 35 beds in 2008. The original facility is more modest and older. Westminster-Canterbury requires a large entrance fee. The 60 AL beds there are typically occupied by residents from the independent living apartments. Management does not market AL beds to the public. Willows is an attractive facility where ownership converted more beds to its special care wing. Village at Orchard Ridge has only 19 AL beds, but several hundred IL beds. As with Westminster-Canterbury, these AL beds are likely to be occupied by residents of the apartment units at the CCRC.

The Village at Orchard Ridge (TVOR) is a new CCRC on a 132-acre site on the north side of Northwestern Pike (Route 50), west of Retail Boulevard and east of Poorhouse Road (Route 654) in Frederick County, two miles west of Winchester Medical Center. An aerial of this community and photos of cottages at the CCRC are shown below.



The Village at Orchard Ridge



Cottages

Ground was broken in May, 2011 on the first phase of construction, which covers 40 acres and offers three levels of accommodations and care: independent living, assisted living and skilled nursing. The initial phase opened in February, 2013 for the independent living units. The community began taking admissions for assisted living,

memory support and nursing care residents in May, 2013. Individual components of the first phase are detailed in the paragraphs below:

- **Independent Living** consists of 51 LEED certified independent living cottage homes and 127 apartments with home-based assisted living services. Apartment sizes range from 786 square feet to 1,502 square feet, with monthly service fees between \$1,785 and \$2,415. Cottages are between 1,339 square feet and 1,686 square feet, with monthly service fees costing from \$2,415 to \$3,045.

These living spaces also have entrance fees. Either 50 or 100 percent of the entrance fees are refunded to residents or their families when they leave the community. Fifty percent refundable fees for cottages range from \$311,820 to \$393,500 and 100 percent refundable cottage fees are between \$455,540 and \$562,230. The 50 percent refundable fees for apartments go from \$203,490 to \$337,215 and 100 percent fees go from \$290,700 to \$489,600. Apartments also have a fee that offers a declining refund over an 18-month period. Those fees are between \$156,980 and \$264,385.

Apartments have 12 floor plans, with one- and two-bedroom options. The cottages have six floor plans, with two-bedroom, two-bath options. National Lutheran has "pre-sold" 83 percent of the Village residential units.

- **Assisted Living/Memory Care**. The assisted living memory care neighborhood opened for its first resident in May, 2013. This neighborhood features 14 private suites, 2 double-occupancy suites, a memory garden, salon and common spaces. Amenities include daily housekeeping, laundry, transportation services, all meals and life enrichment activities
- **Nursing Care/Short-term Rehabilitation**. The 10-unit nursing care and short-term rehabilitation neighborhood of Orchard Woods Health Center opened at the end of the summer 2013.

In addition to the private living areas, the community's common areas encompass four dining venues – the main dining room, a private dining room, a bistro, and a pub. A library, business center, hair salon, fitness room, exercise classroom, art studio, billiard room, resident gardening area, and walking trails are also available. The community also opened a nondenominational chapel in May, 2013 that can accommodate up to 180 people. The apartment units, AL beds and skilled nursing beds are in the elevator buildings shown in the photo to follow. The breakdown of units completed to date are listed below.

Current Unit Mix in Phase I

- 64 cottage homes for rent
- 135 apartment units in high rise buildings
- 19 AL beds
- 28 skilled nursing beds
- 245 Total



Apartment Buildings

Preliminary plans are underway for the community's second phase. Eventually, development on the community could reach as high as five phases totaling 650 apartments and cottage homes. There is currently no timeline for future phases. However, the sponsor's primary target market is active adults.

Conclusion. Trend data for older senior-headed households and the construction trends and occupancy of ALF beds show market support for 100 to 120 new beds over the 2013 to 2018 period. Most new ALF's contain about 80 beds. The conclusion is that over the next few years and prior to 2017/18, a new ALF would be feasible. There are no active plans at this time for an ALF except for future expansion at The Village at Orchard Ridge. Management at Orchard Ridge are expected to add a small number of AL beds in each phase, as they don't market their beds to the public. These beds are included in the demand calculation, so our demand analysis shows

market support for a new 80± bed ALF. The Ridgefield Orchard site is one of the most competitive for this use.

Fiscal Impact

An 80± bed new ALF will likely have a real estate value of \$12 million, based on an average room cost of \$150,000. That total will generate annual real estate taxes of \$114,000. There will also be some on-site revenues from purchases of food and supplies. Off-site revenues are minimal.

The primary cost to the City will be from EMS calls of 100+ trips per year. This may not be a net cost, as these trips would occur to City seniors anyway. The active net cost to the City is for any increase in seniors moving into the City.

We did not get good data for on-site purchases of goods, so we did not include those revenues in our analysis. Typically, 50 percent of the residents of an ALF move to the facility from out of the area, so the EMS cost is 50% of annual costs, of which Medicare covers at 80%.

In general, an 80-bed ALF, with normal occupancy, will likely generate at least \$110,000 per year in annual real estate taxes from the time of building completion and occupancy. Added to this are purchases of goods and food for the facility. This could add 25 percent to on-site revenues. The EMS and other costs are modest. Thus, we estimate a \$130,000 net annual revenue to the City from an 80-bed ALF.

Housing

The Winchester-Frederick County marketplace has four active new townhome communities and one which closed out in early-2013. There are also three large communities in the County in active planning with new towns planned. More townhouse subdivisions are likely to be added to the market as the economy improves.

At present, there are 100± lots still available at active townhome subdivisions and the three new proposals could add 960 new townhome lots in time. The sales pace at active townhome communities has not been at pre-recession levels, so the current and future level of competition could be considerable.

The current townhome market is priced at a maximum of \$250,000. Townhome development is likely not the highest and best use for the Ridgefield Orchard property, given the likely market support for medical office space and/or an ALF. This use would not generate a positive fiscal analysis for the City and competition could be considerable by 2015/16. The \$250,000 price range, reported in constant 2013 dollars, is likely below market for housing in this very attractive setting in the City.

Auburn Glen is the one townhouse community under study that is now closed out. It is an age-restricted community with current prices of \$250,000±. An attached, one story age-restricted community of 50 to 100 homes, with prices (more upscale) at \$300,000 would be a feasible option for the Ridgefield Orchard site. The success of IL apartment units at The Village of Orchard Ridge is one indication of a pent-up demand for this type of housing. The apartments at the new CCRC are rental, but require a considerable endowment fee.

The issue here is that the 9+ acre Ridgefield Orchard site may have excess land if built for an ALF, or one or two small medical office buildings. Whether the IL, age-restricted homes are one-story towns or an IL apartment building, market support should exist.

For a \$300,000 home, the real estate tax rate would equal \$2,850 per house. Other on-site revenue would equal \$1,350 per house. The on-site costs without school children is approximately \$1,000. The annual fiscal impact analysis for age-restricted housing priced in the \$300,000 range is as follows and include off-site revenues:



Autumn Glen

<u>Annual Fiscal Impacts Analysis at Build-Out</u> <u>Age-Restricted Housing</u>		
	<u>Per House</u>	<u>50-Unit</u> <u>Subdivision</u>
<u>On-Site Revenue</u>		
Real Estate Tax	\$2,850	\$142,500
Other Taxes	\$1,350	\$67,500
(Subtotal)	(\$4,200)	(\$210,000)
Off-Site Revenue	\$900	\$45,000
Total Revenue	\$5,100	\$255,000
<u>Costs (on-site)</u>		
Net Annual Revenue	\$4,100	\$205,000

Conclusion

Again, it is difficult to judge which site along Meadow Branch Avenue will be built first and with what land uses. However, over time, the Ridgefield Orchard site will be competitive for medical office space, an ALF and/or age-restricted housing. Ultimate development of the Ridgefield Orchard site could include one or more of the identified uses. All of the three uses under study (see chart below) will generate net tax revenue for the City, with the exact mix undefinable at this time.

<u>Summary of Annual Net Tax Revenue</u> <u>At Built-Out, Ridgefield Orchard Site</u> (2013 dollars)	
	<u>Annual Tax Revenue</u>
80-Bed ALF	\$130,000
30,000 Square Foot Office Building	\$133,800
(60,000 Square Foot Office Buildings)	(\$267,600)
50 Age-Restricted Subdivision	\$205,000

A mix of uses on-site would generate over \$200,000 in net tax revenue from development of these potential land uses.

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: Nov. 19, 2013 CUT OFF DATE: _____

RESOLUTION ___ ORDINANCE ___ PUBLIC HEARING ___ DISCUSSION X

ITEM TITLE: City Council Consideration of Implementing a Storm Water Utility - Proposed Schedule of Events

STAFF RECOMMENDATION: NA

PUBLIC NOTICE AND HEARING: NA

ADVISORY BOARD RECOMMENDATION: NA

FUNDING DATA: See attached.

INSURANCE: NA

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Finance	<u>D</u>	_____	<u>11/11/13</u>
2. City Attorney	<u>AW</u>	_____	<u>11/13/2013</u>
3. City Manager	<u>[Signature]</u>	_____	<u>11-13-13</u>
4. Clerk of Council	_____	_____	_____
Initiating Department Director's Signature:	<u>[Signature]</u>	_____	<u>11/10/13</u> Date



APPROVED AS TO FORM:

[Signature] 11/13/2013
CITY ATTORNEY



CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Perry Eisenach, Public Services Director
Date: November 19, 2013 (Council work session)
Re: Consideration of Implementing a Storm Water Utility – Proposed Schedule of Events

THE ISSUE: Consideration of Implementing a Storm Water Utility – Proposed Schedule of Events

RELATIONSHIP TO STRATEGIC PLAN: **Goal 4:** Create a More Livable City for All. Specifically, **Policy Agenda Item #6:** Develop a storm water management policy with policy directions, project priority and funding mechanisms, which could include the establishment of a storm water utility.

BACKGROUND: The City of Winchester is facing some significant storm water related challenges that are only expected to increase in the coming years. These challenges include both infrastructure improvements that are necessary to remedy flooding issues and increasing regulatory compliance associated with Phase 2 storm water regulations and the newly created Chesapeake Bay initiatives, both of which are federal mandates regulating stormwater discharges. In order to successfully meet these challenges, the City needs to develop and implement a comprehensive storm water management policy and program.

On March 12, 2013, City Council adopted Resolution 2013-08 which directed staff to prepare a detailed proposal that will allow City Council to consider implementing a Storm Water Utility. Since that time, the Public Services Department has been working with the City's storm water consultant, GKY & Associates, to put together this proposal.

Over the next six months, a series of presentations and discussions will be provided to City Council on a proposed Storm Water Utility. A schedule of these presentations and discussions is provided on the attached sheet. At the conclusion of these presentations and discussions, it is anticipated that City Council will have the information necessary to make a decision on implementing a Storm Water Utility. Under the schedule developed, this decision would be made in June 2014.

BUDGET IMPACT: The City currently spends over \$500,000 per year in operational costs, engineering, and administration of the current storm water program. The majority of the current revenue for these expenditures comes from state funds (Highway Maintenance) and utilities. This operational expenditure is expected to increase by approximately \$250,000 or more per year as the new stormwater regulations (Chesapeake Bay initiatives) in Virginia take effect within the next two years. The City is also facing well more than \$30 million in capital projects related to stormwater during the next 20+ years to replace aging infrastructure and also construct new infrastructure where the existing storm water infrastructure is inadequate.

A Storm Water Utility would provide a mechanism that would generate revenue from user fees that would be used solely to pay for the City's storm water program.

OPTIONS: There will be two primary options available to City Council regarding this issue:

1. Implement a Storm Water Utility to pay for the City's storm water program.
2. Not Implement a Storm Water Utility. Alternate revenue sources would need to be identified to pay for the City's storm water program.

There is no action required at present from City Council on implementing a Storm Water Utility. This action is anticipated in June 2014.

RECOMMENDATIONS: Staff will provide City Council with a recommendation on implementing a Storm Water Utility during the spring of 2014.

City of Winchester
Consideration of Implementing Storm Water Utility
Proposed Schedule of Key Events

Date	Meeting	Action Item
November 19, 2013	City Council Work Session Discussion #1	Discussion of Storm Water Regulatory Requirements
December 17, 2013	City Council Work Session Discussion #2	Discussion of Storm Water Infrastructure Needs - Capital Improvement Plan
January 21, 2014	City Council Work Session Discussion #3	Discussion of Storm Water Program – Operation and Maintenance Needs
February 18, 2014	City Council Work Session Discussion #4	Discussion of Storm Water Program Funding Needs - Proposed Storm Water Fee Structure
March 18, 2014	City Council Work Session Discussion #5	Present Proposed Ordinance to Implement Storm Water Utility
April 15, 2014	City Council Work Session Discussion #6	Review of Complete Proposed Storm Water Utility Program – Questions and Answers
May 13, 2014	City Council Regular Meeting	1 st Reading of Ordinance to Implement a Storm Water Utility
June 10, 2014	City Council Regular Meeting	Public Hearing and 2 nd (Final) Reading of Ordinance to Implement a Storm Water Utility
If City Council Approves Stormwater Utility:		
May 2015 (tentative)		First Actual Stormwater Utility Bills Sent Out To Customers

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: Nov. 19, 2013 CUT OFF DATE: _____

RESOLUTION ___ ORDINANCE ___ PUBLIC HEARING ___ DISCUSSION X

ITEM TITLE: City Council Consideration of Implementing a Storm Water Utility - Discussion #1 - Storm Water Regulatory Issues

STAFF RECOMMENDATION: NA

PUBLIC NOTICE AND HEARING: NA

ADVISORY BOARD RECOMMENDATION: NA

FUNDING DATA: See attached.

INSURANCE: NA

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Finance	<u>D</u>		<u>11/11/13</u>
2. City Attorney	<u>AV</u>		<u>11/13/2013</u>
3. City Manager	<u>[Signature]</u>		<u>11/13/13</u>
4. Clerk of Council			
Initiating Department Director's Signature:	<u>[Signature]</u>		<u>11/10/13</u> Date



APPROVED AS TO FORM:

CITY ATTORNEY



CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Perry Eisenach, Public Services Director
Date: November 19, 2013 (Council work session)
Re: Proposed Storm Water Utility – Discussion #1 – Regulatory Issues

THE ISSUE: Consideration of Implementing a Storm Water Utility – Regulatory Issues

RELATIONSHIP TO STRATEGIC PLAN: **Goal 4:** Create a More Livable City for All. Specifically, **Policy Agenda Item #6:** Develop a storm water management policy with policy directions, project priority and funding mechanisms, which could include the establishment of a storm water utility.

BACKGROUND: The City of Winchester, along with other communities in Virginia, is facing some significant storm water issues related to regulatory compliance. These challenges are associated with more stringent Phase 2 storm water regulations and the newly created Chesapeake Bay initiatives, both of which are federal mandates regulating storm water discharges. In addition, there are many regulations associated with the National Flood Insurance Program that have an impact on the City.

There are three primary areas that the City must address related to storm water regulatory issues. These are:

1. Virginia Stormwater Management Program (VSMP).
2. Municipal Separate Storm Sewer Systems Permit (MS4).
3. National Flood Insurance Program (NFIP).

Detailed information on each of these three areas is provided on the attached sheets. The VSMP and MS4 programs are regulatory programs that are mandated by the state and federal governments. The NFIP is a voluntary program, but participation requires the City to adhere to numerous program requirements.

BUDGET IMPACT: It is estimated that it will cost the City at least \$250,000 or more per year to implement and adhere to the new and more stringent stormwater regulations during the next few years. Additional information regarding this will be provided during Discussion #3 – regarding a proposed Storm Water Utility at the Council work session on January 24, 2014.

OPTIONS FOR CITY COUNCIL:

1. Either implement or not implement the Virginia Stormwater Management Program. Formal Council action on this program is requested in the next agenda item via an ordinance to amend City Code Chapter 9.
2. Either continue or not continue the City's participation in the National Flood Insurance Program. No formal Council action is necessary at this time.

RECOMMENDATIONS: Staff recommends the following actions for City Council:

1. Amend Chapter 9 of the City Code to comply with the Virginia Stormwater Management Program (VSMP). The next agenda item contains the proposed ordinance that would implement this required program. The VSMP must be in place by July 1, 2014.
2. Continue the City's participation in the National Flood Insurance Program.

Stormwater Regulatory Issues

1. Virginia Stormwater Management Program (VSMP) - Program Adoption and Implementation

The City of Winchester is required to adopt and implement the Virginia Stormwater Management Program (VSMP) no later than July 1, 2014. This is the result of the Commonwealth of Virginia's adoption of Chapter 372 of the 2004 Virginia Acts of Assembly (HB1177) and subsequent amendments to the Virginia Stormwater Management Act which created the requirement for localities regulated as Municipal Separate Storm Sewer Systems (MS4s) and those located in Tidewater Virginia, to adopt a local stormwater management program approved by Virginia Soil and Water Conservation Board (responsibility for approving local programs was transferred in 2013 to the State Water Control Board). The General Assembly amended this requirement in 2012 (HB1065) to require that all Virginia localities, excluding towns that do not operate a regulated MS4, adopt a local stormwater management program approved by the Soil and Water Conservation Board within 15 to 21 months of the effective date of the regulations establishing local program criteria and procedures. Alternatively, localities were permitted a 12-month extension provided they demonstrated "substantive progress" toward development of a local program by April 1, 2013. The City of Winchester submitted the required documentation to the Board by this deadline, and received the 12-month extension by the Board's at its June 6, 2013 meeting. In order to comply with the VSMP, extensive changes are needed to City Code Chapter 9 – Water Protection.

Pursuant to this extension granted by the Board, the City has developed the required elements of a local VSMP and application package, including the draft VSMP ordinance, funding and staffing plan, and additional, required documentation. As a regulated small MS4 under the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems since 2003, the City has previously developed and implemented a local stormwater management program which includes many, but not all, of the elements required by the Virginia Stormwater Management Program. The City recognizes that these policies and procedures must be updated to comply with the new VSMP and MS4 requirements. Moving forward, the City stormwater management program must ensure consistency with all applicable laws and regulations as well as address any deficiencies or "gaps" between the regulatory requirements and current practices.

From a program implementation perspective, the City's administration of a local VSMP program will add obligations that heretofore have either not been part of the City's program or have been implemented in a different fashion. Specifically, the implementation of the VSMP requirements at the local level will require the Engineering Division to:

- Accept, review and approve stormwater management plans and applications for VSMP Authority Permits, including required attachments;
- Inspect land-disturbing activities subject to VSMP authority permits during construction to ensure that stormwater facilities are constructed in accordance with approved stormwater management plans, approved Stormwater Pollution Prevention Plans (SWPPPs), and all other state and local regulatory requirements; and

- Monitor and inspect stormwater management facilities/BMPs subject to a private maintenance agreement to confirm that permanent BMPs are functioning as intended and regularly maintained by the owner.

The City does not currently have adequate staff to review stormwater management plans and VSMP Authority Permit applications as required by the VSMP requirements. To remedy this deficiency, it is anticipated that a new Stormwater Engineer position will be needed to review and approve stormwater management plans and applications for VSMP Authority Permits, including required attachments. Additional information regarding this proposed new position will be provided during Discussion #3 of the Proposed Stormwater Utility at the Council work session in January 2014.

2. Municipal Separate Storm Sewer System Permit (MS4) Program Development and Implementation

Based on the City's designation as a U.S. Census defined Urbanized Area, Winchester is subject to the terms of the Virginia Small Municipal Separate Storm Sewer System General Permit for Stormwater Discharges (small MS4 general permit). Beginning in 2003, Winchester developed and implemented a program to address the six minimum control measures of the small MS4 permit. The City's program includes public education and outreach on stormwater management concerns; an illicit discharge detection and elimination program; a construction site management program; a post-construction management component; and a "good housekeeping" component, as mandated by the Phase II regulations.

The City has developed, and is executing, a program plan that includes a series of best management practices (BMPs) designed to address each of the minimum control measures listed above. Each BMP includes a schedule for implementation, responsible parties, and measureable goals from which to evaluate the BMPs implementation and effectiveness to the degree feasible. The small MS4 general permit period in Virginia covers a five year permit cycle, with permit years running from July 1 through June 30 – concurrent with the City's Fiscal Year. MS4 Program Annual Reports are due to Virginia DEQ by October 1 for each permit year. The current general permit was initiated in July 2013, and is set to expire in June 2018.

To date, implementation of the MS4 program has constituted a significant portion of the City's stormwater management effort on an ongoing basis, and the recently initiated permit cycle promises to continue that emphasis. In addition, however, this new MS4 permit also includes additional requirements over and above previous permit cycles that mandate a more prescriptive approach to permit compliance. While MS4 permit compliance is still based on identification of a menu of iterative best management practices (BMPs) that address the requisite six minimum control measures, this permit cycle includes a series of implementation milestones that have been included in the permit language itself, mandating completion of specific portions of planning and programming by certain dates. Many of these prescriptive dates center on coordination of local VSMP program implementation (outlined above); more aggressive pollution prevention and good housekeeping initiatives for municipal operations, and planning and implementation of programming to address Total Maximum Daily Loads (TMDLs) which have a Wasteload Allocation (WLA) assigned to the MS4.

As the City of Winchester is located in the Shenandoah River watershed, the City is subject to the requirements of the TMDL established for the Chesapeake Bay. In addition, the City has multiple TMDLs

for tributary streams developed with a WLA to its MS4, including Opequon Creek and Abrams Creek. The City of Winchester developed an internal assessment of the City BMPs needed to approximate compliance with the nutrient and sediment goals of the Chesapeake Bay TMDL. In so doing, the City identified a number of practices and retrofits designed to meet the allocations as currently modeled. Among the items identified were more frequent street sweeping (increase of 50%), development and implementation of nutrient management plans, and the retrofitting of existing stormwater detention facilities to "extended detention" facilities – allowing for a longer draw down period and thus improving water quality. The estimated need for retrofitting these facilities is based on the average area treated by constructed ponds in the City and the number of facilities that would need retrofitting to achieve the treated area calculation developed for the City's implementation scenario. Annual cost estimates, including design and construction costs for retrofits, enhanced nutrient management planning through the Chesapeake Bay TMDL implementation date of 2025 averaged approximately \$230,000 per year.

Of note, recent EPA evaluation of the Commonwealth of Virginia's administration of the MS4 program has led to EPA scheduling MS4 program audits for multiple MS4 Phase I and Phase II communities in Virginia, starting in 2011. As such, local MS4 programs in Virginia are likely to receive increased scrutiny as EPA evaluates the state's administration of the program (especially now that state oversight of the stormwater management program, including MS4 permitting, has transferred back to Virginia DEQ) and local compliance with permit terms and conditions.

In order to maintain compliance with the City's MS4 permit which will continue to get more stringent, a significant amount of additional resources will be required in the future. Additional information regarding this will be provided during Discussion #3 of the Proposed Stormwater Utility at the Council work session in January 2014.

3. National Flood Insurance Program (NFIP)

The City of Winchester is currently a full participant in the National Flood Insurance Program and has been since 2008. There has been a long history of the City's participation in this program that includes the following:

- 1968: NFIP originated.
- 1978: Preliminary Flood Insurer Maps were issued for the City of Winchester.
- Late 1978: City Council votes not to participate in NFIP.

- 1994: Congress passes the Flood Insurance Reform Act requires federally-insured banks (FDIC) to require flood insurance for mortgages.
- Late 1990's: City Council votes to enter the NFIP. Primary reason cited was to allow residents to obtain flood insurance so that they could obtain a mortgage to purchase a property in the flood plain.
- 2000 – 2007: City expended significant resources to perform necessary studies and take various actions to allow the City to receive FEMA's approval to enter the NFIP.
- 2003: City reinstated in NFIP by FEMA on a probationary status.
- 2008: City receives FEMA's approval to enter the NFIP as a full participant.

Approximately 330 acres of the City of Winchester is located in a Federal Emergency Management Agency (FEMA) 100-year floodplain. This total includes 422 residential parcels and 307 non-residential parcels. Participation in the NFIP is voluntary. However, participation is mandatory for any City resident to be able to purchase flood insurance. The City currently has 175 flood insurance policies in effect insuring over \$44 million in property.

Recently, the policy rates for flood insurance have increased substantially. This is the result of the significant losses that the NFIP has incurred in recent years due to storms like Hurricane Katrina and Sandy. The new rates are intended to reflect the actual risk cost and help keep the NFIP self-sustaining.

Questions are often posed by City residents regarding the pros and cons of participating in the NFIP. The following are the primary pros and cons of participating:

Pros of NFIP Participation

1. Residents and businesses have the opportunity to purchase flood insurance. The vast majority of mortgages for properties in the floodplain require flood insurance. Without the ability to purchase flood insurance, mortgages on these properties would be extremely difficult to obtain.
2. The City is eligible to receive federal assistance to pay for damages in the event of an actual flood. The City would not be able to receive any federal assistance for flood damage without participating in the NFIP.

Cons of NFIP Participation

1. There are a significant number of floodplain regulations that must be followed that effect building and developments.
2. Administering and participating in the NFIP does require a significant amount of effort and City resources.

The Public Services Department feels strongly that the benefits of participating in the NFIP far exceed any of the disadvantages for participating. At present, only one City in the Commonwealth of Virginia does not participate in the NFIP – the City of Galax.

The City does have opportunities to help lower the cost of flood insurance for residents and businesses. The National Flood Insurance Program's Community Rating System (CRS) is a voluntary program that rewards floodplain management activities exceeding the NFIP's minimum requirements. Communities are rated Class 10 through Class 1 with flood insurance premium rates discounted in increments of 5% for each class up to a 45% premium discount for a Class 1 community. Communities that participate in the CRS program can earn points in the CRS manual for a variety of proactive stormwater management and floodplain management activities. For every 500 points earned, a community qualifies for a class rating reduction (10 to 9, 9 to 8, etc.). Participating in this program will be discussed in more detail during Discussion #3 of the Proposed Stormwater Utility at the Council work session in January 2014.

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: Nov. 19, 2013 CUT OFF DATE: _____

RESOLUTION ___ ORDINANCE XX PUBLIC HEARING XX

ITEM TITLE: An ordinance to amend Chapter 9 - "Water Protection" of the Winchester City Code to comply with all applicable regulations of the Virginia Stormwater Management Program.

STAFF RECOMMENDATION: Adopt the ordinance.

PUBLIC NOTICE AND HEARING: Will be required.

ADVISORY BOARD RECOMMENDATION: NA

FUNDING DATA: See attached.

INSURANCE: NA

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Finance	<u>[Signature]</u>	_____	<u>11/11/13</u>
2. City Attorney	<u>[Signature]</u>	_____	<u>11/13/2013</u>
3. City Manager	<u>[Signature]</u>	_____	<u>11/13</u>
4. Clerk of Council	_____	_____	_____
Initiating Department Director's Signature:	<u>[Signature]</u>	_____	<u>11/10/13</u> Date



APPROVED AS TO FORM:

[Signature] 11/13/2013
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Perry Eisenach, Public Services Director
Date: November 19, 2013 (Council work session)
Re: Modifications to Chapter 9 – “Water Protection” of the Winchester City Code

THE ISSUE: An ordinance to amend Chapter 9 – “Water Protection” of the Winchester City Code to comply with all applicable regulations of the Virginia Stormwater Management Program.

RELATIONSHIP TO STRATEGIC PLAN: **Goal 4:** Create a More Livable City for All.

BACKGROUND: The Commonwealth of Virginia has adopted legislation that requires the City of Winchester to implement and enforce all applicable provisions of the Virginia Stormwater Management Program (VSMP). The deadline for implementing all these requirements is July 1, 2014.

The attached ordinance would make the necessary modifications to Winchester City Code Chapter 9 – “Water Protection” so that the City is in compliance with State Code.

BUDGET IMPACT: Implementing and enforcing these new regulations will have an impact on the City’s budget as additional resources will be required. Additional information regarding this will be provided during Discussion #3 regarding a proposed Storm Water Utility at the Council work session on January 24, 2014.

OPTIONS FOR CITY COUNCIL:

Either adopt or not adopt the proposed ordinance.

RECOMMENDATION:

Adopt the proposed ordinance.

**AN ORDINANCE TO AMEND AND RE-ENACT CHAPTER 9 OF THE WINCHESTER CITY CODE
PERTAINING TO WATER PROTECTION**

WHEREAS, the Commonwealth of Virginia has enacted legislation mandating that the City of Winchester implement all applicable provisions of the Virginia Stormwater Management Plan; and

WHEREAS, implementing these requirements will require numerous modifications to Chapter 9 of the Winchester City Code; and

WHEREAS, implementing these requirements is associated with more stringent stormwater discharge regulations being mandated by the federal government and state government.

NOW, THEREFORE, BE IT ORDAINED that Chapter 9 of the Winchester City Code is hereby amended and re-enacted to read as provided on the attached pages.

The effective date of this Ordinance shall be July 1, 2014.

Ordinance No. _____

ADOPTED by the Common Council of the City of Winchester on the ____ day of _____, 2014.

Witness my hand and the seal of the City of Winchester, Virginia.

Deputy Clerk of the Common Council

CHAPTER 9

WATER PROTECTION

- Art. I. In General, §§9-1--9-19
- Art. II. Erosion and Sediment Control, §§9-20--9-49
Div. 1. In General, §§9-20--9-29
Div. 2. Erosion and Sediment Control Plan for
Land Disturbing Activities, §§9-30--9-49
- Art. III. Stormwater Management and Water Quality, §§9-50--9-79
Div. 1. In General, §§9-50--9-55
Div. 2. ~~Plan Requirements: Water Quantity and Water
Quality Protection~~Requirements for Water Quantity and Water Quality
Protection, §§9-56--9-79
- Art. IV. Stream Buffers, §§9-80--9-99
- Art. V. Storm Sewer Discharges, §§9-90--9-95

ARTICLE I. IN GENERAL

SECTION 9-1. SHORT TITLE.

This Chapter shall be known and may be cited as the City's "Water Protection Ordinance."

SECTION 9-2. AUTHORITY.

This Chapter is adopted pursuant to authority conferred by the Virginia Erosion and Sediment Control Law (Virginia Code §§ 10.1-560 et seq.), the Virginia Stormwater Management Act (Virginia Code §§10.1-603.1-2 et seq.), Virginia Code §10.1-2108 of the Chesapeake Bay Preservation Act, and the Federal Clean Water Act.

SECTION 9-3. PURPOSES.

The City Council finds that this Chapter is necessary to protect the general health, safety and ~~general~~ welfare of the citizens of the City and the Commonwealth of Virginia and to prevent storm water from being rendered dangerous to the health of persons living in the City, and is supported by the findings of related studies that have been conducted. Therefore, the specific purposes of this Chapter are to:

Editor's Note: Ordinance No. 15-2006, adopted April 11, 2006, repealed and re-enacted Chapter 9 in its entirety.

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- (1) Inhibit the deterioration of public waters and waterways resulting from land disturbing activities;
- (2) Protect the safety and welfare of citizens, property owners, and businesses by minimizing the negative impacts of increased stormwater runoff from new land development and redevelopment;
- (3) Control nonpoint source pollution, erosion and sedimentation, and stream channel erosion;
- (4) Maintain the integrity of existing stream channels and networks for their biological functions, drainage, and natural recharge of groundwater;
- (5) Protect the condition of public waters for all reasonable public uses and ecological functions;
- (6) Provide for the long-term responsibility for and maintenance of stormwater management facilities and best management practices;
- (7) Facilitate the integration of stormwater management and pollution control with other City ordinances and with federal, Commonwealth of Virginia and local programs, policies, regulations and guidelines; ~~and~~
- (8) Prohibit illicit connections and discharges to the City's municipal storm sewer system.;
- (9) Protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources;
- (10) Provide the framework for the administration, implementation, and enforcement of the provisions of the Virginia Erosion and Sediment Control Act and Virginia Stormwater Management Act and their attendant regulations by the City;
- (11) Establish a local Virginia Stormwater Management Program (VSMP) program consistent with the requirements of §62.1-44.15:27 of the Code of Virginia;
- (12) Establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced; and
- (13) Establish the procedures and requirements to be followed in connection with land disturbance permits and VSMP authority permits issued by the City.

SECTION 9-4. RULES OF CONSTRUCTION.

This Chapter protects paramount public interests and shall be liberally construed to effectuate its several purposes. The following rules of construction shall apply in the construction of this Chapter, unless such application would be contrary to the purposes of this Chapter or the context clearly indicates otherwise:

- (1) All references to any statute, ordinance, regulation, guideline, handbook, manual or standard shall be to such statute, ordinance, regulation, guideline, handbook, manual or standard as it exists on the date of adoption of this Chapter and includes any amendment thereafter or reissue in a subsequent edition.
- (2) Any reference to "this Article," "Article II," "Article III," or "Article IV"

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shall include references to all applicable references of Article I. (3) All references to “days” shall be to calendar days.

- (4) All references to a “fee schedule” shall mean and refer to a schedule of the fees and charges associated with the various applications, inspections, permits and approvals required by this Chapter, as approved and amended by the City Council from time to time. All required fees shall be made payable to the City Treasurer.

SECTION 9-5. DEFINITIONS.

The following terms, whenever used or referred to in this Chapter, shall have the respective meanings set forth below, unless the context clearly requires a contrary meaning or any such term is expressly defined to the contrary elsewhere in this Chapter:

Administrator or Program Administrator means the City Engineer for the City of Winchester, Virginia.

Agreement in lieu of a plan means a contract between the program authority and the owner which specifies conservation measures which must be implemented in the construction of a single family residence; this contract may be executed by the program authority in lieu of a formal erosion and sediment control plan.

Applicant means any person submitting a plan for approval, or applying for or requesting the issuance of a permit, when required, under this Ordinance authorizing land disturbing activities to commence.

Authorized City Official means includes any officer or employee of the department of Public Services and Engineering authorized by the City Engineer to act pursuant to this Chapter, except for where the context clearly indicates otherwise.

Best management practices (“BMP’s”) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices and facilities, both structural and nonstructural, to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, ~~receiving waters, or stormwater~~ conveyance systems, and other receiving waters, including surface waters and groundwater. BMP’s also include treatment practices, operating procedures, and practices to control site runoff, stormwater discharges from land disturbing activities, spillage or leaks, or combination of practices that is determined by the Commonwealth of Virginia, ~~a designated area wide planning agency,~~ or the program authority, to be the most effective, practical means of preventing or reducing the amount of surface water runoff and pollution generated by nonpoint sources to a level compatible with water quality goals.

Board or State Board means: ~~(i) as used in Article I, the Virginia Soil and Water Conservation Board, and (ii) as used in Article II, the Virginia Board of Conservation and Recreation~~ State Water Control Board.

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Certified inspector means an employee or agent of the program authority implementing the City's local erosion and sediment control program or stormwater management program who (1) holds a certificate of competence from the Virginia Soil and Water Conservation Board in the area of project inspection or (2) is enrolled in that Board's training program for project inspection and successfully completes such program within one (1) year after enrollment.

Certified plan reviewer means an employee or agent of the program authority implementing the City's local erosion and sediment control program or stormwater management program, who (1) holds a certificate of competence from the Virginia Soil and Water Conservation Board in the area of plan review, (2) is enrolled in that Board's training program for plan review and successfully completes such program within one (1) year after enrollment, or (3) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Virginia Code § 54.1-400, et seq.

Certified program administrator means an employee or agent of the program authority implementing the City's local erosion and sediment control program or stormwater management program who (1) holds a certification of competence from the Virginia Soil and Water Conservation Board in the area of program administration, or (2) is enrolled in that Board's training program for program administration and successfully completes such program within one (1) year after enrollment.

Channel means a natural stream or human-made waterway.

City means the City of Winchester, Virginia.

Clean Water Act (CWA) means the Federal Water Pollution Control Act (33 U.S.C. §-1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, and any subsequent amendments thereto.

Common plan of development or sale means a contiguous area where separate and distinct construction activities occur at different times or according to different schedules.

Conservation plan, ~~*erosion and sediment control plan or plan and specifications*~~ means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with necessary interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

Conservation standards, criteria or specifications means the criteria, guidelines, techniques, and methods for the control of erosion and sedimentation whether promulgated by the

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program authority or contained in (1) the Virginia Erosion and Sediment Control Handbook and other regulations promulgated by the Virginia Soil and Water Conservation Board or (2) the Stormwater Management Handbook and other regulations promulgated by the Virginia Department of Conservation and Recreation.

Construction record drawing means a drawing or plan showing the exact dimensions, geometry, and location of completed stormwater management facilities.

Control measure means any best management practice or stormwater management facility, or other method used to minimize the discharge of pollutants to state waters.

DEQ or VDEQ means the Virginia Department of Environmental Quality.

Development, land development and land development project as used within this Chapter each refer to any manmade change to, or construction on, a land surface that potentially changes its runoff characteristics, or the landform resulting from any such manmade change to the land surface or associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures, or the clearing of land for purposes other than agricultural or silviculture. A land disturbing activity as defined herein shall be considered land development for the purposes of administering this Chapter.

Director, for the purposes of Article V of this Chapter, shall mean and include the City's Director of Public Utilities or the City Engineer, and the employees and agents authorized by either of them to exercise authority or to take enforcement action under the provisions of Article V.

Discharge means to dispose, deposit, spill, pour, inject, dump, leak or place by any means, and also refers to that which is disposed, deposited, spilled, poured, injected, dumped, leaked or placed by any means.

Drainage Basin means a watershed.

Erosion and sediment control plan means a document which sets forth the major soil and water resources conservation measures that will be implemented to assure that the unit or units of land will be so treated to achieve the conservation objectives of this Chapter, and which may also include appropriate illustrations in the form of maps or a site plan, and appropriate narratives, such as a soil and water plan inventory and management information with needed interpretations, a record of decisions contributing to conservation treatment, and any specifications submitted with the plan.

Erosion impact area means an area of land not associated with current land disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of five thousand (5,000) square feet or less used for residential purposes.

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General Permit means the state permit titled “General Permit for Discharges of Stormwater from Construction Activities” found in Part XIV (4VAC50-60-1100 et seq.) of the regulations authorizing a category of discharges under the federal Clean Water Act and the Virginia Stormwater Management Act within a geographical area of the Commonwealth of Virginia.

Illegal discharge and *illicit discharge* each means and refers to any discharge to the City’s municipal separate storm sewer system (“MS4”) that is not composed entirely of stormwater, except: (i) discharges pursuant to a Virginia Pollutant Discharge Elimination System (VPDES) permit; (ii) discharges resulting from firefighting activities; and (iii) any discharges specifically authorized within Article V of this Chapter.

Illicit connection means either of the following: (i) any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by the Program Authority; or (ii) any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records approved by the Program Authority.

Land disturbance or land disturbing activity means a man-made change to the land surface that potentially changes its runoff characteristics, or any such land change which may result in soil erosion from water or wind and the movement of sediments into waters or onto lands in the City or adjacent jurisdictions, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except provided that the term shall not include the exempt activities set forth in Sec. 9-50 for purposes of administering Article III of this Chapter, and provided further that, for the purposes of administering Article II of this Chapter, the term shall not include :

- (1) Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work that ~~are-disturb~~ less than five thousand (5,000) square feet;
- (2) Installation, maintenance or repair of any ~~other~~-underground public utility mains or lines, when such activity occurs on an existing hard surfaced road, street or sidewalk and the land disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced;
- (3) Construction, installation, maintenance or repair of any type of individual utility service connections;
- (4) Septic tank lines or drainage fields unless included in an overall plan for land disturbing activity relating to construction of a building to be served by a septic tank system;
- (5) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
- (6) Disturbed land areas of less than five thousand (5,000) square feet in size;
- (7) Installation of fence and sign posts or telephone and electric poles and

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other kinds of posts or poles;:-

- (8) Emergency work to protect life, limb or property, and emergency repairs; however, if the land disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be ~~shaped and established~~ stabilized in accordance with the requirements of the Virginia Erosion and Sediment Control Handbook;:-
- (9) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1 of the Code of Virginia;
- (10) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulation, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§10.1-1100 et seq.) of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of §10.1-1163 of the Code of Virginia; and
- (11) Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act, Article 2 (§10.1-604 et seq.) of Chapter 6, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation.

Layout means a conceptual drawing containing sufficient information, as determined by the program administrator, to provide for the specified stormwater management facilities required at the time of approval.

Linear development means a land development that is linear in nature, such as (but not limited to): (i) the construction of electric and telephone utility lines and natural gas pipelines; (ii) the construction of railroad tracks, rights-of-way, bridges, communication facilities and related facilities; and (iii) highway construction projects.

Local erosion and sediment control program means an outline of the various methods employed by the City to regulate land disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program, including, without limitation, City ordinances, policies and guidelines, technical materials, inspection, enforcement and evaluation.

Minor modification means an amendment to an existing general permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in

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sampling locations, and changes to compliance dates within the overall compliance schedules. A minor general permit modification or amendment does not substantially alter general permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

Mitigation plan means a plan, a component of a stormwater management/BMP plan, erosion and sediment control plan, or an agreement in lieu of a plan that describes how encroachments into a stream buffer will be mitigated through runoff treatment, re-vegetation, the addition of extra buffer areas, or other appropriate measures.

Municipal Separate Storm Sewer System (MS4) means the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City of Winchester and designed or used for collecting or conveying stormwater, and that is not used for collecting or conveying sewage.

Nonpoint source pollution means pollution whose sources cannot be pin-pointed but rather is washed from the land surface in a diffuse manner by stormwater runoff.

Operator means the owner or operator of any facility or activity subject to regulation under this Ordinance

Owner means the owner of the freehold of land, or the owner of a lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person in control of a property. As used herein, *owner* also refers to, in the appropriate context: (i) any person authorized to act as the agent for the owner, (ii) any person who submits an erosion and sediment control plan or stormwater management plan for approval, or requests issuance of a permit, when required, authorizing land disturbing activities or land development to commence, and (iii) any person responsible for complying with an approved erosion and sediment control plan, agreement in lieu of a plan, or an approved stormwater management plan.

Permit means any building permit, grading permit, or other permit, including the approval of any site plan or subdivision plat, which is required to be issued by any board, commission, officer, employee or agency of the City as a prerequisite to any land development.

Permittee means (i) the person to whom a permit authorizing land disturbing activities is issued, (ii) the person who certifies that an approved erosion and sediment control plan will be followed, ~~or~~ (iii) the person who certifies that an approved stormwater management plan will be followed, or (iv) the person to whom the VSMP Authority Permit is issued.

Person means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, state, county, City, town or other political subdivision of this state, federal, state, or local governmental body, ~~any~~ interstate body, or any other legal entity.

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Plan Approving Authority means the City Engineer of the City of Winchester, Virginia, who is responsible for determining the adequacy of a plan submitted for land disturbing activities on a unit or units of land and for approving plans.

Pollutant refers to, without limitation, paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances and accumulations; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues resulting from construction of a building or structure; noxious or offensive matter of any kind; and other, similar substances that cause or contribute to water pollution.

~~*Program Administrator* means the City Engineer for the City of Winchester, Virginia.~~

Program Authority means the department of Public Services and Engineering. Except for where the context clearly indicates otherwise, the term “program authority” includes any officer or employee of the department of Public Services and Engineering authorized by the City Engineer to act pursuant to this Chapter.

Public waters means and refers to the waters refers to the public waters and waterways of the United States and of the Commonwealth of Virginia.

Redevelopment for purposes of this Chapter means and refers to construction of buildings and structures as replacement(s) for existing improvements.

~~*Regulations* means the Virginia Stormwater Management Program (VSMP) Permit Regulations, 4VAC50-60, as amended, unless otherwise specified.~~

Residential development means a tract or parcel of land developed or to be developed as a single unit under single ownership or unified control, and which is to contain three or more residential dwelling units.

~~*Site* means the land or water area where any facility or land disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land disturbing activity.~~

~~*State* means the Commonwealth of Virginia.~~

~~*State permit* means an approval to conduct a land-disturbing activity issued by the Board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the Board for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Virginia Stormwater Management Act and the Virginia Stormwater Management Regulations.~~

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State waters means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

Storm sewer system means the City's municipal system of roads, streets, catch basins, retention and detention basins, curbs, gutters, ditches, pipes, lakes, ponds, channels, storm drains and other facilities located within the City which are designed or used for collecting, storing or conveying stormwater, or through which stormwater is collected, stored or conveyed.

Stormwater means any surface flow, runoff and drainage consisting of water discharged across the land surface, or through conveyances, to one or more waterways, from any form of natural precipitation.

Stormwater management facility maintenance agreement means an agreement that binds the owner or other designated parties to maintain and inspect stormwater management facilities constructed in accordance with this Chapter, based on specific terms and conditions of the agreement.

Stormwater management plan means a document containing material that describes how existing runoff characteristics will be maintained within a land development project, that describes controls for the management of the rate of stormwater discharge, and that describes any best management practices provided for water quality protection. A stormwater management plan may include a narrative section, a map or site plan, pertinent calculations and specifications included with the plan.

Stormwater Pollution Prevention Plan or SWPPP means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site. In addition the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

Stream buffer means an area of land at or near a tributary streambank and/or nontidal wetland that has an intrinsic water quality value due to the ecological and biological processes it performs or is otherwise sensitive to changes which may result in significant degradation to the quality of state waters.

Subdivision means the division, including resubdivision, of any lot, tract or parcel of land into two (2) or more lots, tracts or parcels, for the purpose, whether immediate or future, of sale or building development.

Total maximum daily load or TMDL means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that load among the various sources of that pollutant in accordance with the requirements of the federal Clean Water Act. TMDLs include the sum of the individual

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wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure.

Virginia Stormwater BMP Clearinghouse website means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

Virginia Stormwater Management Act means Article 1.1 (§10.1-603.2 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

Virginia Stormwater Management Program or VSMP means a program approved by the Board after September 13, 2011 that has been established by a locality to manage the quality and quantity of runoff resulting from land-disturbing activities. A VSMP shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, and evaluation consistent with the requirements of the Virginia Stormwater Management Act and associated regulations.

Virginia Stormwater Management Program Authority or VSMP Authority means an authority approved by the Virginia Soil and Water Conservation Board after September 13, 2011 to operate a Virginia Stormwater Management Program.

Virginia Stormwater Management Program (VSMP) authority permit means an approval issued by the Administrator to initiate a land disturbing activity pursuant to the requirements of Article III of this Chapter, and which may only be issued after evidence of general permit coverage has been provided by the DEQ.

Watershed means a defined land area drained by a river, stream or drainage ways, or system of connecting rivers, streams, or drainage ways such that all surface water within the area flows through a single outlet.

Wetlands, non-tidal means wetlands other than tidal wetlands that are inundated or saturated by surface or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to section 404 of the Federal Clean Water Act.

(Ord. No. 2011-21, 10-11-11)

SECTION 9-6. DESIGNATION OF PROGRAM AUTHORITY; POWERS AND DUTIES.

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- (a) The City Council hereby designates the ~~department~~ Department of Public Services and Engineering as the program authority for the purposes of administering Articles II, III, and IV of this Chapter.
- (b) The program authority shall administer and enforce the provisions of this Chapter, acting by and through authorized City officials and employees.
- (c) The program authority shall establish reasonable regulations and interpretive guidelines for the administration of this Chapter. Such regulations and guidelines shall be consistent with this Chapter and all applicable Federal and Commonwealth of Virginia statutes and regulations (including, without limitation, the provisions of ~~Va. Code~~ §910.1-570 and §10.1-603.7 of the Code of Virginia); and ~~they~~ shall be subject to the approval of City Council).
- (d) ~~Within one year of the date of adoption of this Chapter~~ †The program authority shall ~~assure~~ ensure that the erosion and sediment control program set forth in Article II is administered by a certified program administrator, a certified plan reviewer, and a certified project inspector. The program authority shall also ensure that the stormwater management program set forth in Article III is administered by a certified program administrator, certified plan reviewer, and a certified project inspector not later than June 30, 2014. Such positions may be filled by the same person.
- (e) The program authority shall take appropriate enforcement actions to achieve compliance with this Chapter, and shall maintain a record of enforcement actions for all active land disturbing activities and land developments.
- (f) The program authority is authorized to cooperate with any federal or state agency in connection with plans for erosion and sediment control or stormwater management. The program authority may also recommend to the City ~~manager~~ Manager any proposed agreement with such agency for such purposes, which agreement shall be executed, if at all, by the City ~~manager~~ Manager on behalf of the City.

SECTION 9-7. SAVING PROVISION.

The adoption of this Chapter shall not abate any pending action, liability, or penalty of any person accruing or about to accrue, nor waive any right of the City under any provision in effect prior to the date of adoption of this Chapter, unless expressly provided for in this Chapter. Any erosion and sediment control plan, runoff control permit and, to the extent they pertain to stormwater management, any final site plan or plat, approved prior to the date of adoption of this Chapter shall remain in full force and effect, and all rights and remedies of the City in enforcing such plans, permits and plats are hereby preserved.

SECTION 9-8. APPEALS FROM DECISIONS UNDER THIS CHAPTER; HEARINGS ON APPEAL.

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- (a) Any person who is aggrieved by any action, inaction or decision of the program authority pursuant to this Chapter shall have the right of review of such action by the City Council. Any such appeal shall be filed in writing with the clerk of the City Council within ~~ten (10)~~thirty (30) days of the date of such action, inaction or decision.
- (b) An appeal received by the City Council pursuant to this section shall be referred to the planning commission for review and findings of fact. The planning commission shall review the appeal at its next regular meeting following the date the notice of appeal is received by the clerk of council, and shall report its findings to City Council. The City Council shall review the appeal within thirty (30) days after the date of the planning commission meeting at a regular or special meeting of the Council.
- (c) The City Council shall consider evidence presented by the owner, the program authority, and any other aggrieved person and such other persons as shall be deemed necessary by the Council for a complete review of the matter. The Council shall render its decision in writing and may affirm, reverse or modify the program authority's decision. The Council's decision shall constitute the final decision of the City on the matter(s) which are the subject of the appeal.
- (d) Any person aggrieved by a final decision of the City Council pursuant to this section shall have the right of review of such decision by the Circuit Court of the City. Any such appeal shall be filed in writing with the Circuit Court within thirty (30) days of the Council's final decision.
- (e) For the purposes of this section, "aggrieved person" is limited to the owner, a permittee, owners of adjacent and downstream property and any interested governmental agency or officer thereof.
- (f) Formal hearings conducted pursuant to this Chapter shall comply with all applicable provisions of §62.1-44.15:45 and §62.1-44.26 of the Code of Virginia.

Any person who is aggrieved by any action of the program authority because of its disapproval of a plan submitted pursuant to this Article, or in the interpretation of the provisions of this Article, shall have the right to apply for and receive a review of such action by the City Council, as provided herein:

- (a) An appeal shall be filed in writing with the clerk of the board of supervisors within thirty (30) days of the date notice of the action is given by the program authority or, if an exception to the requirements of this Article as provided in section 17-308 is requested and denied, within thirty (30) days of the date notice of the denial of such exception. Notice shall be deemed to be given on the date that it is mailed or is hand delivered.
- (b) When reviewing the program authority's action, the City Council shall consider evidence and opinion presented by the aggrieved person, the program authority, and such other persons as shall be deemed by the City Council to be necessary for a complete review of the matter. The City Council may affirm, reverse or modify the program authority's

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~~action. The decision of the City Council shall be final, subject only to review by the Circuit Court as provided in Virginia Code § 10.1-603.13.~~

~~(e) For the purposes of this section, the term *person aggrieved* shall be limited to the owner, owners of adjacent or down stream property, and any interested governmental agency or officer thereof.~~

SECTION 9-9. COMPLIANCE WITH CHAPTER PREREQUISITE TO ISSUANCE OF PERMITS AUTHORIZING LAND DEVELOPMENT ACTIVITIES PERFORMANCE GUARANTEE; SURETY.

~~A grading, building or other permit for~~ A permit for activities involving land disturbing activities pursuant to Section 9-20 and Section 9-50 of this Chapter may be issued by the program authority only as provided herein:

~~(a) The owner shall submit with his application for such permit a proposed erosion and sediment control plan and/or stormwater management plan, as may be required by this Chapter, for review and approval pursuant to this Article, or an approved erosion and sediment control plan and/or stormwater management plan and certification that the plan(s) will be followed. A permit shall not be issued until all such required plans have been approved and the required certification(s) are submitted.~~

~~(a)~~ (ba) Prior to issuing a any such permit, the ~~permit issuing department~~ program authority shall require, or in the case of an agreement in lieu of a plan may require, the owner to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the program authority, to ensure that measures could be taken by the City at the applicant's expense, should he/~~she~~ fail, after proper notice, within the time specified to initiate or maintain appropriate corrective action which may be required of him/~~her~~ by the approved plan as a result of his land disturbing activity.

~~(eb)~~ (eb) A bond or other surety shall not exceed the total of the estimated cost to initiate, maintain and repair all erosion and sediment control and/or stormwater management practices, facilities, structures, systems, and control measures identified ~~within-on an~~ the approved plan(s), and to comply with all other terms and conditions of the plan(s). In addition:

(1) The amount of the bond or other surety shall be based on unit prices for new public or private sector construction in the City of Winchester, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed 25% of the estimated cost to initiate, maintain and repair all structures, systems, and measures identified within an approved plan, and to comply with all other terms and conditions of the plan.

(2) The performance bond or other surety shall be provided from a date prior to the

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issuance of any permit until 60 days after the requirements of the approved stormwater management plan have been completed, as determined by the program authority.

- (3) If approved by the program authority, the owner may submit the performance bond or other surety as part of, or included in, any performance bond or surety required in connection with a site plan, subdivision plat or other required approval.
- (dc) If the program authority is required to take corrective action pursuant to this Article, then the City may collect from the owner the amount by which the reasonable cost of such corrective action exceeds the amount of the surety.
- (ed) Within sixty (60) days of the achievement of adequate stabilization of the land disturbing activity, or section thereof, in any land development project in accordance with the approved erosion sediment control plan or section thereof, the bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the owner or terminated based upon the percentage of stabilization accomplished in the project or section thereof.
- (e) Within sixty (60) days of the completion of the requirements of the approved stormwater management plan, as determined by the program authority, the bond or other surety, or any unexpended or unobligated portion thereof, shall be refunded to the owner or terminated. Thereafter, compliance with the requirements of this Article shall be ensured by a maintenance agreement entered into by and between the owner and the program authority in accordance with Section 9-63.

SECTIONS 9-10 – 9-19. RESERVED.

ARTICLE II. EROSION AND SEDIMENT CONTROL

DIVISION 1. IN GENERAL

SECTION 9-20. PERMIT REQUIRED FOR LAND DISTURBING ACTIVITIES.

No person shall engage in any land disturbing activity within the City until he has acquired a permit from the Program Administrator.

SECTION 9-21. DETERMINATION OF LAND DISTURBING ACTIVITY.

The determination of whether an activity is a land disturbing activity for purposes of this

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Article shall be made as provided herein:

- (a) The program authority shall determine whether an activity is a land disturbing activity, including any claim by an owner that the activity is exempt from the requirements of this Article.
- (b) If a land disturbing activity includes activity at a separate location, including but not limited to borrow and disposal areas, the program authority may either:
 - (1) Consider the off-site activity as being part of the land disturbing activity, and require an erosion and sediment control plan to be submitted and approved; or
 - (2) If the off-site activity is already covered by an erosion and sediment control plan approved by the City, require the owner to provide proof of the approval and to certify that the plan will be implemented in accordance with this Article.
- (c) If a property will be developed in phases, the determination of whether an activity constitutes a land disturbing activity shall be determined by considering the development of the property as a whole, regardless of the phasing of the development.
- (d) Land disturbing activity of less than 5,000 square feet on individual lots in a residential development shall not be exempt from this Article if the total land disturbing activity in the residential development is equal to or greater than 5,000 square feet.
- (e) Upon the determination by the program authority that an activity is a land disturbing activity the owner shall immediately comply with the requirements of this Article.

SECTION 9-22. DETERMINATION OF EROSION IMPACT AREA.

The determination of whether an erosion impact area exists on property shall be rendered as provided herein:

- (a) The program authority shall determine whether an erosion impact area exists on a property and the property and the owner thereof are subject to the requirements of this Article. The program authority shall make this determination after an investigation brought either on his own initiative or upon the complaint of any citizen.
- (b) Upon making a determination that an erosion impact area exists, the program authority shall immediately notify the owner of the property, in writing, of its determination. The notice shall be served by certified mail to the address of the owner based on the most recent tax records of the City, or by personal delivery. The written notice shall (i) instruct the owner to submit an erosion and sediment control plan for review and

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approval as provided in this Article, and (ii) state the date by which the plan must be submitted.

- (c) Upon receipt of the notice required by this section, the owner shall immediately submit to the program authority a conservation plan designed to prevent further erosion, and the owner shall in all other aspects comply with the requirements of the notice and of this Article. The owner shall not permit any portion of the land that is the subject of the notice to remain in a condition such that soil erosion and sedimentation causes reasonably avoidable damage or harm to adjacent or downstream property, roads, streams, lakes or ponds.
- (d) For good cause shown, the program authority may grant to an owner an extension of time to comply with the requirements of this section and this Article.

SECTIONS 9-23 – 9-29. RESERVED.

DIVISION 2. EROSION AND SEDIMENT CONTROL PLAN FOR LAND DISTURBING ACTIVITIES

SECTION 9-30. APPLICABILITY.

This Article shall apply to any land disturbing activity. Each owner shall comply with the requirements of this Article, as provided herein:

- (1) Prior to engaging in any land disturbing activity, or allowing any land disturbing activity to occur, on his property;
- (2) At all times during any land disturbing activity until it is completed, including all times when the land disturbing activity is performed by a contractor engaged in construction work; and
- (3) When notified by the program authority that an erosion impact area exists on his land, and the notice requires the owner to submit an erosion and sediment control plan in order to control erosion and sedimentation.

SECTION 9-31. RESPONSIBILITIES OF OWNER OF LAND WHEN WORK TO BE CONDUCTED BY CONTRACTOR.

Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of the required erosion and sediment control plan shall be the responsibility of the owner of the land.

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SECTION 9-32. CONFORMITY TO COMMONWEALTH OF VIRGINIA HANDBOOK.

Except as modified below, all plans and specifications submitted under this Article shall be in conformance with the standards, specifications and criteria of the Virginia Erosion and Sediment Control Handbook and those regulations promulgated by the Virginia Soil and Water Conservation Board, including, without limitation, the criteria, techniques and methods set forth in 4VAC50-30-40, as amended. The following subsections are hereby changed of VAC 50-30-40 of the Virginia Erosion and Sediment Control Regulations:

- (1) The provision found in Subsection 19b. (1) is deleted.

SECTION 9-33. REVIEW AND INSPECTION FEE.

A ~~plan review and inspection~~ fee shall be submitted at the time of filing any erosion and sediment control plan ~~or application for a permit pursuant to this article~~. This fee shall be an amount as set forth ~~within the most recent fee schedule approved by City Council~~ below:

<u>Site Plans:</u>	<u>\$300 + \$50 per disturbed acre</u>
<u>Subdivision Plans:</u>	<u>\$400 + \$50 per disturbed acre</u>
<u>Single Family Residences</u>	
<u>(With An Agreement in Lieu of a Plan):</u>	<u>\$50 per building unit</u>
<u>Land Disturbance not associated with a Site</u>	
<u>Plan, Subdivision Plan or Single Family Home:</u>	<u>\$200 -</u>

SECTION 9-34. EROSION AND SEDIMENT CONTROL PLAN.

Each owner subject to this Article shall submit to the program authority for review and approval an erosion and sediment control plan as provided herein:

- (a) The owner shall submit a completed application on a form provided by the program authority, together with three (3) copies of an erosion and sediment control plan that satisfies the requirements of this section, and a certification stating that all requirements of the approved plan will be complied with.
- (b) The plan shall include specifications for temporary and permanent controls of soil erosion and sedimentation in such detail as the program authority shall deem reasonably adequate, considering the nature and extent of the proposed land disturbing activity, and a statement describing the maintenance responsibilities of the owner to assure that the land disturbing activity will satisfy the purposes and requirements of this Article. As a minimum, the plan shall follow the format and conform to the approved standards and specifications for control techniques as set forth in the "Virginia Erosion and Sediment

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Control Handbook”, which by reference is adopted as a part of this Chapter. The plan shall be consistent with the criteria, techniques and methods as set forth in the Minimum Standards (§ 4 VAC 50-30-40) of the Virginia Erosion and Sediment Control Regulations adopted by the Virginia Soil and Water Conservation Board. The plan shall identify the person holding a certificate of competence, as described in Virginia Code § 10.1-561, who shall be in charge of and responsible for carrying out the land disturbing activity.

- (c) The program authority may require additional information as may be necessary for its complete review of the plan.
- (d) In lieu of paragraphs (a)-(c), above, if the land disturbing activity involves land also under the jurisdiction of another local erosion and sediment control program, the owner may, at his option, choose to have a conservation plan approved by the Virginia Department of Conservation and Recreation, Division of Soil and Water Conservation. The owner shall notify the program authority of such plan approval by such board.
- (e) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sediment control specifications annually with the Board for review and written comments. The specifications shall apply to:
 - (1) Construction, installation or maintenance of electric, natural gas and telephone utility lines, and pipelines; and;
 - (2) Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

Individual approval of separate projects within subdivisions 1 and 2 of this subsection is not necessary when Board approved specifications are followed, however, projects included in subdivisions 1 and 2 must comply with Board approved specifications. Projects not included in subdivisions 1 and 2 of this subsection shall comply with the requirements of the City of Winchester erosion and sediment control program.

- (f) State agency projects are exempt from the provisions of this ordinance except as provided for in the Code of Virginia, Sec. 10.1-564.

(Ord. No. 2007-21, 07-10-07)

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SECTION 9-35. REVIEW AND APPROVAL OF EROSION AND SEDIMENT CONTROL PLAN.

Each erosion and sediment control plan submitted pursuant to this Article shall be reviewed and approved as provided herein:

- (a) The plan shall be reviewed by the program authority to determine its compliance with the requirements of this Article and with applicable Commonwealth of Virginia laws and regulations.
- (b) During its review of the plan, the program authority may correspond with the owner from time to time to review and discuss the plan with the owner, and shall inform the owner in writing of any modifications, terms, or conditions required to be included in the plan in order for it to be approved.
- (c) Except as provided in paragraph (d), below, the program authority shall approve or disapprove a plan in writing within forty-five (45) days from the date a complete application was received. The decision of the program authority shall be based on the plan's compliance with the requirements of this Article and with applicable Commonwealth of Virginia laws and regulations. If the plan is disapproved, the specific reasons for such disapproval (with reference to the relevant ordinances, laws or regulations) shall be stated in the decision. The decision shall be communicated to the applicant by mail or delivery.
- (d) If the program authority fails to act on the plan within 45 days from the date the complete application was received by it, then the plan shall be deemed approved.
- (e) If the owner is required to obtain approval of a site plan or subdivision plat, the program authority shall not approve an erosion and sediment control plan unless and until the site plan or plat is approved as provided by law. For purposes of this paragraph, a site plan or plat may be deemed approved by the program authority if its approval is conditioned upon the approval of an erosion and sediment control plan pursuant to this Article, and the program authority determined that review and approval of the erosion and sediment control plan will not affect approval of the site plan or plat. The program authority may approve an erosion and sediment control plan prior to approval of a required site plan or plat in the following circumstances:
 - (1) To correct any existing erosion or other condition conducive to excessive sedimentation which is occasioned by any violation of this Chapter or by accident, act of God, or other cause beyond the control of the owner, provided that the activity proposed shall be strictly limited to the correction of such condition;
 - (2) To clear and grub stumps and other activity directly related to the

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- selective cutting of trees, as may be permitted by law;
- (3) To fill earth with spoils obtained from grading, excavation or other similar, lawful activities;
- (4) To construct temporary access roads, provided that the area disturbed shall be returned to substantially its previous condition, with no significant change in surface contours, within thirty (30) days of the completion of such temporary use, or within thirteen (13) months of the commencement of any land disturbing activity on the land which is related to such temporary use, whichever period shall be shorter.
- (5) To establish burrow, fill, or waste areas, if permitted by the City's zoning ordinance.

SECTION 9-36. AGREEMENT IN LIEU OF A PLAN.

- (a) If land disturbing activity is for the purpose of establishing or modifying a single family detached dwelling, the program authority may allow an agreement in lieu of a plan for the construction of such dwelling, provided:
 - (1) The single family dwelling is located on an individual lot which is not part of a subdivision; or
 - (2) The single family dwelling is located within a residential development or subdivision, and the individual lots are being developed by different property owners; or
 - (3) The single family dwelling is located within a subdivision that no longer has an active erosion and sediment control plan; and
 - (4) The agreement in lieu of a plan identifies the person holding a certificate of competence, as described in Virginia Code 10.1-561, who shall be in charge of and responsible for carrying out the land disturbing activity.
- (b) In determining whether to allow an agreement in lieu of a plan, the program authority shall include as part of its consideration the potential threat to water quality and to adjacent land resulting from the land disturbing activity. When an agreement in lieu of a plan is authorized and approved by the program authority, the program authority and the owner shall have all of the rights, responsibilities and remedies set forth in this Article as though such agreement in lieu of a plan was an erosion and sediment control plan.
- (c) At the discretion of the program authority a bond may be required in an amount not to exceed Ten Thousand Dollars (\$10,000.00) to cover potential threats to water quality. (Ord. No. 2011-21, 10-11-11)

SECTION 9-37. AMENDMENT OF APPROVED PLAN.

The program authority may change an approved erosion and sediment control plan,

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and/or require an owner to submit an amended plan, in the following circumstances:

- (1) An inspection reveals that the plan is inadequate to satisfy the requirements of this Article; or
- (2) The owner finds that, because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out and proposed amendments to the plan, consistent with the requirements of this Article are agreed to by the program authority and the owner; or
- (3) The land disturbing activity was not commenced during the one hundred eighty (180) day period following plan approval, or ceased for more than one hundred eighty (180) days, and the existing plan has been evaluated to determine whether it still satisfies the requirements of this Article and Commonwealth of Virginia erosion and sediment control criteria and to verify that all design factors are still valid, and it has been determined that the plan is inadequate. In such a case, the land disturbing activity shall not be resumed until a modified plan is submitted and approved as provided in this Article.

SECTION 9-38. DUTY TO COMPLY, MAINTAIN AND REPAIR.

Upon approval by the program authority of an erosion and sediment control plan, each owner shall:

- (1) Comply with the approved plan when performing, or allowing to be performed, any land disturbing activities, or activities to correct an erosion impact area;
- (2) Maintain and repair all erosion and sediment control structures and systems to ensure continued performance of their intended function;
- (3) Comply with all requirements of this Article; and
- (4) Have a person holding a certificate of competence, as described in Virginia Code §10.1-561, in charge of and responsible for carrying out the land disturbing activity. This person shall be designated prior to commencement of land disturbing activity.

(Ord. No. 2007-21, 07-10-07)

SECTION 9-39. INSPECTION AND MONITORING.

- (a) As a condition of approval of an erosion and sediment control plan, the program authority may require the owner to monitor and report to the program authority as provided herein:
 - (1) Any monitoring conducted shall be for the purpose of ensuring compliance with the erosion and sediment control plan, and to determine whether the measures required in the plan are effective in controlling erosion and sediment.
 - (2) The condition requiring monitoring and reporting shall state: (i) the

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method and frequency of such monitoring, and (ii) the format of the report and the frequency for submitting reports.

- (b) The program authority shall inspect any land disturbing activity or erosion impact area as provided herein:
- (1) The program authority shall conduct periodic inspections of land disturbing activities and erosion impact areas to determine compliance with the approved erosion and sediment control plan, and to determine whether such approved plan and permit as implemented are adequate to satisfy the requirements of this Article.
 - (2) Except as provided in paragraph (3), below, inspections shall be conducted (i) during or immediately following initial installation of erosion and sediment controls; (ii) at times indicated by Commonwealth of Virginia conservation standards; and (iii) upon completion of the land development project prior to the release of any surety. The inability of the program authority to conduct inspections within the time periods set forth within this paragraph shall not be deemed to be a failure of the program authority to perform a mandatory duty or a ministerial function, and no liability to the City, the program authority, or to any official or employee thereof shall arise therefrom.
 - (3) Notwithstanding paragraph (2), above, the program authority is authorized to establish an alternative inspection program which ensures compliance with an approved erosion and sediment control plan. Such alternative inspection program shall be: (i) approved by the Virginia Soil and Water Conservation Board prior to implementation; (ii) established in writing; (iii) based on a system of priorities which, at a minimum, address the amount of disturbed project area, site conditions, and stage of construction; (iv) documented by inspection records; and (v) maintained and available for public review in the department of Public Services and Engineering.
 - (4) The program authority shall have the right to enter upon property subject to an erosion and sediment control plan for the purposes of conducting an inspection as provided in this section or an investigation pertaining to an erosion or sedimentation complaint. The owner shall be given notice of the inspection. Such notice may be either verbal or in writing.

SECTION 9-40. DETERMINATION OF NONCOMPLIANCE WITH PLAN.

Upon a determination by the program authority that an owner has failed to comply with an approved erosion and sediment control plan, the following procedures shall apply:

- (a) The program authority shall immediately serve upon the owner a written notice to comply. The notice shall (i) instruct the owner to take corrective measures immediately, when immediate action is necessary to prevent erosion or sedimentation problems; (ii) state specifically the measures needed to come into compliance with

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the approved plan; and (iii) stat a reasonable time for compliance. The notice shall be served by certified mail to the address provided by the owner in the application for approval of the plan, by personal delivery to the owner, or by personal delivery to an agent or employee at the site of the permitted activities who is supervising such activities.

- (b) If the owner fails to take corrective measures stated in the notice to comply within the time specified in the notice, the permit-issuing department may revoke any permit it has issued related to the land disturbing activity and the owner shall be deemed to be in violation of this Article. Furthermore, he shall be deemed to be in violation of this Chapter and shall be subject to the penalties provided by the Chapter.
- (c) If the owner fails, within the time specified in the notice, to take the corrective measures for compliance stated in the notice, the program authority, upon finding that such action is reasonably necessary to protect the public health, safety and welfare, may take all corrective measures it deems necessary in order to protect the public health, safety and welfare, and shall be entitled to recover the expenses of such action from the owner.
- (d) Upon receipt of a sworn complaint of a violation of this Article or of an approved erosion and sediment control plan, from the program authority, the Program Administrator may, in conjunction with or subsequent to a notice of violation, issue an order requiring that all or part of the land disturbing activity permitted on the site be stopped until the specified corrective measures have been taken or, if land disturbing activity has commenced without an approved plan, requiring that all of the land disturbing activity be stopped until an approved plan and any required permits have been obtained.
 - (1) Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands, sediment deposition in waters, or water quality problems within the watersheds of the Commonwealth, or where the land disturbing activity has commenced without an approved plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply.
 - (2) A stop-work order shall be served in the same manner as a notice to comply, and it shall remain in effect for seven (7) days from the date of service, pending application by the enforcing authority or alleged violator for appropriate relief to the Circuit Court.
 - (3) If the alleged violator has not obtained an approved plan or any required permits within seven (7) days from the date of service of a stop-work order, the City Engineer may issue an order to the owner requiring that all construction or other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by certified mail to the address specified in the permit application.

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- (4) The owner may appeal the issuance of any stop-work order to the Circuit Court.
- (5) Final decision of the Plan Approving Authority shall be subject to review by the Circuit Court of the City provided an appeal is filed within thirty (30) days from the date of the final written decision adversely affecting the rights, duties or privileges of the person engaging or proposing to engage in land disturbing activity.
- (6) Any person violating or failing, neglecting or refusing to obey an order issued by the City Engineer may be compelled in a proceeding instituted in the Circuit Court to obey the order and to comply therewith, by injunction, mandamus or other appropriate remedy.
- (7) Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.
- (8) Nothing in this section shall prevent the Program Administrator from taking any other action authorized by this Chapter or by any other provision of law.

(Ord. No. 2011-21, 10-11-11)

SECTION 9-41. CERTIFICATION OF PROGRAM PERSONNEL.

As required by Commonwealth of Virginia law, the City's erosion and sediment control program shall meet, within one (1) year following the adoption of this section, the following minimum standards for effectiveness:

- (1) An erosion and sedimentation control plan shall not be approved until it is reviewed by a certified plan reviewer;
- (2) Inspections of land disturbing activity shall be conducted by a certified inspector; and
- (3) The City's erosion control program shall contain a certified program administrator, a certified plan reviewer and a certified project inspector, who may be the same person.

(Ord. No. 2011-21, 10-11-11)

SECTION 9-42. PENALTIES, INJUNCTIONS AND OTHER LEGAL ACTIONS.

- (a) Any person violating the provisions of this Article shall, upon conviction, be guilty of a Class 1 misdemeanor.
- (b) The following may apply to the Circuit Court for injunctive relief to enjoin a

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- (1) The City.
 - (2) The owner of property that has sustained damage or that is in imminent danger of being damaged; however, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the provisions of this Article, and the program authority, that a violation of this Article has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated this Article nor the program authority has taken corrective action within 15 days to eliminate the conditions which have caused, or create the probability of causing, damage to the owner's property.
- (c) In addition to any criminal penalties provided for a violation of this Chapter, any person who violates any provision of this Chapter may be liable to the City in a civil action for damages.
 - (d) Each violation of any regulation or order of the Board, any provision of this Chapter, or any provision of Title 10.1, Chapter 5, Article 4 of the Code of Virginia shall be subject to a civil penalty of one hundred dollars (\$100.00). Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall specified violations arising from the same set of facts result in civil penalties which exceed a total of three thousand dollars (\$3,000.00), except that a series of violations arising from the commencement of land disturbing activity without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000. An appropriate official or employee of the program authority, or a certified inspector for the City, may issue a summons for collection of the civil penalty and the action may be prosecuted by the City.
 - (e) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation. A civil action for such violation or failure may be brought by the City against such person.
 - (f) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Program Administrator issued under this Chapter any condition of a permit issued under this Chapter or any provision of this Chapter, the Program Administrator may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed \$2,000.00. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (d) or (e) of this section.
 - (g) Any civil penalties assessed by a court pursuant to this section shall be paid

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into the City treasury, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the Commonwealth of Virginia treasury.

(Ord. No. 2011-21, 10-11-11)

SECTIONS 9-43 -9-49. RESERVED.

ARTICLE III. STORMWATER MANAGEMENT AND WATER QUALITY

DIVISION 1. IN GENERAL

SECTION 9-50. STORMWATER MANAGEMENT PLAN; APPLICABILITY; VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP) AUTHORITY PERMIT; APPLICABILITY; EXEMPT ACTIVITIES.

- (a) Except as provided herein, no person may engage in any land-disturbing activity until a VSMP authority permit has been issued by the program authority in accordance with the provisions of this Article. In addition, no grading, building or other permit shall be issued, nor any site plan approved, for any property unless a VSMP authority permit has been issued by the program authority in accordance with the provisions of this Article. Each owner shall comply with the requirements of this Article prior to commencing any land development or land-disturbing activity, or allowing any land development or land-disturbing activity to occur, on his property, ~~for residential, commercial, industrial or institutional use~~, and at all times thereafter.
- (b) No person may commence ~~development of any land~~ any land-disturbing activity until he has submitted ~~a stormwater management/best management plan (BMP)~~ all plans and documents required by this section to the ~~City~~ program authority and has obtained the ~~City's program authority's~~ approval of that all such plans and documents. ~~No building permit, site plan approval or other permit for activities involving land development shall be issued by any City department or official, unless a stormwater management/BMP plan has been approved by the program authority consistent with the provisions of this division. No VSMP authority permit shall be issued unless:~~
- (1) A permit application on a form provided by the program authority has been submitted to the program authority, and the permit application has been reviewed and approved in accordance with the provisions of this Article. The applicant shall submit with his application for such permit certification by the owner that all land clearing, construction, land development and drainage will be performed according to the approved stormwater management plan and permit. No VSMP authority permit shall be issued unless and until the permit application and

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- supporting documentation demonstrate, to the satisfaction of the program authority, that all land clearing, construction, disturbance, land development and drainage will be performed according to the approved permit;
- (2) An erosion and sediment control plan has been submitted and approved in accordance with the provisions of Article II of this Chapter, and a permit has been issued by the program authority for the land-disturbing activity in accordance with Section 9-20;
 - (3) A stormwater management plan has been submitted to the program authority and reviewed and approved in accordance with all applicable requirements of this Article;
 - (4) Evidence has been submitted to the program authority demonstrating that the applicant has applied for and obtained coverage under a general permit, including a completed general permit registration statement;
 - (5) A performance guarantee or surety has been submitted to the program authority in accordance with Section 9-9;
 - (6) All fees required by this Chapter have been paid to the City; and
 - (7) If an operator intends to meet the water quality and/or quantity requirements set forth in Division 2 of this Article through the use of off-site compliance options as authorized under §10.1-603.8:1 of the Code of Virginia and 4VAC-50-60-69 of the Virginia Administrative Code, then a letter of availability from the off-site provider must be provided to the program authority. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by §10.1-603.8:1 of the Code of Virginia.
- (c) Notwithstanding any other provisions of this Chapter, the following activities shall not be considered a land-disturbing activity for the purposes of administering the requirements of this Article and shall be exempt from the requirements of this Article:
- (1) Permitted surface or deep mining operation and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;
 - (2) Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in the regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§10.1-1100 et seq.) of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of §10.1-1163 of the Code of Virginia;
 - (3) Single-family residences separately built and disturbing less than one (1) acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures;
 - (4) Land disturbing activities that disturb less than one (1) acre of land area;
 - (5) Discharges to a sanitary sewer or a combined sewer system;
 - (6) Activities under a state or federal reclamation program to return an abandoned

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- property to an agricultural or open land use;
- (7) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and
- (8) Land-disturbing activities conducted in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VSMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with all applicable requirements of this Article is required within 30 days of commencing the land-disturbing activity.

(e) Notwithstanding any other provisions of this Article, the following activities are exempt from the requirements of this section:

- (1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;
- (2) Tilling, planting or harvesting of agricultural, horticultural, or forest crops;
- (3) Construction, extension or replacement of a building or buildings on a site of 5,000 square feet or less, not including cases where development is to be done in phases and the total land disturbance for all phases is greater than 5,000 square feet;
- (4) Land development or a portion of a land development on land which is designated as lying within a flood plain, except in cases where the flood plain has been modified by permitted fill or other activities in compliance with the zoning ordinance;
- (5) Land development or a portion of a land development where the land is adjacent to a flood plain, and the owner has demonstrated to the reasonable satisfaction of the program authority that off-site improvements or other provisions for the disposition of surface water runoff would equally or better serve the public interest and safety, and that such method of disposition would not adversely affect downstream properties or stream channels; and
- (6) Any land development related to a final site plan or plat approved by the appropriate governing authority prior to the effective date of this Chapter.

(b) Notwithstanding any other provisions of this Article, the following activities are exempt from the requirements of this section:

- (1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;
- (2) Tilling, planting or harvesting of agricultural, horticultural, or forest crops; and
- (3) Single-family dwelling units separately built and not part of a division of land, including additions or modifications to existing single-family detached

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~~dwelling units, except if the land disturbance exceeds 5,000 square feet.~~

SECTION 9-51. STORMWATER MANAGEMENT/~~BMP~~ PLAN; REQUIREMENTS/CONTENTS.

Each person subject to this Article shall submit to the program authority for review and approval a stormwater management/~~BMP~~ plan as provided herein:

(a) Together with the required stormwater management/~~BMP~~ plan, the owner of property proposed for development or redevelopment shall submit:

- (1) An application on a form provided by the program authority;
- (2) Any required application fee, as set forth within the most recent fee schedule approved by City Council.
- ~~(3) A certification stating that all land clearing, construction, land development and drainage will be done according to the approved plan;~~
- (4) Specifications for stormwater management and best management practices in order to satisfy the requirements of Division 2 of this Article. The program authority may require the owner to submit maps, calculations, detail drawings, reports, a listing of all major permit decisions and any other information as are determined by the program authority to be necessary to allow a complete review of the plan.

(b) For purposes of this section, major permit decisions include, but are not limited to, decisions pertaining to zoning map amendments, special use permits, grading permits, building and erosion and sediment control plans and any permit related to the land development required under Commonwealth of Virginia or ~~Federal~~ federal law.

(c) Each stormwater management plan submitted for approval shall contain, at a minimum, the following information:

- (1) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;
- (2) A narrative that includes a description of current site conditions and final site conditions;
- (3) A map or maps of the site that depicts the topography of the site and includes:
 - (i) All contributing drainage areas;
 - (ii) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
 - (iii) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
 - (iv) Current land use including existing structures, roads, and locations of known utilities and easements;
 - (v) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
 - (vi) The limits of clearing and grading, and the proposed drainage patterns on the site;
 - (vii) Proposed buildings, roads, parking areas, utilities, and stormwater

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- management facilities; and
- (viii) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.
- (4) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the predevelopment and postdevelopment drainage areas;
- (5) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
- (6) Information on the proposed stormwater management facilities, including:
- (i) The type of facilities;
 - (ii) Location, including geographic coordinates;
 - (iii) Acres treated; and
 - (iv) The surface waters or karst features, if present, into which the facility will discharge;
- (7) Hydrologic and hydraulic computations, including runoff characteristics; and
- (8) Documentation and calculations verifying compliance with the water quality and quantity technical requirements of Division 2 of this Article.
- (d) The stormwater management plan required under this Article shall apply the stormwater management technical requirements set forth in Division 2 of this Article to the entire land disturbing activity, and shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.
- (e) If an operator intends to meet the water quality and/or quantity requirements set forth in Division 2 of this Article through the use of off-site compliance options as authorized under §10.1-603.8:1 of the Code of Virginia and 4VAC-50-60-69 of the Virginia Administrative Code, then a letter of availability from the off-site provider must be provided to the program authority. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by §10.1-603.8:1 of the Code of Virginia.
- (f) Elements of the stormwater management plans that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.
- (g) A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

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MANAGEMENT/BMP PLAN RESERVED.

Each stormwater management/BMP plan submitted pursuant to this Article shall be reviewed and approved as provided herein:

- ~~(a) The plan shall be reviewed by the program authority to determine its compliance with the requirements of this Article and with applicable Federal and Commonwealth of Virginia laws and regulations. Where a proposed stormwater management plan includes facilities or BMPs for which design requirements and specifications, and/or maintenance requirements, are specified within the Virginia Stormwater Management (SWM) Handbook and/or the Virginia Stormwater Management Regulations set forth within 4 VAC 3-20 et seq., the program authority shall utilize those design requirements, specifications and/or maintenance requirements in reviewing and making decisions as to the acceptability of such facilities or BMPs under this Article.~~
- ~~(b) The plan shall be reviewed by the program authority to determine whether it complies with the requirements of section 9-51 and all other requirements of this Article.~~
- ~~(c) During its review of the plan, the program authority may meet with the owner from time to time to review and discuss the plan with the owner, and to request any additional data as may be reasonably necessary for a complete review of the plan.~~
- ~~(d) The program authority shall approve or disapprove a plan within forty-five (45) days from the date a complete application was accepted for review. The decision of the program authority shall be based on the plan's compliance with this Article. If the plan is disapproved, the reasons for such disapproval shall be stated in the decision.~~
- ~~(e) Each stormwater management/BMP plan approved by the program authority shall be subject to the following:~~
 - ~~(1) The owner shall comply with all applicable requirements of the approved plan, this Article, the Virginia Stormwater Management Act (Virginia Code §§ 10.1-603.2 et seq.), and the Commonwealth of Virginia stormwater management regulations set forth in 4 VAC 3-20-10 et seq.;~~
 - ~~(2) The owner shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan;~~
 - ~~(3) Land development shall be conducted only within the area specified in the approved plan;~~
 - ~~(4) The rights granted by virtue of the approved plan shall not be transferred, assigned or sold unless a written notice of transfer, assignment or sale is filed with the program authority and the recipient of such rights provides the certification required by provision (c)(2);~~
 - ~~(5) The program authority may require, in conjunction with its approval of a plan, that the owner first enter into a stormwater management/BMP facilities maintenance agreement as provided in section 9-63;~~
 - ~~(6) The program authority shall be allowed, after giving reasonable notice to the owner, occupier or operator of the land development, to conduct periodic inspections as provided in section 9-67, and~~

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- ~~(7) The program authority may require, as a condition of plan approval, that the owner enter into a right of entry agreement or grant an easement for purposes of inspection and maintenance. If such agreement or easement is required, the program authority shall not be required to give notice prior to conducting an inspection.~~
- (f) Nothing in this section shall require approval of a plan or part thereof that is determined by the program authority to pose a danger to the public health, safety, or general welfare or to deviate from sound engineering practices.

~~Commonwealth of Virginia law reference—Va. Code § 10.1-603.8.~~

SECTION 9-53. MONITORING AND REPORTING.

As a condition of approval of a stormwater management/BMP plan, the program authority may require the owner to monitor and report to the program authority as provided herein:

- (a) Any monitoring conducted shall be for the purpose of ensuring compliance with the stormwater management/BMP plan and to determine whether the plan provides effective stormwater management.
- (b) The condition(s) requiring monitoring and reporting shall state the method and frequency of such monitoring.
- (c) The condition(s) requiring monitoring and reporting shall state the format of the report and the frequency for submitting reports.
- (d) Pursuant to § 10.1-603.12:2 of the Code of Virginia, the Administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under this Ordinance, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this Ordinance, provided that the disclosure requirements of 10.1-603.12:2 of the Code of Virginia shall be met by the program authority.
- ~~(f) As a condition of approval of a stormwater management plan, the program authority may require the owner to monitor and report to the program authority as follows:~~
- ~~Any monitoring conducted by the owner shall be for the purpose of ensuring compliance with the approved stormwater management plan and to determine whether the plan provides effective stormwater management.~~
- ~~The condition(s) requiring monitoring and reporting shall state the method and frequency of such monitoring.~~
- ~~The condition(s) requiring monitoring and reporting shall state the format of the report and the frequency for submitting reports.~~

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~~Commonwealth of Virginia law reference—Va. Code § 10.1-603.8.~~

SECTION 9-54. ISSUANCE OF PERMIT; SURETY RESERVED.

~~A grading, building or other permit for activities involving land development may be issued by a permit issuing department only as provided herein:~~

- ~~(a) The owner shall submit with his application for such permit an approved stormwater management/BMP plan and certification by the owner that all land clearing, construction, land development and drainage will be done according to the approved plan. A permit shall not be issued until such approved plan and certification are submitted.~~
- ~~(b) Prior to the issuance of any such permit, the owner shall be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the City attorney, to ensure that measures could be taken by the City or the program authority at the owner's expense should he fail, after proper notice as provided in section 9-68, to take timely corrective action specified in the notice. The performance bond or other surety shall be provided from a date prior to the issuance of any permit by the permit issuing department until sixty (60) days after the requirements of the approved stormwater management/BMP plan have been completed, as determined by the program authority.~~
- ~~(c) A performance bond or other surety pursuant to paragraph (b) shall not exceed the total of the estimated cost to initiate, maintain and repair all stormwater management facilities, practices and other appropriate actions which may be required of the owner pursuant to the approved stormwater management/BMP plan as a result of the land development. The amount of the bond or other surety shall be based on unit price for new public or private sector construction in the City of Winchester, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty five (25) percent of the estimated cost to initiate, maintain and repair all stormwater management facilities, practices and other appropriate actions which may be required of the owner pursuant to the approved stormwater management/BMP plan.~~
- ~~(d) If the program authority is required to take corrective action pursuant to section 9-68 upon the failure of the owner to do so, the City may collect from the owner for the difference if the amount of the reasonable cost of the corrective action exceeds the amount of the surety.~~
- ~~(e) Within sixty (60) days of the completion of the requirements of the approved stormwater management/BMP plan, as determined by the program authority, the bond or other surety, or any unexpended or unobligated portion thereof shall be refunded to the owner or terminated. Thereafter, compliance with the requirements of this Article shall be assured by a maintenance agreement entered into by and between the owner and the program authority, which agreement shall be in a form approved by the City.~~

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~~Attorney:~~

~~(Ord. No. 2011-21, 10-11-11)~~

~~Commonwealth of Virginia law reference--Va. Code § 10.1-603.8.~~

SECTION 9-55. FEES.

Each owner seeking approval of a stormwater management ~~BMP~~ plan shall pay a fee upon submittal of such plan and application for a VSMP authority permit, and shall pay a fee for ~~each inspection, in amounts as set forth in the most recent fee schedule approved by City Council~~ the modification or transfer of registrations statements from the general permit issued by the State Board, and for maintaining coverage under an approved VSMP authority permit, as provided below:

(a) Fees for issuance of a VSMP authority permit and associated general permit coverage shall be imposed in accordance with Table 1. Each Applicant shall be subject to a fee (“total fee to be paid by applicant” column) in accordance with the disturbed acreage of their site or sites as provided in Table 1.

Table 1: Fees for permit issuance

<u>Fee type</u>	<u>Total fee to be paid by Applicant</u>	<u>Department portion of “total fee to be paid by Applicant” (based on 28% of total fee paid*)</u>
<u>General / Stormwater Management - Small Construction Activity/Land Clearing (Sites with land disturbance acreage equal to or greater than 1 acre and less than 5 acres)</u>	<u>\$2,700</u>	<u>\$756</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)</u>	<u>\$3,400</u>	<u>\$952</u>

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<u>Fee type</u>	<u>Total fee to be paid by Applicant</u>	<u>Department portion of "total fee to be paid by Applicant" (based on 28% of total fee paid*)</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing [Sites with land disturbance acreage equal to or greater than 10 acres and less than 50 acres]</u>	<u>\$4,500</u>	<u>\$1,260</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$6,100</u>	<u>\$1,708</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites with land disturbance acreage equal to or greater than 100 acres)</u>	<u>\$9,600</u>	<u>\$2,688</u>

* If the project is completely administered by the Department of Environmental Quality, such as may be the case for a state or federal project or projects covered by individual permits, the entire fee shall be paid to the Department of Environmental Quality.

Commonwealth of Virginia law reference – Va. Code § 10.1-603.10.

(b) Fees for the modification or transfer of registration statements from the general permit issued by the State Board shall be imposed in accordance with Table 2. If the general permit modifications result in changes to stormwater management plans that require additional review by the City, such reviews shall be subject to the fees set out in Table 2. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in Table 1.

Table 2: Fees for the modification or transfer of registration statements for the

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General Permit for Discharges of Stormwater from Construction Activities

<u>Type of Permit</u>	<u>Fee Amount</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 and less than 5 acres)</u>	<u>\$200</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)</u>	<u>\$250</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)</u>	<u>\$300</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$450</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)</u>	<u>\$700</u>

(c) The following annual permit maintenance fee shall be imposed on all VSMP authority permits in accordance with Table 3, including fees imposed on expired permits that have been administratively continued. Maintenance fees shall be paid annually to the City by the anniversary date of permit coverage. Such fees shall apply until the permit coverage is terminated. No permit will be reissued or automatically continued without payment of the required fee.

Table 3: Permit Maintenance Fees

<u>Type of Permit</u>	<u>Fee Amount</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 and less than 5 acres)</u>	<u>\$400</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)</u>	<u>\$500</u>

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<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)</u>	<u>\$650</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$900</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)</u>	<u>\$1,400</u>

(d) The fees set forth in Subsections (a) through (c) above, shall apply to:

- (1) All persons seeking a VSMP authority permit and associated coverage under the general permit.
- (2) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.
- (3) Persons whose coverage under the general permit has been revoked shall apply to the Department of Environmental Quality for an Individual Permit for Discharges of Stormwater From Construction Activities.
- (4) Permit and permit coverage maintenance fees outlined under Section 9-55 (c) may apply to each general permit holder.

(e) No general permit application fees will be assessed to:

- (1) Permittees who request minor modifications to general permits as defined in Section 9-5 of this Ordinance. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the Administrator shall not be exempt pursuant to this Section.
- (2) Permittees whose general permits are modified or amended at the initiative of the Department of Environmental Quality, excluding errors in the registration statement identified by the Administrator or errors related to the acreage of the site.

(f) All incomplete payments will be deemed as nonpayments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in §58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account. The [Locality] shall be entitled to all remedies available under the Code of Virginia in collecting any past

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due amount.

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DIVISION 2. ~~PLAN REQUIREMENTS; WATER QUANTITY AND WATER QUALITY PROTECTION~~ REQUIREMENTS FOR WATER QUANTITY AND WATER QUALITY PROTECTION

SECTION 9-56. STORMWATER MANAGEMENT FACILITIES AND CHANNELS. TECHNICAL REQUIREMENTS FOR THE DESIGN OF STORMWATER MANAGEMENT FACILITIES; GRANDFATHERED ACTIVITIES; EXCEPTIONS.

- (a) The City of Winchester hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Virginia Stormwater Management Regulations, as amended, expressly to include 4VAC50-60-63 [water quality design criteria requirements]; 4VAC50-60-65 [water quality compliance]; 4VAC50-60-66 [water quantity]; 4VAC50-60-69 [offsite compliance options]; 4 VAC 50-60-72 [design storms and hydrologic methods]; 4VAC50-60-74 [stormwater harvesting]; 4VAC50-60-76 [linear development projects]; and, 4VAC50-60-85 [stormwater management impoundment structures or facilities], which shall apply to all land-disturbing activities regulated pursuant to this Article, except as expressly set forth in paragraphs (e) and (f) of this section.
- (b) Stormwater management facilities and ~~modifications to~~ channels, and modifications thereto, required as part of a stormwater management ~~BMP~~ plan shall be designed, installed and constructed as provided herein:
- (1) Stormwater management facilities, best management practices, and modifications to channels shall be designed and constructed in compliance with applicable local, ~~Commonwealth of Virginia~~ state and ~~Federal~~ federal laws, regulations, and standards, including, but not limited to the Federal Clean Water Act; the Virginia Stormwater Management Act (VA Code §§10.1-603.2 et seq.) and the ~~Virginia~~ Virginia stormwater ~~management~~ Management ~~Regulations~~ promulgated by the ~~state~~ Virginia Board of Conservation and Recreation, set forth within ~~4 VAC 3-20-10~~ 4VAC50-60-10 et seq.; the National Flood Insurance Program; the Virginia BMP Clearinghouse website and the City of Winchester ~~Stormwater Management Design~~ Public Services Standards Manual.
 - (2) Stormwater management facilities and best management practices shall be designed and sited to capture, to the maximum extent practicable, the runoff from the entire land development project area and, in particular, areas of impervious cover within the development project area.
 - (3) Hydrologic parameters shall reflect the ultimate buildout in the land development project area and shall be used in all engineering calculations.
 - (4) Post-development runoff rate of flow shall be maintained, as nearly as practicable, as the pre-development runoff characteristics, ~~subject further to the requirements of §9-52.~~
 - (5) The number, type, and siting of stormwater management facilities shall be designed so as to preserve natural channel characteristics and natural groundwater recharge on a site to the extent practical.

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- (c) Each stormwater management/BMP plan shall require that land and receiving waterways which are downstream from the land development be protected from stormwater runoff damage, as provided herein:
- (1) To protect downstream properties and receiving waterways from flooding, the ten (10) year post-development peak rate of runoff from the land development shall not exceed the ten (10) year pre-development peak rate of runoff.
 - (2) To protect downstream properties and receiving waterways from channel erosion, the two (2) year post-development peak rate and velocity of runoff from the land development shall not exceed the two (2) year pre-development peak rate and velocity of runoff.
 - (3) If the land development is in a watershed for which a hydrologic and/or hydraulic study has been conducted or a stormwater model developed, the program authority may modify the requirements of paragraphs (1) and (2) so that runoff from the land development is controlled in accordance with the findings in the study or model, or to prevent adverse watershed stormflow timing, channel degradation, and/or localized flooding problems.
 - (4) In addition to the requirements of paragraphs (1) and (2), the program authority may require that the plan include additional measures to address damaging conditions to downstream properties and receiving waterways caused by the land development.
- (d) Pre-development and post-development runoff rates determined for purposes of paragraph (c) shall be verified by calculations that are consistent with accepted engineering practices, as determined by the program authority.
- (e) Until June 30, 2019, any land-disturbing activity for which a currently valid proffered or conditional zoning, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the Administrator as being equivalent thereto, was approved by the City prior to July 1, 2012, and for which no coverage under the general permit has been issued prior to July 1, 2014, shall be considered grandfathered by the Administrator and shall not be subject to the technical criteria of Part II B of the Regulations, but shall be subject to the technical criteria of Part II C of the Regulations for those areas that were included in the approval, provided that the Administrator finds that such proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the Administrator as being equivalent thereto, (i) provides for a layout and (ii) the resulting land-disturbing activity will be compliant with the requirements of Part II C of the Regulations. In the event that the approved document is subsequently modified or amended in a manner such that there is no increase over the previously approved plat or plan in the amount of phosphorus leaving each point of discharge of the land-disturbing activity through stormwater runoff, and such that there is no increase over the previously approved plat or plan in the volume or rate of runoff, the grandfathering shall continue as before.
- (1) Until June 30, 2019, for local, state, and federal projects for which there has been an obligation of local, state, or federal funding, in whole or in part, prior to July 1, 2012, or for which the Virginia Department of Conservation and Recreation has

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approved a stormwater management plan prior to July 1, 2012, such projects shall be considered grandfathered by the City and shall not be subject to the technical requirements of Part II B of the Regulations, but shall be subject to the technical requirements of Part II C of the Regulations for those areas that were included in the approval.

(2) For land-disturbing activities grandfathered under this subsection, construction must be completed by June 30, 2019, or portions of the project not under construction shall become subject to the technical requirements of paragraph (a) above.

(f) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical requirements

(g) The Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this Ordinance are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this Ordinance.

(1) Exceptions to the requirement that the land-disturbing activity obtain required VSMP authority permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse website.

(2) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 4VAC50-60-69 of the Regulations have been considered and found not available.

(h) Other than requests for permission to develop within a required stream buffer, which requests shall be handled pursuant to §9-74, a request for an exception to the requirements of this Article pursuant to paragraph (g) of this section shall be made and reviewed as follows:

(a1) A written request for an exception shall be submitted to the program authority, which shall immediately forward a copy of the request to the City attorney's office for its recommendation. The request shall address the factors listed in paragraph (e), below above.

(b2) After receiving a recommendation from the City attorney's office and considering a recommendation from the program authority the request, the City Council Administrator shall grant or deny a request for an exception within 60 days from the date of the program authority's receipt of the request.

(c) A request for exception may be granted by the City Council, upon finding that:

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- ~~(1) A stormwater management plan has been submitted to the program authority for review in accordance with this Article, and the plan demonstrates that reasonable alternatives to the exception have been considered and determined to not be feasible through attempts to meet the provisions of this Article, the use of non-structural measures, the use of a mitigation plan, or by other means;~~
 - ~~(2) The exception requested is the minimum necessary to afford relief;~~
 - ~~(3) Reasonable and appropriate conditions can be imposed to ensure that the purposes of this Article are satisfied; and~~
 - ~~(4) The sole basis for the request is not economic hardship, which shall be deemed an insufficient reason to grant an exception.~~
- (i) Nothing in this section shall preclude an operator from constructing to a more stringent standard at their discretion.

~~Commonwealth of Virginia law reference – Va. Code § 10.1-603.3.~~

SECTION 9-57. NON-STRUCTURAL MEASURES STORMWATER POLLUTION PREVENTION PLAN (SWPPP); REQUIREMENTS.

- (a) The Stormwater Pollution Prevention Plan (SWPPP) shall include the content and address all of the requirements specified by Section 4VAC50-60-54 of the Virginia Administrative Code and must also comply with the requirements and general information set forth in Section 4VAC50-60-1170, Section II [stormwater pollution prevention plan] of the general permit.
- (b) The SWPPP shall be amended by the owner whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.
- (c) The SWPPP must be maintained by the owner at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site. Owners shall make the SWPPP available for public review in accordance with Section II of the general permit, either electronically or in hard copy.

~~Non-structural measures may be used in conjunction with or in place of structural measures in order to satisfy the requirements of this Article, as provided herein:~~

- ~~(1) The program authority may allow non-structural measures to satisfy, partially or in whole, the requirements of this Article, if such measures are identified in accepted technical literature, are acceptable to the program authority based on its exercise of sound professional judgment, and the program authority finds

that the measures achieve equivalent benefit for water quantity and/or quality protection as would otherwise be provided by structural measures.~~
- ~~(2) Non-structural measures include, but are not limited to, minimization of impervious surfaces, stream buffer reforestation, providing additional stream-buffer areas, wetland restoration, waste reuse and recycling, and development~~

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design that reduces the rate and volume of runoff.

~~Commonwealth of Virginia law reference—Va. Code § 10.1-603.3.~~

SECTION 9-58. CONTROL OF PEAK RATE AND VELOCITY OF RUNOFF POLLUTION PREVENTION PLAN FOR MINIMIZING DISCHARGES DURING CONSTRUCTION; REQUIREMENTS.

(a) A Pollution Prevention Plan, as required by 4VAC50-60-56 of the Virginia Stormwater Management Regulations, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants during construction. At a minimum, such measures must be designed, installed, implemented, and maintained to:

- (1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
- (2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
- (3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

(b) The pollution prevention plan shall include effective best management practices to prohibit the following discharges:

- (1) Wastewater from washout of concrete, unless managed by an appropriate control;
- (2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
- (3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
- (4) Soaps or solvents used in vehicle and equipment washing.

(c) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

- ~~(a) Each stormwater management/BMP plan shall require that land and receiving waterways which are downstream from the land development be protected from stormwater runoff damage, as provided herein: (1) To protect downstream properties and receiving waterways from flooding, the ten (10) year post-development peak rate of runoff from the land development shall not exceed the ten (10) year pre-development peak rate of runoff~~
- ~~(2) To protect downstream properties and receiving waterways from channel-erosion, the two (2) year post-development peak rate and velocity of runoff from the land development shall not exceed (3) If the land development is in a~~

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~~watershed for which a hydrologic and/or hydraulic study has been conducted or a stormwater model developed, the program authority may modify the requirements of paragraphs (1) and (2) so that runoff from the land development is controlled in accordance with the findings in the study or model, or to prevent adverse watershed stormflow timing, channel degradation, and/or localized flooding problems.~~

~~(4) In addition to the requirements of paragraphs (1) and (2), the program authority may require that the plan include additional measures to address damaging conditions to downstream properties and receiving waterways caused by the land development.~~

~~(b) Pre-development and post-development runoff rates determined for purposes of paragraph (a) shall be verified by calculations that are consistent with accepted engineering practices, as determined by the program authority.~~

~~(c) Notwithstanding any other provisions of this Article, the following activities are exempt from the requirements of this section:~~

~~(1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;~~

~~(2) Tilling, planting or harvesting of agricultural, horticultural, or forest crops;~~

~~(3) Construction, extension or replacement of a building or buildings on a site of 5,000 square feet or less, not including cases where development is to be done in phases and the total land disturbance for all phases is greater than 5,000 square feet;~~

~~(4) Land development or a portion of a land development on land which is designated as lying within a flood plain, except in cases where the flood plain has been modified by permitted fill or other activities in compliance with the zoning ordinance;~~

~~(5) Land development or a portion of a land development where the land is adjacent to a flood plain, and the owner has demonstrated to the reasonable satisfaction of the program authority that off-site improvements or other provisions for the disposition of surface water runoff would equally or better serve the public interest and safety, and that such method of disposition would not adversely affect downstream properties or stream channels; and~~

~~(6) Any land development related to a final site plan or plat approved by the appropriate governing authority prior to the effective date of this Chapter.~~

SECTION 9-59. BEST MANAGEMENT PRACTICES.

(a) Each stormwater management/**BMP** plan shall require that best management practices be provided in conjunction with or in addition to stormwater management facilities designed for water quantity treatment, as provided herein:

(1) Best management practices shall be designed and sited to capture runoff from the entire land development project area and, in particular, areas of impervious cover within the land development, to the maximum extent practicable.

(2) Best management practices shall be designed to remove the difference between post-development and pre-development total phosphorus loads in cases where post-development loads exceed pre-development loads.

(3) Calculation methods and expected removal ranges for various best management practices shall be included in the ~~design manual~~**Public Services Standards Manual**

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maintained by the program authority.

~~(b) Notwithstanding any other provisions of this Article, the following activities are exempt from the requirements of this section:~~

- ~~(1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;~~
- ~~(2) Tilling, planting or harvesting of agricultural, horticultural, or forest crops; and~~
- ~~(3) Single family dwelling units separately built and not part of a division of land, including additions or modifications to existing single family detached dwelling units, except if the land disturbance exceeds 5,000 square feet.~~

(b) Non-structural measures may be used in conjunction with or in place of structural measures in order to satisfy the requirements of this Article, as provided herein:

- (1) The program authority may allow non-structural measures to satisfy, partially or in whole, the requirements of this Article, if such measures are identified in accepted technical literature, are acceptable to the program authority based on its exercise of sound professional judgment, and the program authority finds that the measures achieve equivalent benefit for water quantity and/or quality protection as would otherwise be provided by structural measures.
- (2) Non-structural measures include, but are not limited to, minimization of impervious surfaces, stream buffer reforestation, providing additional stream buffer areas, wetland restoration, waste reuse and recycling, and development design that reduces the rate and volume of runoff.

~~Commonwealth of Virginia law reference—Va. Code § 10.1-603.3.~~

SECTION 9-60. CONTRIBUTION TO REGIONAL STORMWATER MANAGEMENT PROGRAM.

- (a) Each stormwater management ~~BMP~~ plan shall require that the owner contribute to a regional stormwater management program, as provided herein:
 - (1) If the land development is located within the watershed of a regional stormwater management program established by the ~~county~~ City which requires pro rata share contributions, the owner shall pay a pro rata share of the cost of the facility in accordance with any ordinance of the ~~county~~ City establishing the program.
 - (2) An owner's payment pursuant to paragraph (1) shall relieve the owner of the requirements of ~~section~~ Section 17-3149-56(c), if the regional program is designed to control the peak rate and velocity of runoff, and/or the requirements of ~~section~~ Section 17-3159-59, if the regional program is designed to provide best management practices. An owner's payment pursuant to paragraph (1) shall not relieve an owner of his responsibility to comply with any other requirement of this Chapter, except as provided in this section.

~~Commonwealth of Virginia law reference—Va. Code § 10.1-603.3.~~

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SECTION 9-61. REVIEW OF STORMWATER MANAGEMENT PLAN; APPROVAL.

(a) Each stormwater management plan submitted pursuant to this Article shall be reviewed and approved as provided herein:

(1) The plan shall be reviewed by the program authority to determine its compliance with the requirements of this Article and with applicable ~~Federal~~ local, state, and federal and Commonwealth of Virginia laws and regulations. Where a proposed stormwater management plan includes facilities or BMPs for which design requirements and specifications, and/or maintenance requirements, are specified ~~with~~ in the Virginia Stormwater Management (SWM) Handbook and/or on the Virginia BMP Clearinghouse website, and/or the Virginia Stormwater Management Regulations set forth within 4VAC 3-20 et seq., the program authority shall utilize those design requirements, specifications and/or maintenance requirements in reviewing and making decisions as to the acceptability of such facilities or BMPs under this Article.

(2) During its review of the plan, the program authority may meet and correspond with the owner from time to time to review and discuss the plan with the owner, and to request any additional data as may be reasonably necessary for a complete review of the plan.

~~(3) The program authority shall approve or disapprove a plan within 45 days from the date a complete application was received. The decision of the program authority shall be based on the plan's compliance with the requirements of this Article and with applicable Commonwealth of Virginia laws and regulations. The decision shall be in writing and shall be communicated to the applicant by mail or delivery. If the plan is rejected or disapproved, the specific reasons for such disapproval (with reference to the relevant ordinances, laws or regulations) shall be stated in the decision. If the program authority fails to act on a plan within the 45-day period, the plan shall be deemed approved.~~

(4) Nothing in this Article or section shall require approval of a plan, or any portion thereof, that is determined by the program authority to pose a danger to the public health, safety, or general welfare, or to deviate from sound engineering practices.

~~(b) The Administrator shall determine the completeness of a plan and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete. If a determination of completeness is not made within 15 calendar days of receipt, then the plan shall be deemed complete.~~

~~(c) The program authority shall approve or disapprove a plan within 60 days from the date a complete application was received, provided that for any plan that is deemed complete in accordance with paragraph (b) of this section, the program authority shall approve or disapprove the plan within 60 days from the date the plan was submitted to the program authority. The decision of the program authority shall be based on the plan's compliance with the requirements of this Article and with applicable local, state~~

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and federal laws and regulations. The decision shall be in writing and shall be communicated to the applicant by mail or delivery. If the plan is rejected or disapproved, the specific reasons for such disapproval (with reference to the relevant ordinances, laws or regulations) shall be stated in the decision. If the program authority fails to act on a plan within the 60-day period, the plan shall be deemed approved. The Administrator shall review any plan that has been previously disapproved within 45 calendar days of the date of resubmission.

(e) Each stormwater management/BMP plan approved by the program authority shall be subject to the following:

- (1) The owner shall comply with all applicable requirements of the approved plan, this Article, the Virginia Stormwater Management Act (Virginia Code §§ 10.1-603.2 et seq.), and the Commonwealth of Virginia stormwater management regulations set forth in 4 VAC 3-20-10 et seq.;
- (2) The owner shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan;
- (3) Land development shall be conducted only within the area specified in the approved plan;
- (4) The rights granted by virtue of the approved plan shall not be transferred, assigned or sold unless a written notice of transfer, assignment or sale is filed with the program authority and the recipient of such rights provides the certification required by provision (e)(2);
- (5) The program authority may require, in conjunction with its approval of a plan, that the owner first enter into a stormwater management/BMP facilities maintenance agreement as provided in section 9-63;
- (6) The program authority shall be allowed, after giving reasonable notice to the owner, occupier or operator of the land development, to conduct periodic inspections as provided in section 9-67; and
- (7) The program authority may require, as a condition of plan approval, that the owner enter into a right of entry agreement or grant an easement for purposes of inspection and maintenance. If such agreement or easement is required, the program authority shall not be required to give notice prior to conducting an inspection.

SECTION 9-62. CONDITIONS OF APPROVAL.

(ea) Each stormwater management/BMP plan approved by the program authority shall be subject to the following conditions, at a minimum:

- (1) The owner shall comply with all applicable requirements of the approved plan, this Article, and the Virginia Stormwater Management Act (Virginia Code §§ 10.1-603.2 et seq.) and Regulations, and the Commonwealth of Virginia stormwater management regulations set forth in 4 VAC 3-20-10 et seq.;
- (2) The owner shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan;
- (3) Land development shall be conducted only within the area specified in the approved plan;

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- (4) The rights granted by virtue of the approved plan shall not be transferred, assigned or sold unless a written notice of transfer, assignment or sale is filed with the program authority and the recipient of such rights provides the certification required by provision paragraph (ed)(2) of this section;
- (5) The program authority may require, in conjunction with its approval of a plan, that the owner first enter into a stormwater management/BMP facilities maintenance agreement as provided in sSection 9-63; and
- (6) The program authority shall be allowed, after giving reasonable notice to the owner, occupier or operator of the land development, to conduct periodic inspections of the land development in accordance with Section 9-67 to determine the owner's compliance with the provisions of this Article. The program authority may require, as a condition of plan approval, that the owner enter into a right of entry agreement or grant an easement for purposes of inspection and maintenance. If such agreement or easement is required, the program authority shall not be required to give notice prior to conducting an inspection.

~~Each stormwater management plan approved by the program authority shall be subject to the following:~~

- ~~(a) The owner shall comply with all applicable requirements of this Article, the Virginia Stormwater Management Act (Va. Code §§10.1-603.2 et seq), the Commonwealth of Virginia stormwater regulations set forth in 4 VAC 3-20-10 et seq, and the Virginia Stormwater Management Handbook.~~
 - ~~(b) The owner shall certify in writing that all land clearing, construction, land development and drainage will be done according to the approved plan.~~
 - ~~(c) Land development shall be conducted only within the area specified within the approved plan.~~
 - ~~(d) The rights granted by virtue of the approved plan shall not be transferred, assigned or sold unless a written notice of transfer, assignment or sale is filed with the program authority and the recipient of such rights provides the certification required by provision (b), above.~~
 - ~~(e) The program authority shall be allowed, after giving reasonable notice to the owner, occupier or operator of the land development, to conduct periodic inspections of the land development to determine the owner's compliance with the provisions of this Article. The program authority may require, as a condition of approval of a stormwater management plan, that the owner enter into a right of entry agreement, or grant an easement, for purposes of inspection and maintenance. If such agreement or easement is required, the program authority shall not be required to give notice prior to conducting an inspection.~~
- ~~(3) The condition(s) requiring monitoring and reporting shall state the format of the report and the frequency for submitting.~~ **SECTION 9-63. DUTY TO COMPLY, MAINTAIN AND REPAIR; MAINTENANCE AGREEMENT.**

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- (a) The owner shall maintain and repair all structural and nonstructural stormwater management measures required by the plan, as follows:
- (1) The owner shall be responsible for the operation and maintenance of such measures and shall pass such responsibility to any successor owner, unless such responsibility is lawfully transferred to the City or to another governmental entity.
 - (2) The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other measures specified to manage the quality and quantity of runoff. If an approved a stormwater management plan includes the use of requires structural or nonstructural measuresbest management practices, the owner shall execute a stormwater management facilities maintenance agreement prior to the program authority granting final approval for any site plan or other development for which a permit is requiredof the stormwater management plan. The required stormwater management facilities maintenance agreement shall be in a form approved by the City Attorney. If an owner certifies that ithe cannot exercise its rights under a purchase agreement until a site plan or other development plan receives final approval from the City, the program authority may grant its final approval without a signedan executed and recorded agreement, provided that the agreement is submitted to the Administrator for review and approval prior to the approval of the stormwater management plan, and is signedexecuted and recorded as provided herein prior to issuance of any certificate of occupancy for any building on the sitethe development project. The agreement shall be recorded in the office of the clerk of the Circuit Court for the City of Winchester and shall, at a minimum:
 - (i) Be stated to run with the land. If an owner certifies that it cannot exercise its rights under a purchase agreement until a site plan or other development receives final approval from the City, the program authority may grant its final approval without a signed agreement, provided that the agreement is signed and recorded as provided herein prior to issuance of any certificate of occupancy for the development project. The required stormwater management facilities maintenance agreement shall be in a form approved by the City Attorney and shall, at a minimum:
 - (ii) Provide for all necessary access to the property for the purposes of maintenance and regulatory inspections;
 - (iii) Provide for periodic inspections and the submission of inspection and maintenance reports to the Administrator;
 - (iv) Designate for the land development the owner, governmental agency, or other legally-established entity which shall be permanently responsible for maintenance of the structural or non- structural measures required by the plan;
 - (v) Pass the responsibility for such maintenance to successors in title;
and
 - (vi) Ensure the continued performance of the maintenance obligations required by the plan and by this Article.; and
 - (vii) Be enforceable by all appropriate governmental parties.

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SECTION 9-64. AMENDMENT OF APPROVED STORMWATER MANAGEMENT PLANS.

~~An approved stormwater management plan may be changed or amended only as provided herein:~~

- (a) The program authority may change an approved stormwater management ~~BMP~~ plan only as provided herein.
- ~~(b)~~ The owner shall submit ~~additional data identified in section — (plan requirements) information as required by Section 9-51~~ in order to allow the program authority to determine whether any such change ~~will comply~~ complies with the requirements of this Article.
- ~~(c)~~ The owner shall submit to the program authority a written request and justification for a change or amendment of an approved stormwater management plan, and shall provide such data as may be required by the program authority in order to determine whether the proposed change will comply with the requirements of this Article.
- ~~(d)~~ The program authority shall conduct its review and shall make its decision with respect to the proposed change in accordance with the procedures for initial submission and approval of a stormwater management plan. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving of the request for an amendment. ~~(d) If the proposed change to the approved plan complies with the requirements of this Article, the program authority shall approve such proposed change in writing.~~
- ~~(e)~~ Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. An owner shall make no changes to an approved plan without first complying with this section.
- ~~(f)~~ The Administrator may require that an approved stormwater management plan be amended, within a time prescribed by the Administrator, to address any deficiencies noted during an inspection.

SECTION 9-65. EXCEPTIONS RESERVED.

~~Other than requests for permission to develop within a required stream buffer, which requests shall be handled pursuant to §9-74, a request for an exception to the requirements of this Article shall be made and reviewed as follows:~~

- ~~(a) A written request for an exception shall be submitted to the program authority, which shall immediately forward a copy of the request to the City attorney's office. The request shall address the factors listed in paragraph (c), below:~~
- ~~(b) After receiving and considered a recommendation from the program authority, the~~

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~~City council shall grant or deny a request for an exception within 60 days from the date of the program authority's receipt of the request.~~

~~(e) A request for exception may be granted by the City Council, upon finding that:~~

- ~~(1) A stormwater management plan has been submitted to the program authority for review in accordance with this Article, and the plan demonstrates that reasonable alternatives to the exception have been considered and determined to not be feasible through attempts to meet the provisions of this Article, the use of non-structural measures, the use of a mitigation plan, or by other means;~~
- ~~(2) The exception requested is the minimum necessary to afford relief;~~
- ~~(3) Reasonable and appropriate conditions can be imposed to ensure that the purposes of this Article are satisfied; and~~
- ~~(4) The sole basis for the request is not economic hardship, which shall be deemed an insufficient reason to grant an exception.~~

SECTION 9-66. DEDICATION OF FACILITIES TO THE PUBLIC.

The owner of a stormwater management facility required by this Article may offer for dedication any such facility, together with such easements and appurtenances as may be reasonably necessary, as provided herein:

- (a) Any such offer shall be made in writing and delivered to the office of the City attorney, with a copy to the program authority. The owner, at his sole expense, shall provide any documents or information requested by the program authority or the City Council. The program authority shall make a preliminary assessment as to whether the dedication of such facility is appropriate and will promote the public health, safety and general welfare. In making its assessment, the program authority shall inspect the facility in question and shall determine whether it has been properly maintained and is in good repair. The program authority shall estimate the annual cost of maintenance and repair of the facility, and of the remaining useful life of the facility. The program authority shall forward a report of its assessment to the City Council.
- (b) The City Council shall review the offer, taking into account the recommendations of the program authority and other City staff or officials, and may accept or refuse the offer of dedication.
- (c) If the City Council decides to accept the offer of dedication, the document dedicating the stormwater management facility shall be recorded in the office of the clerk of the Circuit Court for the City of Winchester.
- (d) If the dedication of a stormwater management facility is required by City ordinance as a condition of approval of a subdivision plat, then the applicable provision of the City's subdivision ordinance shall apply in lieu of this section.

SECTION 9-67. INSPECTIONS.

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The program authority shall inspect any land subject to an approved stormwater management plan, as provided herein:

- (a) The program authority shall inspect the land disturbing activity during construction for:
- (1) Compliance with the approved erosion and sediment control plan;
 - (2) Compliance with the approved stormwater management plan;
 - (3) Development, updating, and implementing of a pollution prevention plan; and
 - (4) Development and implementation of any additional control measures necessary to address a TMDL.
- (b) The Administrator or any duly authorized agent of the Administrator may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purposes of obtaining information of conducting surveys or investigations necessary in the enforcement of the provisions of this Article.
- (ac) During the installation of stormwater management measures, or the conversion of erosion and sediment control measures into stormwater management measures, the program authority shall conduct periodic inspections to determine whether such measures are being installed as provided in the approved plan.
- (bd) Upon completion of the installation of stormwater management measures, the program authority shall conduct periodic inspections to determine whether such measures are being maintained as provided in the approved plan, or to investigate a complaint pertaining to the plan.
- (ee) ~~The inspections shall be conducted at least annually, measured from the date the installation or implementation of the stormwater management measures is deemed by the program authority to be complete.~~ The inability of the program authority to conduct inspections within the time periods set forth in this ~~paragraph~~ section shall not be deemed to be a failure of the program authority to perform a mandatory duty or a ministerial function, and no liability to the City, the program authority, or any official or employee thereof shall arise therefrom.
- (df) The program authority shall be allowed, after giving notice to the owner, occupier or operator of the land development, to conduct any inspection required by this section. The notice may be either verbal or in writing. Notice shall not be required if the program authority and the owner have entered into a right of entry agreement, or if the owner has granted to the program authority an easement for purposes of inspection and maintenance.
- (g) Notwithstanding any other provision of this section or Article, post-construction inspections of stormwater management facilities required by the provisions of this Ordinance shall be conducted by the Administrator or any duly authorized agent of the Administrator pursuant to the City's inspection program, and shall occur, at minimum, at least once every five (5) years except as may otherwise be provided for in the stormwater management facilities maintenance agreement executed in accordance with Section 9-63, measured from the date the installation or implementation of the stormwater management measures is deemed by the program authority to be complete.

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SECTION 9-68. DETERMINATION OF NONCOMPLIANCE WITH PLAN; PROCEDURE.

(a) Upon a determination by the program authority that an owner has failed to comply with an approved VSMP authority permit or stormwater management plan, or any conditions thereof, the following enforcement provisions and procedures shall apply:

(1) The program authority shall serve upon the owner, permittee, or person responsible for implementing the permit a written notice to comply. The notice shall be served by certified mail, to the owner's address of record with the City assessor's office, or by personal delivery to the owner, or by personal delivery to an agent or employee at the site of the permitted activities who is supervising such activities. The notice shall:

- (i) Instruct the owner to take corrective measures immediately, when immediate action is necessary to prevent or abate drainage, erosion, or water pollution problems;
- (ii) Specify the measures required to comply with the approved plan or permit, or any conditions thereof;
- (iii) Specify the time within which such required measures must be completed; and
- (iv) Include copies of inspection reports or other such documentation demonstrating non-compliance with the approved plan or permit, or any conditions thereof.

(2) If a permittee fails to comply with a notice issued in accordance with paragraph (a)(1) of this section within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed. Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by the Administrator or any duly authorized agent of the Administrator. However, if the Administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with Section 9-69.

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- (3) If the owner fails to take corrective measures stated in the notice to comply, within the time specified in the notice, then the City may revoke any building permit or other permit for activities involving the land development, and the owner shall be deemed to be in violation of this Article.
- (34) If the program authority determines, upon completion of a maintenance inspection, that maintenance or repair of the measures has been neglected, or that any stormwater management facility is a danger to public health or safety, it may perform the work necessary to assure that such measures or facilities are not a danger to public health or safety, and shall be entitled to recover the costs of such work from the owner. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument pursuant to Section 9-9 and/or Section 9-63 of this Chapter, the Administrator may enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.
- (5) In addition to any other remedy provided by this ordinance, if the Administrator or his designee determines that there is a failure to comply with the provisions of this Ordinance, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with the Public Services Standards Manual, as applicable.

SECTION 9-69. PENALTIES, INJUNCTIONS AND OTHER LEGAL ACTIONS.

Enforcement of this Article shall be as follows:

- (a) Any person who violates any provision of this Article shall be guilty of a misdemeanor and shall be subject to a fine not exceeding one thousand dollars (\$1,000.00), or up to 30 days imprisonment for each violation, or both. Notwithstanding any other civil or equitable remedy provided by this Section or by law, any person who willfully and negligently violates any provision of this Article, any order of the Administrator, any condition of a permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.
- (b) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in Circuit Court by the City to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. The City may apply to the Circuit Court to enjoin a violation or threatened violation of the provisions of this Article, without the necessity of showing that an adequate remedy at law exists.

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(c) Without limiting the remedies that may be obtained pursuant to this section, the City may bring a civil action against any person for violation of any provision of this Article, or of any term or condition of a permit, plan, or maintenance agreement. The action may seek the imposition of a civil penalty of not more than two thousand dollars (\$2,000.00) against the person for each violation. Each day of violation of each requirement shall constitute a separate offense. The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court. In imposing a civil penalty pursuant to this paragraph, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance. Violations for which a penalty may be imposed under this paragraph shall include but not be limited to the following:

- (1) No state permit registration;
- (2) No SWPPP;
- (3) Incomplete SWPPP;
- (4) SWPPP not available for review;
- (5) Failure to install stormwater BMPs;
- (6) No approved erosion and sediment control plan;
- (7) Stormwater BMPs improperly installed or maintained;
- (8) Operational deficiencies of stormwater BMPs;
- (9) Failure to conduct required inspections or maintenance;
- (10) Incomplete, improper, or missed inspections; and
- (11) Discharges not authorized or not in compliance with the requirements of Section 4VAC50-60-1170 of the general permit coverage issued for the land-disturbing activity.

Any civil penalties assessed by a court as a result of a summons issued by the City shall be paid into the treasury of the City to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

(d) With the consent of any person who has violated or failed, neglected or refused to obey, or comply with any permit, obligation or a plan or agreement, or any provision of this Article, the program authority may provide, in an order issued by the program authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified above in paragraph (c). Such civil charges shall be in lieu of any civil penalty which could be imposed under paragraph (c).

~~SECTION 9-70. — REVIEW OF CERTAIN PROGRAM AUTHORITY ACTIONS.~~

~~Any person who is aggrieved by any action of the program authority because of its disapproval of a plan submitted pursuant to this Article, or in the interpretation of the~~

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~~provisions of this Article, shall have the right to apply for and receive a review of such action by the City Council, as provided herein.~~

~~(a) An appeal shall be filed in writing with the clerk of the board of supervisors within thirty (30) days of the date notice of the action is given by the program authority or, if an exception to the requirements of this Article as provided in section 17-308 is requested and denied, within thirty (30) days of the date notice of the denial of such exception. Notice shall be deemed to be given on the date that it is mailed or is hand delivered.~~

~~(b) When reviewing the program authority's action, the City Council shall consider evidence and opinion presented by the aggrieved person, the program authority, and such other persons as shall be deemed by the City Council to be necessary for a complete review of the matter. The City Council may affirm, reverse or modify the program authority's action. The decision of the City Council shall be final, subject only to review by the Circuit Court as provided in Virginia Code § 10.1-603.13.~~

~~(c) For the purposes of this section, the term *person aggrieved* shall be limited to the owner, owners of adjacent or down-stream property, and any interested governmental agency or officer thereof.~~

SECTIONS 9-71-70 - 9-79. RESERVED.

ARTICLE IV. STREAM BUFFERS

SECTION 9-80. DUTY TO RETAIN OR ESTABLISH STREAM BUFFER.

- (a) Except as otherwise provided in this Article, any land adjacent to the following listed waters, and/or nontidal wetlands adjacent to these streams, shall provide buffers for the purposes of retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff:
- (1) Abrams Creek
 - (2) Town Run
 - (3) Hogue Run
 - (4) Buffalo Lick Run
 - (5) Redbud Run
- (b) A required stream buffer shall be no less than thirty-five (35) feet wide on each side of the stream, which buffer shall be measured horizontally from the top of the stream bank.
- (c) Existing stream buffers shall be retained, except as allowed in §9-83(d).

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- (d) Each required stream buffer shall be maintained and incorporated into the design of the land development to the fullest extent possible.
- (e) Within a required stream buffer, no indigenous vegetation shall be disturbed or removed, except as follows:
 - (1) Activities pertaining to the management of the stream buffer, identified in §9-81 of this Article;
 - (2) Development activities authorized in a stream buffer, identified in §9-83;
 - (3) Activities authorized in §9-82;
 - (4) Tilling, planting or harvesting of agricultural or horticultural crops in home gardens.
- (f) With respect to developments that are required to have an approved site plan, and involving land containing existing and/or required stream buffers, contour lines shall be shown at two-foot intervals. In any case where any proposed development

(Ord. No. 2007-14, 5-8-07)

SECTION 9-81. MANAGEMENT OF A STREAM BUFFER.

Each stream buffer required to be established or maintained pursuant to this Article shall be managed as provided herein:

- (a) The target vegetative cover in a stream buffer area shall be an indigenous riparian forest with ground cover, shrub and tree canopy layers.
- (b) Within twenty-five (25) feet of the top of the stream bank and on land classified as nontidal wetland:
 - (1) Indigenous riparian vegetation shall be preserved, or, where it does not exist, it shall be restored or allowed to evolve by natural succession;
 - (2) Dead, diseased, and dying trees may be removed;
 - (3) Fallen trees that are blocking stream channels, or trees with undermined root systems in imminent danger of falling, may be removed where stream bank erosion is a current or potential problem that outweighs any positive effects the fallen tree or trees may have on the stream ecosystem;
 - (4) Removal or pruning of invasive shrub and vine species is allowed, provided that such removal or pruning is done in a manner that prevents erosion;
 - (5) Unpaved pathways and trails may be constructed and maintained in a manner that will effectively control erosion and to minimize adverse impacts to the buffer, subject to applicable provisions of §9-83, below; and
 - (6) Stormwater channels may be constructed and maintained in a manner that will prevent erosion and minimize adverse impacts to the buffer.

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- (c) Beyond twenty-five (25) feet from the top of the stream bank to the limits of the required buffer:
- (1) Dead, diseased and dying trees may be removed;
 - (2) Trees 6 inches in diameter or greater, measured 48 inches from the ground, shall be preserved;
 - (3) Removal or pruning of invasive shrub and vine species shall be allowed, provided that such removal or pruning is done in a manner that prevents erosion; and
 - (4) Unpaved pathways and trails may be constructed and maintained in a manner that will effectively control erosion and minimize adverse impacts to the buffer, subject to applicable provisions of §9-83, below.
 - (5) Stormwater channels may be constructed and maintained in a manner that will prevent erosion and minimize adverse impacts to the buffer.
- (d) Where an existing structure (i.e. building, street, road, bridge, etc.) is located within the buffer, vegetation, not including the ground cover, can be removed within 15 feet of the structure. Removal of additional vegetation can be allowed if required by State or Federal requirements or if necessary for the health, safety or welfare of the City's citizens and approved by the City Engineer.

SECTION 9-82. DEVELOPMENT EXEMPT FROM STREAM BUFFER REQUIREMENTS.

The following types of development shall not be required to retain, establish or manage a stream buffer, provided that the requirements of this section are satisfied:

- (a) The construction, installation, operation and maintenance of electric, gas and telephone transmission lines, railroads, and activities of the Virginia Department of Transportation, and their appurtenant structures, which are accomplished in compliance with the Erosion and Sediment Control Law (Virginia Code §§10.1-560 et seq.) or an erosion and sediment control plan approved by the Virginia Soil and Water Conservation Board.
- (b) The construction, installation and maintenance by public agencies of water, sewer, electric and gas lines, including lines constructed by private entities for dedication to public agencies, provided that:
 - (1) To the extent practical, the location of such lines shall be outside required stream buffer areas;
 - (2) No more land shall be disturbed than is necessary to construct, install and maintain the water or sewer lines; and
 - (3) Construction, installation and maintenance of such lines shall comply with applicable federal, state and local requirements and permits and be conducted in a manner that protects water quality.

SECTION 9-83. DEVELOPMENT AUTHORIZED IN A STREAM

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BUFFER.

If otherwise authorized by applicable regulations of the City's zoning ordinance, the following land development activities shall be allowed in a stream buffer area, provided that the requirements of this section are satisfied and performance standards established by the program authority are met:

- (a) A building or structure which existed on the date of adoption of this Chapter may continue at such location. However, nothing in this section authorizes the continuance, repair, replacement, expansion or enlargement of such building or structure except as authorized by the City's zoning ordinance.
- (b) On-site or regional stormwater management facilities, and temporary erosion and sediment control measures, provided that:
 - (1) To the extent practical the location of such facilities shall be outside the stream buffer;
 - (2) No more land shall be disturbed than is necessary to provide for construction and maintenance of the facility;
 - (3) The facilities are designed and constructed so as to minimize impacts to the functional value of the stream buffer and to protect water quality; and
 - (4) Facilities located within a floodplain adhere to floodplain regulations and are designed and located, to the extent practical, to maintain their water quantity and/or water quality control value during flood conditions.
- (c) Water dependent facilities, passive recreation access (such as unpaved pathways and trails), historic preservation, and archaeological activities, provided that all applicable federal, state, and local permits are obtained.
- (d) Development in a stream buffer, where authorized by the program authority in the circumstances described below, may be allowed if a mitigation plan is submitted to and approved by the program authority pursuant to §9-84:
 - (1) On a lot which was of record prior to the date of adoption of this Chapter, if:
 - (i) Establishment or preservation of the stream buffer would result in the loss of a building site, and there are no other available building sites outside the stream buffer on the lot, or
 - (ii) The proposed development consists of redevelopment not exceeding the current level of encroachment resulting from existing improvements, or
 - (iii) The proposed development is for construction of an accessory building or structure (including, without limitation, an accessory apartment) permitted by the City's zoning ordinance.
 - (2) On a lot on which development within the stream buffer will consist

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- of an ecological/wetland restoration project;
- (3) On a lot on which the development in the stream buffer will consist of the construction and maintenance of a driveway or roadway, and the program authority determines that the stream buffer would prohibit reasonable access to a portion of the lot which is necessary for the owner to have a reasonable use of the lot;
 - (4) On a lot on which the development in the stream buffer will consist of the construction and maintenance of a paved pathway or trail not exceeding five (5) feet in width;
 - (5) On a lot which was of record prior to the date of adoption of this Chapter, on which development within the stream buffer will consist of the construction, installation and maintenance of water and sewer facilities or sewage disposal systems, and the program authority determines that the stream buffer would prohibit the practicable development of such facilities or systems.
 - (6) On a lot on which the development in the stream buffer will consist of the construction and maintenance of the Green Circle Trail System.

(Ord. No. 2007-14, 5-8-07)

SECTION 9-84. MITIGATION PLAN REQUIRED.

Each owner who seeks to develop in a stream buffer pursuant to §9-83(d) shall submit to the program authority for review and approval a mitigation plan as provided herein:

- (a) The owner shall submit a mitigation plan that satisfies the applicable requirements of this section; the required fee, as set forth within the most recent fee schedule approved by City Council; and a certification stating that all requirements of the approved plan will be complied with.
- (b) The mitigation plan shall be reviewed by the program authority to determine whether it complies with the requirements of this section and all other requirements of this Article. The program authority shall approve or disapprove a mitigation plan within 30 days of the date that a complete plan was accepted for review. The decision shall be in writing and shall be communicated to the owner. If the plan is disapproved, the reasons for such disapproval shall be stated in the decision.
- (c) Each mitigation plan shall:
 - (1) Identify the impacts of proposed development on water quality and lands within the stream buffer;
 - (2) Identify the alternatives to development in the stream buffer that have been explored by the applicant;
 - (3) Ensure that, where development does take place within a stream buffer, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of the stream buffer;

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- (4) Demonstrate and assure that development will be conducted using best management practices;
 - (5) Specify mitigation which will address water quality and stream buffer impacts; and
 - (6) Contain other information requested by the program authority.
- (d) Each mitigation plan shall be evaluated by the program authority based on the following criteria:
- (1) Whether all reasonable alternatives to development in the stream buffer have been explored and exhausted;
 - (2) Whether the development in the stream buffer is the minimum necessary and is to be conducted in a manner that will be least disruptive to the natural function of the stream buffer; and
 - (3) Whether best management practices will effectively mitigate adverse impacts from the encroachment on the stream buffer and its natural functions.

SECTION 9-85. INSPECTIONS

The program administrator shall inspect any land subject to establishing a vegetated stream buffer to insure that the buffers are installed as per the criteria outlined in Article IV.

SECTIONS 9-86 - 9-89. RESERVED.

ARTICLE V. STORM SEWER DISCHARGES

SECTION 9-90. FINDINGS AND DETERMINATIONS.

- (a) Pollutants in stormwater from many sources are largely uncontrolled and have an adverse impact upon the quality of receiving waters. Major sources of stormwater that cause water quality impacts include construction sites, illicit connections, illegal discharges and industrial activities.
- (b) Amendments to the Federal Clean Water Act (CWA) in 1987 required the United States Environmental Protection Agency to establish National Pollutant Discharge Elimination System (NPDES) requirements for municipal separate storm sewer (MS4) systems. NPDES regulations require the City to control through ordinance, permit, contract or other available means (collectively, the City's "stormwater management program") the contribution of pollutants into waters of the United States.

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- (c) This Article is adopted as an integral part of the City's stormwater management program.

SECTION 9-91. DISCHARGES TO THE CITY'S STORM SEWER SYSTEM.

- (a) It shall be unlawful and a violation of this Article to:
- (1) Throw, drain, or otherwise discharge into the City's storm sewer system any pollutants or waters containing pollutants other than stormwater;
 - (2) Connect, or cause or allow to be connected, any sanitary sewer to the storm sewer system, any such connections owned or authorized by the City prior to April 11, 2006;
 - (3) Cause or allow any illicit connection to the City's storm sewer system; or
 - (4) Violate any condition or provision of this Article, or any permit or approval granted to allow any stormwater discharges to the City's storm sewer system.
- (b) Subject to the provisions of subsection (c) of this section, the following activities shall not be considered illicit discharges:
- (1) Water line flushing;
 - (2) Landscape irrigation;
 - (3) Diverting stream flows or rising groundwater, or infiltration of uncontaminated groundwater;
 - (4) Public safety activities, including, but not limited to, law enforcement and fire fighting;
 - (5) Pumping of uncontaminated groundwater from potable water sources, foundation drains, irrigation waters, springs, or water from crawl spaces or footing drains;
 - (6) Lawn watering;
 - (7) Individual car washing on residential properties;
 - (8) De-chlorinated swimming pool discharges (less than 1 PPM chlorine);
 - (9) Street washing;
 - (10) Any activity authorized by a valid National Pollutant Discharge Elimination System (NPDES) permit, waiver or discharge order, a Virginia Pollutant Discharge Elimination System (VPDES) permit, waiver or discharge order, or a Virginia Pollution Abatement (VPA) permit;
 - (11) Any activity by a governmental entity in accordance with Federal, state, and local regulations and standards for the maintenance or repair of drinking water reservoirs or drinking water treatment or distribution systems; and
 - (12) Any activity by the City, its employees and agents, in accordance with federal, state and local regulations and standards, for the maintenance of any component of its stormwater management system.
 - (13) Discharges specified in writing by the director as being necessary to protect public health and safety.

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(14) Dye testing, following notification to the City engineer.

- (c) If any of the activities listed in subsection (b), above, of this section are found to be sources of pollutants to public waters, the Program Authority (as defined in §9-5 of this Chapter) shall so notify the person performing such activities and shall order that such activities be stopped or conducted in such manner as to avoid the discharge of pollutants into such waters. The failure to comply with any such order shall be unlawful and a violation of this Article.

SECTION 9-92. WATERCOURSE PROTECTION.

Every person owning property through which a watercourse passes, or such a person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

SECTION 9-93. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of such compliance may be required in a form acceptable to the Program Authority prior to allowing discharges to the City's storm sewer system.

SECTION 9-94. INSPECTIONS AND MONITORING.

- (a) The Program Authority shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this ordinance. The Program Authority shall have authority to carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with the provisions of this Article, including the prohibition of illicit discharges to the storm sewer system. The Program Authority may monitor stormwater outfalls or other components of the municipal storm sewer system as may be appropriate in the administration and enforcement of this Article.
- (b) The Program Authority shall have the authority to require pollution prevention plans from any person whose discharges cause or may cause a violation of a VPDES permit.

SECTION 9-95. ENFORCEMENT, PENALTIES, REMEDIES.

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- (a) A willful violation of the provisions of this Article shall constitute a Class 1 misdemeanor. Each day that a continuing violation of this Article is maintained or permitted to remain shall constitute a separate offense.

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- (b) Any person who commits any act prohibited by this Article shall be liable to the City for all costs of testing, containment, cleanup, abatement, removal and disposal of any substance unlawfully discharged into the storm sewer system.
- (c) Any person who commits any act prohibited by this Article shall be subject to a civil penalty in an amount not to exceed one thousand dollars (\$1,000.00) for each day that a violation continues. The court assessing such penalty may, at its discretion, order that the penalty be paid into the treasury of the City for the purpose of abating, preventing or mitigating environmental pollution.
- (d) The City may bring legal action to enjoin the continuing violation of this Article. The existence of any other remedy, at law or in equity, shall be no defense to any such action.
- (e) The Program Authority shall have authority to order that any activity found to be in violation of this Article be stopped or conducted in such a manner as to avoid the discharge of sewage, industrial wastes or other wastes into the storm sewer system.
- (f) Any discharge caused or permitted to exist in violation of any provisions of this Article constitutes a threat to the public health, safety and welfare, and is hereby declared and deemed a public nuisance. Following receipt of written notice of such nuisance from the Program Authority, if the responsible person fails to abate or obviate such nuisance, then the City may do so and charge and collect the cost thereof from the responsible person, in any manner provided by law (including, without limitation, any manner provided by law for the collection of state or local taxes).
- (g) The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable Federal, State or local law.
- (h) The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one or more of the remedies set forth herein has been sought or granted.

WATER PROTECTION

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CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 11/19/13 (work session), **CUT OFF DATE:** 11/13/13

RESOLUTION **ORDINANCE** X **PUBLIC HEARING**

ITEM TITLE:

TA-13-138 AN ORDINANCE TO AMEND AND REENACT ARTICLES 18, 21, 23, AND 14.2 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SIGNS, VIOLATION AND PENALTY, FEES, AND CORRIDOR ENHANCEMENT. (Revision to temporary sign provisions and permit requirements)

STAFF RECOMMENDATION:

Approval.

PUBLIC NOTICE AND HEARING:

****Public hearing held on 10/22/13****

ADVISORY BOARD RECOMMENDATION:

Planning Commission recommended approval.

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Planning			<u>11/13/13</u>
2. City Attorney			<u>11/13/2013</u>
3. City Manager			<u>11-14-13</u>
4. Clerk of Council			

Initiating Department Director's Signature: 11/13/13
(Zoning and Inspections)



APPROVED AS TO FORM:

CITY ATTORNEY 11/13/2013

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

AMG From: Aaron Grisdale, Director of Zoning and Inspections

Date: November 19, 2013

Re: O-2013-14, Zoning Text Amendment (TA-13-138) – Temporary Signs

THE ISSUE:

The proposed Zoning Ordinance text amendment will modify the existing Zoning Ordinance language pertaining to temporary signs, fees, and penalties.

RELATIONSHIP TO STRATEGIC PLAN:

This text amendment correlates to the 2018 Goal #4 of “Create a More Livable City for All” as well as the policy agenda item of City Gateway Beautification for the major entrance corridors of the City.

BACKGROUND:

Council considered this item during their April 23rd work session, and held a public hearing on June 11, 2013. After hearing concerns from several local entities and businesses during the public hearing, staff held meetings with the Chamber of Commerce, Museum of the Shenandoah Valley, and other interested local businesses. As a result of these meetings and conversations, staff has prepared changes to the proposed text amendment to incorporate some of the concerns and recommendations of these groups.

In the first week of August, staff submitted the revised draft of the zoning text amendment to the Chamber of Commerce. The Chamber provided the updated proposed ordinance with changes to its members, who then provided feedback and comments to staff.

September 3, 2013 - Update

During the Council work sessions on August 20th and 27th this item was discussed with Council. Council provided direction to eliminate the permit requirement, consider an alternate allocation of temporary signage that is proportional to the amount of lot frontage and set a maximum number of temporary signs per property.

This version of the text amendment, Draft 7, includes the aforementioned revisions desired by Council. The temporary sign permit provisions were removed, and an allocation of temporary signs proportional to the amount of frontage on a public street was included. The proposed allocation allows for one temporary sign per 50-feet of public street frontage with a maximum of four signs per property. The previously included maximum size, required setback, and height provisions were maintained from the previous version. Two tables were included in this draft to help make the ordinance easier to read and understand.(Full staff report attached).

November 19, 2013 – Update

During the October 22, 2013 special meeting of City Council, there were three minor revisions that were included in the temporary sign ordinance, which different from the version Council reviewed during the first reading on September 10, 2013. First, there was an increase to the size of residential real estate signs to 8 square feet. Secondly, “university campus” was explicitly listed under the *Development Banner* provisions of Section 18-8-12.2l, along with an increase of the maximum size of such signs to 10 square feet. Lastly, a the word “banner” was deleted from the “Temporary banner advertising signs” included in Section 18-8-12.3a in order to remove an unintended restriction on the types of sign material, and make the ordinance more inclusive.

BUDGET IMPACT:

No funding is required.

OPTIONS:

- Adopt the Zoning Ordinance Text Amendment
- Decline to adopt the Zoning Ordinance Text Amendment

RECOMMENDATIONS:

Planning Commission and staff recommend approval.

TA-13-138 AN ORDINANCE TO AMEND AND REENACT ARTICLES 18, 21, 23, AND 14.2 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SIGNS, VIOLATION AND PENALTY, FEES, AND CORRIDOR ENHANCEMENT.

REQUEST DESCRIPTION

This publicly sponsored text amendment is to serve as a refinement of the existing temporary sign ordinances, and provide clearer standards pertaining to size, number, and duration of display for such temporary signs. Additionally, the amendment will shorten the appeal period for sign violations.

STAFF COMMENTS

Presently, the Zoning Ordinance is vague when setting standards for temporary signs throughout the City. Many classifications of signs do not have a maximum size, limit for the number or time duration limitation. This proposed amendment seeks to provide clearer standards for temporary signs, while still allowing flexibility for individuals, groups, and businesses to conduct outside advertising on site.

The major changes include:

- Establishing maximum size, setback requirements, duration limitations, height and allowable number of sign standards for several classifications of signs.
- Creating and modifying definitions of several types of signs to make the Zoning Ordinance easier to interpret for citizens and business owners.
- Creation of a requirement for a temporary sign permit for several classifications of temporary commercial signs.
- Shortening the appeal period for temporary sign violations from 30 days to 10 days.
- Clarify standards for electronic message board signs, specifically as to the frequency of message changes.

As the Zoning Ordinance is currently constituted, enforcement of temporary signs is time and labor intensive. Absent a temporary sign permit requirement, there is no staff check or review on proposed temporary signage or trigger to initiate conversations between a business owner and staff to discuss regulations. When staff does identify a sign violation, the current appeal period of thirty (30) days results in a significant lag between notice of violation and resolution; with a shortened appeal period of ten (10) days, staff can more quickly initiate other enforcement measures such as civil penalties or court action, if needed. The changes proposed within the amendment will allow for expedited enforcement of such violations.

As part of City Council's Strategic Plan, the "Vision 2028" includes the establishment of Winchester as "a Beautiful, Historic City and a Hometown for Families." Having clear sign standards is important for the creation of a beautiful City, by creating harmonious neighborhoods and proportional sign standards. Furthermore, the Winchester Comprehensive Plan calls for Winchester to be a "Community of Choice" and reducing sign clutter and improving the overall appearance of the community can contribute towards that goal.

Lastly, the proposed amendment will benefit businesses by continuing to allow for a variety of options and flexibility for conducting as needed temporary advertisements, thus resulting in a growing economy.

UPDATE For Council Work Session 8/20/13:

City Staff has had discussions with several businesses and organizations including the Chamber of Commerce regarding this temporary sign ordinance. As a result of the concerns that were voiced during Council's public hearing as well as the questions and concerns brought up during these other discussions, staff has proposed a few revisions to this text amendment. Earlier in August, staff provided a copy of the updated zoning text amendment to the Chamber of Commerce to solicit comments and feedback from the revisions. Staff believes that this draft of the text amendment balances the input received from the local community as well as the steps needed to bring the City's Zoning Ordinance closer in line with Council's Strategic Plan. Specifically the changes include:

- A change to exempt government signs from the requirements of the sign ordinance; such signs include but are not limited to street signs, highway markers, and traffic control devices. (Section 18-8-2.4)
- Adding language to ensure that political campaign signs are only installed on private property with the consent of the property owner. (Section 18-8-12.2c)
- Adding language to special event signs to allow for them to be located on public property with approval of the City Manager or his designee. This was to ensure there is no conflict with special event signs that may be placed on the public right-of-way along the Loudoun Street Mall with special approval. (Section 18-8-12.2e)
- A change to signs for outdoor sales of merchandise to allow for a temporary sign for outside vendors and outdoor display of merchandise associated with a permit on the Loudoun Street Mall. (Section 18-8-12.2f)
- Allowing for a temporary "OPEN" business flag sign affixed to the building. Such signs may not exceed 15 square feet. (Section 18-8-12.2i)
- Adding language to allow for development banners to be affixed to poles inside of a commercial shopping center or medical campus, provided such signs do not exceed 6 square feet. (Section 18-8-12.2j)
- Adding clarifying language that incidental price or advertising signs, such as the small signs on the top of a fuel pump or a price sign on a vehicle or other merchandise does not require a sign permit. (Section 18-8-12.2k)
- A change to the allocation of portable signs on a property from one sign per street frontage to one sign per business; with the caveat that no more than two signs be located within 100-feet of each other within the limits of the development, similar to the current regulations for permanent directional signs. This change will allow greater flexibility on larger parcels that contain numerous business tenants. (Section 18-8-12.3c)
- Increasing the number of temporary sign permits that can be issued per year from three to four; and changing the allocation from permits per property, to permits per business/tenant. (Section 18-8-12.3)
- Adding a classification of signs for regional tourism destinations. This will allow for unique properties that serve as a regional draw for tourists, such as the Museum of Shenandoah Valley and the Winchester Frederick County Visitor Center, to display advertisements for special events/displays. (Section 18-8-12.3e)
- Clarifying the definition of a "Portable Price or Advertising Sign" to eliminate the inclusion of portable flag signs, since they are already prohibited elsewhere in the Ordinance. (Section 18-8-18.17)

- Clarifying the definition of “Temporary Sales Sign” for special temporary permitted sales events such as fireworks or Christmas tree sales; and clarifying that these signs do not include the temporary signs in the Primary and Secondary Assessment districts. (Section 18-8-18.19)
- Changing the proposed temporary sign permit fee from \$40 to \$25 per permit. (Section 23-8-12)

Update For Council Meeting 9/3/13:

During the Council work sessions on August 20th and 27th this item was discussed with Council. Council provided direction to eliminate the permit requirement, consider an alternate allocation of temporary signage that is proportional to the amount of lot frontage and set a maximum number of temporary signs per property.

This version of the text amendment, Draft 7, includes the aforementioned revisions desired by Council. The temporary sign permit provisions were removed, and an allocation of temporary signs proportional to the amount of frontage on a public street was included. The proposed allocation allows for one temporary sign per 50-feet of public street frontage with a maximum of four signs per property. If a property has multiple street frontages then each frontage will be included in the calculation. If a property does not meet the required 50-foot frontage requirement, they will be permitted to have one temporary sign.

The previously included maximum size, required setback, and height provisions were maintained from the previous version. Two tables were included in this draft to help make the ordinance easier to read and understand. Lastly, a provision was included to keep minimum spacing on site. The proposed spacing requirement is tied to the speed limit of the street that the property fronts upon. If the posted speed limit is 25 miles per hour or less, the spacing required will be 50-feet. For streets with a higher travel speed and higher speed limit the spacing requirement will be increased to 75-feet.

Update for Council Work Session 11/19/13:

During the October 22, 2013 special meeting of City Council, there were three minor revisions that were included in the temporary sign ordinance, which different from the version Council reviewed during the first reading on September 10, 2013. First, there was an increase to the size of residential real estate signs to 8 square feet. Secondly, “university campus” was explicitly listed under the *Development Banner* provisions of Section 18-8-12.2l, along with an increase of the maximum size of such signs to 10 square feet. Lastly, a the word “banner” was deleted from the “Temporary banner advertising signs” included in Section 18-8-12.3a in order to remove an unintended restriction on the types of sign material, and make the ordinance more inclusive.

RECOMMENDATION

During their April 16, 2013 meeting, the Planning Commission unanimously recommended approval and adoption of this text amendment because it represents good planning practice by providing for reasonable standards for temporary signs while allowing flexibility for citizens and businesses to conduct temporary advertisements and announcements.

Current vs. Proposed Temporary Sign Regulations

Type of Sign	Current Max. Size	Proposed Max. Size	Current Max. Display Period	Max. Display Period	Current Max. # of Signs	Proposed Max #	Setback	Permit Required	Height	Special
Construction Signs	None	4 SF (resid.) / 16 SF (non-resid.)	None	Completion of Project	None	1 per Contractor	None	No	None	
Real Estate Signs	None	8 SF (resid. < 2 acres) / 12 SF (resid. >= 2 acres) & 16 SF (non-res. < 2 acres) / 32 SF (non-res >= 2 acres)	None	Completion of Sale / Rental / Lease	None	1 per frontage	None	No	None	
Political Campaign Signs	None	None	Removed NLT 14 days after event	Removed NLT 14 days after event	None	None	None	No	None	
Street Banners	None	None	14 days before/after event	14 days before/after event	None	None	N/A	Yes, City Council	None	
Civic/Fraternal/Charitable Event Sign	None	None	Removed NLT 5 days after event	Removed NLT 5 days after event	None	None	None	No	None	
Signs advertising storage of materials	None	None	None	None	None	None	None	No	None	Not visible from off-site
Yard Sale Sign	2 SF	4 SF	From 8:00a-6:00p day of sale	3 days prior, removed upon completion	One	One	None	No	None	
Development Banner	N/A	10 SF	N/A	None	N/A	None	None	No	None	Minimum 50 feet of spacing between signs

Current vs. Proposed Temporary Sign Regulations

Type of Sign	Current Max. Size	Proposed Max. Size	Current Max. Display Period	Max. Display Period	Current Max. # of Signs	Proposed Max #	Setback	Permit Required	Height	Special
Temporary Advertising Signs	None	16 SF	10 days	10 days / month	None	1 per 50 ft of street frontage (max 4)	5 feet	No	4 feet*	*Unless attached to building **If speed limit <= 25 MPH, 50-ft of spacing between signs. If speed limit > 25 MPH, 75-ft of spacing between signs.
Temporary business identification	N/A	16 SF	N/A	45 days	N/A	1 per business/tenant	5 feet	No	4 feet*	*Unless attached to building
Portable Price/Advertising Sign	20 SF	16 SF	None	30 days (except for Downtown Assess. Districts)	1 per street frontage	1 per 50 ft of street frontage (max 4)	5 feet	No	4 feet	*If speed limit <= 25 MPH, 50-ft of spacing between signs. If speed limit > 25 MPH, 75-ft of spacing between signs.
Temporary Event Signs	N/A	12 SF	N/A	Duration of Event	None	2 per event	5 feet	No	4 feet	^Max 4 sign permits/year per property
Non-commercial Sign	N/A	12 SF	N/A	None	N/A	1 per property (residential properties 1/res. Unit)	None	No	4 feet	Not affixed to wall, fence, structure, vehicle, or landscaping.
Open Flag Sign	N/A	15 SF	N/A	Only during operational hours	N/A	1	None	No	None	Sign bears the word "OPEN" no additional logo or text
Incidental Price / Advertising Sign	N/A	2 SF	N/A	None	**	None	None	No	None	** 1 sign per gasoline pump; 1 sign per item displayed for sale

TA-13-138

Text Amendment to Amend and Reenact Articles 18, 21, 23,
and 14.2 of the Winchester Zoning Ordinance (Temporary
Signs)

Background and Purpose of Ordinance

- Desire to have clean attractive thoroughfares throughout the City, which temporary signs play a large part
- Comprehensive Plan calls for Winchester to be the “Community of Choice”
- City Council’s Strategic Plan
 - Vision 2028: Calls for Winchester to be a “Beautiful, Historic City”
 - Goal #4: Create a More Livable City for All
 - Policy Agenda Item: “City Gateway Beautification” for the major entrance corridors of the City

Current Temporary Sign Ordinance

- Presently, most temporary sign standards do not contain clear limits on size, duration, and number of temporary signs.
- No permit is required for most temporary signs.
- Appeal period for temporary sign violations is 30-days.
- Corridor Enhancement (CE) Overlay Districts have stricter sign codes (Valley Avenue, Amherst Street, Cedar Creek Grade, S. Pleasant Valley/E. Cork Street, Berryville Avenue) than the Historic Winchester (HW) District.

Current Temporary Sign Ordinance (cont'd)

- Adopted Corridor Enhancement Districts:
 - Valley Avenue and Berryville Avenue:
 - Banners and pennants are prohibited; portable and temporary signs should not be used.
 - Amherst Street, Cedar Creek Grade, S. Pleasant Valley Rd, E. Cork Street:
 - Portable signs, temporary signs, banners, and pennants are prohibited.

Sign Clutter



Sign Clutter Continued



Sign Clutter Continued

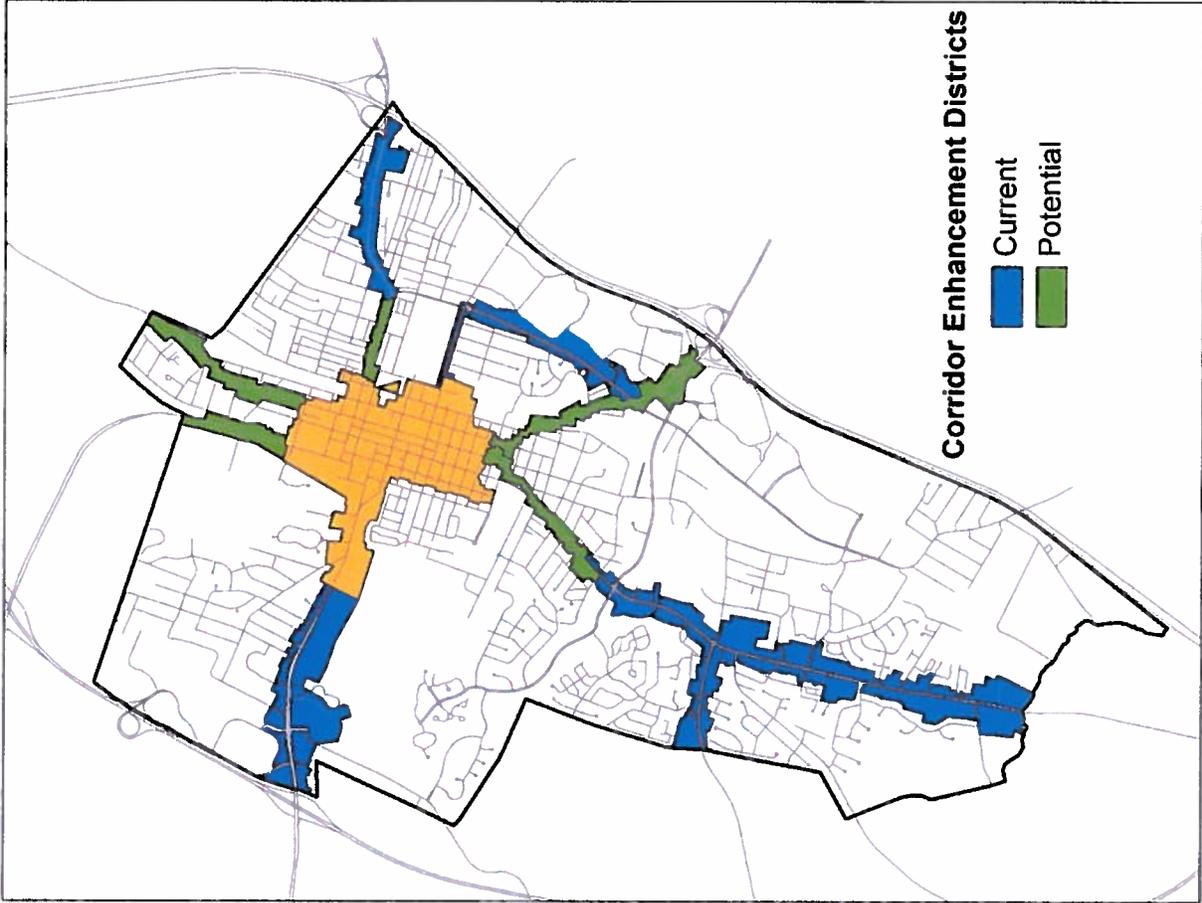


Proposed Temporary Sign Ordinance

- Balance the interests of businesses, civic organizations, and non-profits to conduct temporary advertisements with the goals outlined in City Council's Strategic Plan
- Clearly define: time, place, and number of permitted signs
- Create several definitions to clarify types of signs
- Create shorter appeal period for sign violations (from 30 days to 10 days).

Corridor Enhancement / Historic District Changes

- Current ordinance has stricter standards in the CE district than in the HW district
- Proposed ordinance will make the standards more uniform
- Use of banners and pennants will be prohibited now in the Historic Winchester District to mirror CE district regulations
- Includes one exception for properties in CE/HW districts to display one sign outlined in Section 18-8-12.2 (charity event sign, construction sign, etc.)



Existing Prohibited Signs



Changes Since August Work Sessions

- Changes to the text amendment since the two August Council Work Sessions:
 - At the August 27th Council work session, Council forwarded the ZTA with a request to staff to eliminate the permit process and change the allocation of temporary signs.
 - As a result of the above Council action staff made the following changes to the ZTA:
 - Changed the allocation of temporary signs from a per business/tenant allocation to one sign per 50 feet of street frontage allocation (with a maximum of 4 signs per property). This is a change to recognize that there are numerous properties throughout the City of Winchester that have multiple tenants in a commercial building. (Section 18-8-12.3)
 - Eliminated the temporary sign permit requirement
 - Provided a spacing requirement for temporary signs on a parcel, so no more than two temporary signs can be located within a 50-foot area if the speed limit is 25 MPH or less, and 75-feet of spacing if the speed limit exceeds 25 MPH. This is included to help reduce sign clutter. (Section 18-8-12.3)

Changes Since August (Cont'd)

- In addition to the council directed changes, staff proposed some minor revisions since August 27th:
 - The ordinance would take effect 90 days after adoption in order to ensure time for the education of the public and businesses.
 - Modified the maximum size of residential real estate signs from 4 SF to 8 SF after additional discussions with local realtors. (Section 18-8-12.2b)
 - Included “university campus” under the *Development Banner* provisions and increased the maximum size to 10 SF. (Section 18-8-12.2l)
 - Eliminated the word “banner” from *Temporary Advertising Banner Signs*. This was to resolve an unintended restriction of temporary signs, resulting in a more inclusive ordinance. (Section 18-8-12.3a and Table 18-8-12.3)

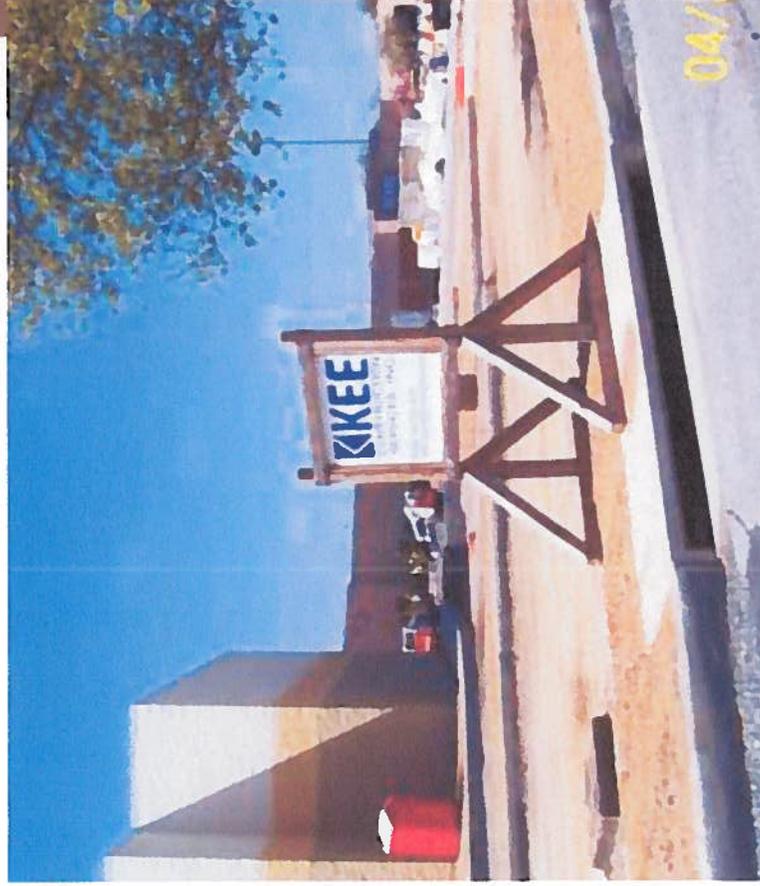
Current versus Proposed Regulations

Type of Sign	Current Max. Size	Proposed Max. Size	Current Max. Display Period	Max. Display Period	Current Max. # of Signs	Proposed Max #	Setback	Permit Required	Height	Special
Construction Signs	None	4 SF (resid.) / 16 SF (non-resid.)	None	Completion of Project	None	1 per Contractor	None	No	None	
Real Estate Signs	None	8 SF (resid. < 2 acres) / 12 SF (resid. >= 2 acres) & 16 SF (non-res. < 2 acres) / 32 SF (non-res >= 2 acres)	None	Completion of Sale / Rental / Lease	None	1 per frontage	None	No	None	
Political Campaign Signs	None	None	Removed NLT 14 days after event	Removed NLT 14 days after event	None	None	None	No	None	
Street Banners	None	None	14 days before/after event	14 days before/after event	None	None	N/A	Yes, City Council	None	
Civic/Fraternal/Charitable Event Sign	None	None	Removed NLT 5 days after event	Removed NLT 5 days after event	None	None	None	No	None	
Signs advertising storage of materials	None	None	None	None	None	None	None	No	None	Not visible from off-site
Yard Sale Sign	2 SF	4 SF	From 8:00a-6:00p day of sale	3 days prior, removed upon completion	One	One	None	No	None	
Development Banner	N/A	10 SF	N/A	None	N/A	None	None	No	None	Minimum 50 feet of spacing between signs

Current versus Proposed Regulations (cont'd)

Type of Sign	Current Max. Size	Proposed Max. Size	Current Max. Display Period	Max. Display Period	Current Max. # of Signs	Proposed Max #	Setback	Permit Required	Height	Special
Temporary Advertising Signs	None	16 SF	10 days	10 days / month	None	1 per 50 ft of street frontage (max 4)	5 feet	No	4 feet* *Unless attached to building **If speed limit <= 25 MPH, 50-ft of spacing between signs. If speed limit > 25 MPH, 75-ft of spacing between signs.	
Temporary business identification	N/A	16 SF	N/A	45 days	N/A	1 per business/tenant	5 feet	No	4 feet* *Unless attached to building	
Portable Price/Advertising Sign	20 SF	16 SF	None	30 days (except for Downtown Assess. Districts)	1 per street frontage	1 per 50 ft of street frontage (max 4)	5 feet	No	4 feet *If speed limit <= 25 MPH, 50-ft of spacing between signs. If speed limit > 25 MPH, 75-ft of spacing between signs.	
Temporary Event Signs	N/A	12 SF	N/A	Duration of Event	None	2 per event	5 feet	No	4 feet ^Max 4 sign permits/year per property	
Non-commercial Sign	N/A	12 SF	N/A	None	N/A	1 per property (residential properties 1/res. Unit)	None	No	4 feet Not affixed to wall, fence, structure, vehicle, or landscaping.	
Open Flag Sign	N/A	15 SF	N/A	Only during operational hours	N/A	1	None	No	None	Sign bears the word "OPEN" no additional logo or text
Incidental Price / Advertising Sign	N/A	2 SF	N/A	None	**	None	None	No	None	** 1 sign per gasoline pump; 1 sign per item displayed for sale

Construction Signs



Type of Sign	Current Max. Size	Proposed Max. Size	Current Max. Display Period	Max. Display Period	Current Max. # of Signs	Proposed Max #	Setback	Permit Required	Height	Special
Construction Signs	None	4 SF (resid.) / 16 SF (non-resid.)	None	Completion of Project	None	1 per Contractor	None	No	None	

Real Estate Signs



Type of Sign	Current Max. Size	Proposed Max. Size	Current Max. Display Period	Max. Display Period	Current Max. # of Signs	Proposed Max #	Setback	Permit Required	Height	Special
Real Estate Signs	None	8 SF (resid. < 2 acres) / 12 SF (resid. >= 2 acres) & 16 SF (non-res. < 2 acres) / 32 SF (non-res >= 2 acres)	None	Completion of Sale / Rental / Lease	None	1 per frontage	None	No	None	

Civic, Fraternal, Charitable Event Signs



Type of Sign	Current Max. Size	Proposed Max. Size	Current Max. Display Period	Max. Display Period	Current Max. # of Signs	Proposed Max #	Setback	Permit Required	Height	Special
Civic/Fraternal/Charitable Event Sign	None	None	Removed NLT 5 days after event	Removed NLT 5 days after event	None	None	None	No	None	

Development Banner



Type of Sign	Current Max. Size	Proposed Max. Size	Current Max. Display Period	Max. Display Period	Current Max. # of Signs	Proposed Max #	Setback	Permit Required	Height	Special
Development Banner	N/A	10 SF	N/A	None	N/A	None	None	No	None	Minimum 50 feet of spacing between signs

Portable Signs



Portable Advertising Sign



Portable Feather Flag Sign



Portable A-frame Sign

Type of Sign	Current Max. Size	Proposed Max. Size	Current Max. Display Period	Max. Display Period	Current Max. # of Signs	Proposed Max #	Setback	Permit Required	Height	Special
Portable Price/Advertising Sign	20 SF	16 SF	None	30 days (except for Downtown Assess. Districts)	1 per street frontage	1 per 50 ft of street frontage (max 4)	5 feet	No	4 feet	* If speed limit <= 25 MPH, 50-ft of spacing between signs. If speed limit > 25 MPH, 75-ft of spacing between signs.

Temporary Advertising Signs



Temporary Banner Sign



Temporary Banner Sign



Temporary Banner Sign



Temporary Banner Signs

Type of Sign	Current Max. Size	Proposed Max. Size	Current Max. Display Period	Max. Display Period	Current Max. # of Signs	Proposed Max # of street frontage (max 4)	Setback	Permit Required	Height	Special
Temporary Advertising Signs	None	16 SF	10 days	10 days / month	None	1 per 50 ft of street frontage (max 4)	5 feet	No	4 feet*	* Unless attached to building ** If speed limit <= 25 MPH, 50-ft of spacing between signs. If speed limit > 25 MPH, 75-ft of spacing between signs.

Additional Provisions

- Prohibits signs or devices that are designed to be set in motion by the atmosphere, including pennants, propellers, discs, and similar devices.
- Changes the time for appeal to Board of Zoning Appeals from 30 days to 10 days
- Includes clearer standards for electronic message board signs

Questions?



RESOLUTION ADOPTING AN ORDINANCE TO AMEND AND REENACT ARTICLES 18, 21, 23, AND 14.2 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SIGNS, VIOLATION AND PENALTY, FEES, AND CORRIDOR ENHANCEMENT.

TA-13-138

WHEREAS, the Code of Virginia provides that one of the purposes of a Zoning Ordinance is to facilitate the creation of a convenient, attractive and harmonious community; and

WHEREAS, the Zoning Ordinance sign provisions have been established in order to ensure that signs are appropriate to the land, building, or use to which they are appurtenant and are adequate, but not excessive, for their intended purpose; and,

WHEREAS, the proposed Ordinance amendments will provide clearer established parameters for the size, location, and duration of display for temporary signs; and,

WHEREAS, in order to facilitate a dynamic and thriving community, uniform sign standards will allow for flexible opportunities for businesses, individuals, and other entities to communicate with the community.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Winchester hereby adopts the following text amendment, which shall become effective ninety (90) days following the date of adoption:

AN ORDINANCE TO AMEND AND REENACT ARTICLES 18, 21, 23, AND 14.2 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SIGNS, VIOLATION AND PENALTY, FEES, AND CORRIDOR ENHANCEMENT.

TA-13-138

DRAFT 8 – 10/22/13

*Ed. Note: The following text represents excerpts of the Zoning Ordinance that are subject to change. Words with ~~strikethrough~~ are proposed for repeal. Words that are **boldfaced and underlined** are proposed for enactment. Existing ordinance language that is not included here is not implied to be repealed simply due to the fact that it is omitted from this excerpted text.*

WINCHESTER ZONING ORDINANCE

ARTICLE 18

SECTION 18-8. SIGNS.

- 18-8-1 INTENT. The intent of this Article is to establish limitations on signs in order to **ensure** ~~insure~~ that they are appropriate to the land, building, or use to which they are appurtenant and are adequate, but not excessive, for their intended purpose. Any widespread display of outdoor advertising is considered inappropriate to the character and sound development of the City, and it is intended by this Article that the streets and highways in the City shall not be made available for such display.
- 18-8-2 PERMIT REQUIRED. A sign permit shall be required before a sign is erected, altered, or relocated, except as otherwise provided herein.
- 18-8-2.1 **Applications**. Each application for such permit shall be accompanied by plans showing the area of the sign; the size, character, and design proposed; the method of illumination, method of fastening such sign; the name and address of the sign owner and of the sign erector. Fees for sign permits shall be in accordance with the schedule of fees for building permits as adopted by the City Council. A sign permit shall become null and void if the work for which the permit was issued has not been completed with a period of six (6) months after the date of issuance of the permit.
- 18-8-2.2 **Permit Exceptions**. A permit shall not be required for the following; but such signs shall be subject to any and all applicable provisions of this Ordinance:
- a. Any **permanent** sign four (4) square feet or less in area.
 - b. Repainting without changing wording, composition, or color, or minor nonstructural repairs.
 - c. Changing the wording ~~or face of~~ a sign that was erected in accordance with the provisions of this Article.
 - d. Temporary signs and signs painted on or hung behind windows as permitted in all districts under Section 18-8-12, **except as provided in this Ordinance**. (10/09/01, Case No. TA-01-05)

- e. Signs indicating the location of a community garden or market garden, provided that such signs shall not exceed four (4) square feet in area and shall not exceed six (6) feet in height. Such signs may include information, identification, and sponsorship reference. (10/12/10, Case TA-10-418, Ord. No. 2010-51)

18-8-2.3 **Unless otherwise provided for within this Ordinance, all signs, temporary or permanent, shall be set back from the front property line by a minimum of five (5) feet, except within the B-1 and RB-1 districts.**

18-8-2.4 **The requirements of this section shall not apply to any permanent or temporary signs issued or installed by the state, local government, any political subdivision thereof, or the employees or agents of such entities.**

18-8-11 SIGNS PERMITTED IN THE HW DISTRICT. No ~~permanent~~ sign shall be erected or altered in the Historic Winchester (**HW**) District until a Certificate of Appropriateness has been issued by the **Zoning Administrator or Board of Architectural Review, unless otherwise provided in this Ordinance.** These signs are subject to the provisions of Article 14 and design guidelines as may be adopted by the Board of Architectural Review. Signage shall not be internally illuminated. **Roof mounted signs, banners, and pennants are prohibited, with the exception that one sign provided in Section 18-8-12.2 may be installed per property in accordance with the provisions of that Section.** (9/11/01, Case TA-01-02, Ord. No. 029-2001; 3/8/05, TA-04-08, Ord. No. 007-2005)

18-8-11.1 **SIGNS PERMITTED IN THE CE DISTRICTS. No sign shall be erected or altered in one of the Corridor Enhancement (CE) Districts until a Certificate of Appropriateness has been issued by the Planning Department, unless otherwise provided in this Ordinance, and which Certificate of Appropriateness shall be issued upon conformity with all the provisions and design criteria of Article 14.2 of this Ordinance.**

18-8-12 SIGNS PERMITTED IN ALL DISTRICTS. The following signs shall be permitted in all districts. ~~Unless otherwise indicated, Temporary Signs and signs painted on or hung behind windows shall not require a sign permit.~~ The area of any sign shall not be included in computing the aggregate sign areas specified for individual districts. (9/11/01, Case TA-01-02, Ord. No. 029-2001)

18-8-12.1 **Temporary Signs**, which shall be non-illuminated, and are limited to the following types:

18-8-12.2 **The following temporary signs may be installed by-right without fee or Certificate of Appropriateness, provided the sign is installed in accordance with the size, location, and duration standards outlined in this section. No setback from property lines shall be required for any signs permitted in this section:**

- a. Construction Signs, which identify the architects, engineers, contractors and other individuals or firms involved with the construction. **One sign per individual or firm involved with construction is permitted, and each sign shall not exceed four (4) square feet in area for a single family residential project and sixteen (16) square feet for any other project, and shall be removed immediately following the completion of the project.**
- b. Real Estate Signs, advertising the sale, rental, or lease of the premises, or part of the premises on which the signs are displayed. **Signs shall not exceed eight (8) square feet in area on residential properties or sixteen (16) square feet for non-residential properties and shall be removed immediately after sale, lease or rental. One sign per street frontage is permitted. On properties two (2) acres or larger, residential signs may be up to twelve (12) square feet and non-residential signs may be up to a maximum of thirty-two (32) square feet.**
- c. Political Campaign Signs, announcing the candidates seeking public political office and other data pertinent thereto. These signs shall be confined within private property, **erected only with the consent of the owner of the private property**, and removed within fourteen (14) days after the event for which they were made.
- d. Street Banners, advertising a public entertainment or event, if specifically approved by the City Council and only for locations designated by the City Council, during and for fourteen (14) days before and after the event for which they were made.
- e. Signs advertising only the name, time and place of any bona fide fair, carnival, festival, bazaar, horse show, or similar event, when conducted by a public agency or for the benefit of any civic, fraternal, religious, or charitable cause: provided that all such signs shall be removed within five (5) days after the last day of the event to which they pertain. **Such signs may be installed in the public right-of-way only upon approval by the City Manager or his designee.**
- ~~f.~~ Signs advertising storage of materials and supplies or display of merchandise for sale or rent shall be permitted but shall not be visible from off-site, **except for one temporary sign up to twelve (12) square feet may be used as part of an outdoor vendor or outdoor display of merchandise permit as provided for in Section 18-7 of this Ordinance.** (10/17/95, Case TA-95-04, Ord. No. 053-95)
- g. **Signs advertising an on-site yard sale. One such sign may be placed upon the property for which the yard sale is taking place and may be up to a maximum of eight (8) square feet. Such signs may be placed on site three (3) days before the sale, and must be removed upon completion of the sale.**
- h. **Non-commercial Signs. One such sign may be placed upon a property. If a residential property contains more than one unit, one sign per residential unit is permitted. Such signs shall not exceed twelve (12) square feet, have**

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a height of not greater than four (4) feet, and must be freestanding and not affixed to a wall, fence, structure, vehicle, or landscaping.

- i. **Open Business Sign.** One such flag sign not to exceed fifteen (15) square feet may be affixed to the building that bears the word "OPEN" or other words depicting the nature of the business. Should the flag contain any corporate logo or text, the sign will not meet this definition. Such signs may only be on display during the operational hours of the business.
- j. **Development Banner.** Banners identifying the name or simple announcement of a commercial center, medical campus, university campus or similar development, provided that such signs do not exceed ~~ten (10)~~ square feet and are securely affixed to a building or pole on private property, at least fifty (50) feet shall be provided between any two such signs.
- k. **Incidental Price and Advertising Signs,** any temporary advertising sign less than two (2) square feet in area. One such sign may be affixed to the product being advertised. For service establishments, a maximum of one sign may be affixed to a gasoline or petroleum fuel pump.

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Table 18-8-12.2

Type	Maximum Size	Maximum Height	Maximum Number
Construction Signs	See Section 18-8-12.2a	None	1 per individual/firm
Real Estate Signs	See Section 18-8-12.2b	None	1 per street frontage
Political Campaign Signs	None	None	None
Street Banners	None	None	None
Civic/Fraternal/Charitable Event Sign	None	None	None
Signs Advertising Storage/Display of Merchandise	None	None	None
Yard Sale	8 SF	None	None
Non-commercial Signs	12 SF	4 feet	1 per residential unit
Open Business Sign	15 SF	None	1 per business
Development Banner	6 SF	None	None
Incidental Price or Advertising Sign	2 SF	None	None

18-8-12.3 The following commercial temporary signs shall be permitted in the in the RB-1, RO-1, B-1, B-2, M-1, M-2, CM-1, and PC districts. The number of permitted signs shall be directly proportional to the amount of public street frontage for that property. If a property has multiple public street frontages, each frontage shall be included in the sign calculation. Unless otherwise provided, one (1) temporary sign may be installed per fifty (50) linear feet of public street frontage, with a maximum of four (4) temporary signs per property. Each permitted temporary sign may be up to a

maximum of sixteen (16) square feet in size and four (4) feet in height unless affixed to the face of a building. For properties that do not meet the fifty (50) linear foot requirement for a temporary sign, one temporary sign meeting the aforementioned requirements shall be permitted. If the property frontage(s) allows for multiple temporary signs, then no two temporary signs shall be located within fifty (50) feet of each other for properties fronting on a street with a speed limit of twenty-five (25) miles per hour or less, and a distance of seventy-five (75) feet for properties fronting on a street with a speed limit of greater than twenty-five (25) miles per hour.

- a. Temporary advertising signs on display no more than ten (10) days per month.
- b. Temporary Business Identification Signs during review and approval of a permanent building-mounted or freestanding sign. Such signs must be affixed to the face of a building or an existing freestanding sign structure and be on display no longer than forty-five (45) days and are limited to one sign per business.
- c. Portable price or advertising signs. Such signs shall be permitted to be on display a maximum of thirty (30) days, except for signs permitted in the Primary and Secondary Downtown Assessment Districts permitted under Section 18-7.
- d. Temporary sales signs, as defined in Section 18-8-18.19 provided that no more than two (2) such signs are on display, and having a height of no more than four (4) feet. Such signs shall be on display for no longer than the approved temporary event.
- e. Regional Tourism Signs. Two signs may be placed on properties containing a regional tourism destination for the purpose of making public announcements, advertising special exhibits, events, or similar advertisements. Such signs shall be exempt from the requirements of Article 14.2, and each sign may be on display no longer than thirty (30) days and no larger than twenty-five (25) square feet. For the purposes of this section a regional tourism destination shall mean a property larger than three (3) acres that routinely provides information and/or exhibits for tourists and the general public.

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Table 18-8-12.3

Type	Maximum Size	Maximum Height	Maximum Number
Temporary Advertising Signs	16 SF	4 feet	See Section 18-8-12.3
Temporary Business Identification Signs	16 SF	Must be affixed to a building	1 per business
Portable Price or Advertising Signs	16 SF	4 feet	See Section 18-8-12.3
Temporary Sales Signs	16 SF	4 feet	2 per approved temporary sale event
Regional Tourism Signs	25 SF	4 feet	2

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~~18-8-12.2~~ **18-8-12.4** Permanent Signs.

- a. Directional Signs, as defined, provided each sign does not exceed ten (10) square feet in area nor four (4) feet in height. No more ~~that~~ **than** two (2) signs shall be permitted within one hundred (100) feet of each other within the limits of the development except signs required by a public authority for recognized traffic management needs. For commercial centers greater than fifty thousand square feet in floor area and Higher Education (HE-1) District uses, additional directional freestanding signs not exceeding thirty (30) square feet in area and six (6) feet in height shall be permitted within off-street parking areas when such signs provide directional assistance for multiple destinations. For Medical Center (MC) District uses, additional directional freestanding signs not exceeding seventy two (72) square feet in area and ten (10) feet in height shall be permitted within off-street parking areas when such signs provide directional assistance for multiple destinations. A sign permit shall be required. Such additional signs shall be limited to a single unifying logo representative of the development and text on a solid color background and shall be oriented so as to limit primary viewing to persons already on site and not to persons traveling on public and/or private streets provided in lieu of public streets. (1/9/97, Case TA-97-11, Ord. No. 034-097; 6/9/98, TA-98-02, Ord. No 016-98; 9-9-08 Case TA-08-06, Ord. No. 2008-39)
- b. Wall or freestanding signs, not exceeding a total of fifty (50) square feet in area nor eight (8) feet in height and not internally illuminated, for the identification of a subdivision or Planned Development or one freestanding sign not exceeding fifty (50) square feet in area nor eight (8) feet in height and not internally illuminated for the identification of an apartment complex containing at least 50 apartment units and covering at least three (3) acres of ground, if located at an entrance to said subdivision, Planned Development or apartment complex. If a said apartment complex fronts upon more than one public street, then one additional freestanding identification sign not exceeding twenty-five (25) square feet in area shall be allowed at a separate entrance. (3/11/97, Case TA-96-08, Ord. No. 007-97; 9/11/01, Case No. TA-01-02, Ord. No. 029-2001)
- c. Names of buildings, dates of erection, monumental citations, commemorative tablets, and the like when carved into stone, concrete, or similar material or made of bronze, aluminum, or other permanent type construction and made an integral part of the structure.
- d. Institutional signs setting forth the name or any simple announcement for any public, charitable, educational, or religious institute, located entirely within the premises of that institution. Freestanding signs shall not exceed twenty-five (25) square feet in area.
- e. Signs painted on or hung behind windows.
- f. Menu boards shall be permitted in the B-1, B-2, CM-1, M-1, and PC districts for drive-through establishments provided such signs shall be designed and oriented so as to limit primary viewing to persons using drive through

facilities and menus shall be displayed only on the drive through standing space side. (3/8/94, Case TA-93-09, Ord. No. 005-94)

- g. Community Signs, after a finding that such signs are consistent with the provisions of Sections 18-2-1.1a and b of this Ordinance. The intent of this section is to permit a limited number of signs at the entryways to the community where multiple noncommercial messages are presented in a planned, orderly manner. Such signs shall not exceed 15 feet in height nor 150 square feet in sign area. No signs permitted under this section shall be more than 1,500 feet from the nearest exit ramp and no two signs shall be within 500 feet of each other. A sign permit shall be required. (10/8/96, Case TA-96-06, Ord. No. 026-96)

- 18-8-13 SIGNS PROHIBITED IN ALL DISTRICTS. The following types of signs are prohibited in all districts:
- 18-8-13.1 Any sign that obscures a sign display by a public authority for the purpose of giving traffic instructions or directions or other public information.
- 18-8-13.2 Any sign within the triangular area at the street corner of a corner lot described in Section 18-12 of this Ordinance.
- 18-8-13.3 Any sign that consists of strings of light bulbs or illumination devices such as LEDs.
- 18-8-13.4 Any sign or device, other than pennants or banners whether or not any such device has written message content, of which all or any part is in motion by any means, including fluttering, rotating, or other moving signs set in motion by movement of the atmosphere, including but not limited to pennants, propellers, discs, and similar devices. This shall not apply to the hand of a clock or a weather vane, flags of a national, state or local government, or signs in Section 18-8-12.2i.
- 18-8-13.5 Any sign, except official notices and advertisements, which is nailed, tacked, posted, or in any other manner attached to any utility pole or structure for supporting wire, cable, or pipe, or to any tree on any street or sidewalk or to public property of any description.
- 18-8-13.6 Outdoor advertising signs.
- 18-8-13.7 Moored balloons, inflatable signs, or other floating signs that are tethered to the ground.
- 18-8-13.8 Any sign with a minimum clearance of less than eight (8) feet above a walkway or sidewalk or less than fifteen (15) feet above a driveway or alley. (7/10/90, Case TA-90-04, Ord. No. 026-90)
- 18-8-14 ILLUMINATION.
- 18-8-14.1 The light from any illuminated sign shall not cause direct glare into or upon any building or property owner other than the building or property to which the sign may be related.
- 18-8-14.2 No sign shall display flashing or intermittent lights, or other lights of changing degrees of intensity, brightness or color, except a sign indicating time or temperature, with changes alternating on not less than five (5) second cycle when such time or temperature sign does not constitute a public hazard, in the judgment of the Zoning Administrator.

- 18-8-14.3 Neither the direct nor reflected light from primary light sources shall create a traffic hazard to operators of motor vehicles on public thoroughfares.
- 18-8-14.4 Signs for developments in the Highway Commercial, B-2 District that include multifamily units, per Section 8-2-20, shall not utilize any internal illumination. External illumination, if any, shall be provided in a down-cast manner or shielded to prevent direct lighting of windows in multifamily units. (9/13/05, Case TA-05-02, Ord. No. 025-2005)
- 18-8-14.4 Electronic Message Board Signs shall not change message with a greater frequency than once every sixty (60) seconds in order to prevent traffic hazards to operators of motor vehicles on public thoroughfares, with exception of time or temperature changes per Section 18-8-14.2.**

18-8-18 DEFINITIONS.

- 18-8-18.1 **Area of Sign**. The entire area within a circle, triangle, parallelogram, or trapezoids including the extreme limits of writing, reproduction, emblem, or any figure of similar character, together with any frame or other material or color forming an integral part of the display or used to differentiate the sign from the background against which it is placed, excluding the necessary supports or uprights on which such sign is placed. On double-faced signs, only one (1) display face shall be measured in computing total sign area where sign faces are parallel and are at no point more than two (2) feet from one another.
- 18-8-18.2 **Maintenance**. The replacing or repairing of a part or portion of a sign made unusable by ordinary wear, tear, or damage beyond the control of the owner or the reprinting of existing copy without changing the wording.
- 18-8-18.3 **Outdoor Advertising Sign**. A freestanding or building mounted sign bearing a message which is not appurtenant to the use of the property where the sign is located, and which does not identify the place of business where the sign is located as the purveyor of merchandise or services upon the sign, except signs permitted off-premises for Commercial Centers, as defined and except for directional signs per Section 18-8-18.11. Such signs may also be referred to as billboards or poster panels. (1/9/97, Case TA-97-11, Ord. No. 034-097)
- 18-8-18.4 **Projecting Signs**. A sign attached to and perpendicular to the building wall.
- 18-8-18.5 **Sign**. Any structure, display device, or representation which is designed or used to advertise or call attention to any thing, person, business, activity, or place and painted, printed, constructed, and displayed in any manner whatsoever out of doors for recognized advertising purposes. However, this shall not include any official court or public notices nor the flag, emblem, or insignia of a government, school, or religious group when displayed for official purposes.
- 18-8-18.6 **Temporary Sign**. A banner, ~~pennant~~, poster, or advertising display constructed of cloth, plastic sheet, cardboard, wallboard, or other like materials, intended to be displayed for a limited period of time, and not permanently attached to a building, or the ground, **or other structure. Only temporary signs provided in Section 18-8-**

12.2 may be constructed utilizing wood materials and may be securely affixed to the ground to prevent being set in motion by the atmosphere.

- 18-8-18.7 **Wall Sign.** A sign affixed directly to or painted on or otherwise inscribed on an exterior wall or parapet and confined within the limits thereof of any building and which projects from that surface less than twelve (12) inches at all points.
- 18-8-18.8 **Roof Line.** Either the edge of the roof or the top of the parapet, whichever forms the top line of the building silhouette. Where a building has several roof levels, this roof or parapet shall be the one belonging to that portion of the building on which the sign is located. (3/8/94, Case TA-93-09, Ord. No. 005-94)
- 18-8-18.9 **Roof Sign.** A sign erected on the roof of a building. Roof signs shall not project above the roof line. (3/8/94, Case TA-93-09, Ord. No. 005-94)
- 18-8-18.10 **Community Sign.** A sign identifying the community and/or recognized historic and/or cultural resources therein provided such signs are situated within or visible from major tourism corridors directly connecting from limited access highways. Signs may include uniformly sized and shaped emblems, logos, insignias or simple nameplates of any civic, fraternal, charitable or religious organization based in the community. (10/8/96, Case TA-96-06, Ord. No. 026-96)
- 18-8-18.11 **Directional Sign.** A wall or freestanding sign in or primarily oriented toward a parking lot to identify entrances, exits, and divisions of the lot into sections, and to control vehicular and pedestrian traffic in the lot. In cases where a property owner agrees to close an existing driveway connecting directly to a street to permit shared access per Section 18-6-3.6 of this Ordinance or where an off-premises entrance from the public street in lieu of a direct connection is recommended by a public authority, one (1) off- premises directional sign bearing the name or simple logo of the commercial activity shall be permitted at the connection to the street. (1/9/97, Case TA-97-11, Ord. No. 034-097)
- 18-8-18.12 Inflatable Sign. A sign capable of being expanded by air or other gas and used on a temporary or permanent basis to advertise a product or event.**
- 18-8-18.13 Monument Sign. A freestanding sign permanently installed on the property. The base of a monument sign is as wide as or wider than the main sign face. A monument sign is built on-grade in such a manner that the sign and the structure are an integral part of one another.**
- 18-8-18.14 Electronic message board sign. A sign displaying characters or images that move or change, caused by any method other than physically removing and replacing the sign or its components. This includes a display that incorporates technology to allow the sign face to change the image, such as any display that incorporates LED lights manipulated through digital input, "digital ink" or any other method or technology that allows the sign face to present a series of images or displays.**

- 18-8-18.15** **Construction Sign. A sign depicting the name or logo of a contractor, engineer, architect, or other individual or business that is involved with a construction, renovation, or demolition project.**
- 18-8-18.16** **Real Estate Sign. A sign advertising the sale, lease, or rent of the property upon which the sign is located.**
- 18-8-18.17** **Portable Price or Advertising Sign. A sign that is not permanently affixed to the ground, building or a structure, designed to be on display for a limited period of time. Such signs include sandwich board signs, moveable chalkboard signs, and other signs of a similar nature. These signs shall not include any signs provided under Section 18-8-12.2.**
- 18-8-18.18** **Yard Sale Sign. A sign advertising a yard sale, garage sale, estate auction, or similar private sale of personal property and located upon the property where such sale is occurring.**
- 18-8-18.19** **Temporary Sales Sign. A temporary sign advertising a temporary sales event as permitted by the Administrator, such as Christmas trees, fireworks, or similar sales event placed upon the property where such event is occurring. Such signs shall not include portable signs permitted in the Primary or Secondary Assessment districts, nor events sponsored by the Old Town Development Board or City of Winchester.**
- 18-8-18.20** **Non-commercial Sign. A sign utilized for a non-commercial purpose. Such signs shall not include real estate, construction, or yard sale signs.**

SECTION 18-19. HOME OCCUPATIONS. (10/11/83, Case 83-06, Ord. No. 034-83)

- 18-19-5 A yard sale shall be considered a permitted home occupation, subject to the following:
- 18-19-5.2 Each yard sale may be held a maximum of two consecutive days, and only during the hours of 8:00 a.m. to 6:00 p.m. ~~One two (2) square foot on-premises sign advertising the yard sale may be displayed during the hours of 8:00 a.m. to 6:00 p.m. on the day(s) of the sale.~~ (3/8/94, Case TA-94-01, Ord. No. 006-94)

**ARTICLE 21
VIOLATION AND PENALTY**

- 21-2-2** **The appeal period for violations of this Ordinance pertaining to the following uses shall be ten (10) days, pursuant to §15.2-2286:**

- a. Any violation of Sections 18-8-12.1 through 18-8-12.3, pertaining to temporary signs.
- b. Any violation of Sections 18-9-5 through 18-9-5.4, pertaining to yard sales.
- c. Any violation of Section 18-12, pertaining to visual obstructions.
- d. Any violation of Section 18-17, pertaining to mobile storage units and temporary events.

**ARTICLE 14.2
CORRIDOR ENHANCEMENT DISTRICT – CE**

- 14.2-6 AMHERST STREET, CEDAR CREEK GRADE, AND PLEASANT VALLEY RD/CORK STREET CORRIDORS**
- 14.2-6.6 Signs
- 14.2-6.6a Roof mounted, portable, and temporary signs, as well as banners and pennants are prohibited, with the exception that one sign provided in Section 18-8-12.2 may be installed per property in accordance with the provisions of that Section.

- 14.2-7 BERRYVILLE AVENUE AND VALLEY AVENUE CORRIDORS**
- 14.2-7.6 Signs
- 14.2-7.6a Roof mounted signs, banners, and pennants are prohibited, portable and temporary signs should not be used, with the exception that one sign provided in Section 18-8-12.2 may be installed per property in accordance with the provisions of that Section.

- 14.2-8 FAIRMONT AVENUE, MILLWOOD AVENUE, AND NORTH LOUDOUN STREET CORRIDORS**
- 14.2-8.6 Signs
- 14.2-8.6a Roof mounted signs, banners, and pennants are prohibited, portable and temporary signs should not be used, with the exception that one sign provided in Section 18-8-12.2 may be installed per property in accordance with the provisions of that Section.

- 14.2-9 NATIONAL AVENUE CORRIDOR**
- 14.2-9.6 Signs
- 14.2-9.6a Roof mounted signs, banners, and pennants are prohibited, portable and temporary signs should not be used, with the exception that one sign provided in Section 18-8-12.2 may be installed per property in accordance with the provisions of that Section.

2013 Fire and Rescue Department Statistics

Month	Incidents											Casualties		Training Hours		Resuscitation Efforts	
	EMS	Fire	Total	Struc. Fire	Fire Other	ALS 1	ALS 2	BLS	Pt. Ref.	Mutual Aid Given	Mutual Aid Recvd.	Fire	Civ.	Dept. Personnel	LFCC Ride-Along Students	Cardiac Arrest	Cardiac Arrest Saved
January	349	96	445	5	91	160	2	137	21	50	13	1	0	935	0	1	1
February	309	65	374	2	63	138	1	109	25	18	13	0	1	424	0	2	1
March	390	103	493	7	96	171	6	161	23	40	7	0	1	879	12	4	2
April	333	95	428	3	92	153	3	130	19	27	15	1	0	872	282	1	0
May	388	113	501	5	108	144	5	144	30	35	11	1	2	410	54	3	1
June	341	112	453	8	104	134	4	150	31	39	10	0	3	386	0	4	1
July	388	106	494	7	99	170	7	137	29	39	15	0	0	1444	0	4	1
August	357	105	462	6	99	175	2	123	27	25	6	2	0	1467	0	1	0
September	373	82	455	3	79	187	10	124	27	23	10	0	0	1481	0	6	3
October	346	118	464	4	114	151	7	140	26	35	6	0	1	876	0	5	1
November			0		0												
December			0		0												
TOTAL	3574	995	4569	50	945	1583	47	1355	258	331	106	5	8	9173	348	31	11
																35.48%	

26.3% National Average

10 Years of Incidents											
2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
4932	5288	5711	5673	5571	5365	5407	5539	5541	5756		

Other Monthly Activity:



WFRD personnel work performance testing



Valor award given to A shift and volunteers

2013 EMS Revenue Recovery Statistics

	Total billed	Payment Adj.	Net Collectable	Total paid by insurance	Patient Payment	Refunds	Total Deposit	Total Revenue	Increase from FY2012	Percent Increase From FY2012
JULY	\$162,940.00	\$24,446.29	\$138,493.71	\$77,877.66	\$11,029.60	\$0.00	\$80,835.01	\$80,835.01	\$6,999.94	9%
AUGUST	\$154,507.00	\$7,921.18	\$146,585.82	\$73,522.65	\$6,533.14	\$786.97	\$79,268.82	\$160,103.83	\$561.43	0%
SEPTEMBER	\$168,585.00	\$10,688.87	\$157,896.13	\$66,236.78	\$0.00	\$309.00	\$65,927.78	\$226,031.61	(\$4,098.67)	-2%
OCTOBER	\$154,649.00	\$0.00	\$154,649.00	\$100,980.62	\$1,880.64	\$0.00	\$102,861.26	\$328,892.87	\$11,521.10	4%
NOVEMBER										
DECEMBER										
JANUARY										
FEBRUARY										
MARCH										
APRIL										
MAY										
JUNE										
TOTALS	\$640,681.00	\$43,056.34	\$597,624.66	\$318,617.71	\$19,443.38	\$1,095.97	\$328,892.87			



2013 Fire Marshal Division Statistics

Month	City Fire Property Dollar Loss/Save			Plan Review		Inspections/Investigations								Public Education			
	Loss	Value	Saved	#	Revenue	Fire Insp.	Follow-up	Sprinkler	Alarm	Supres.	Site	Other Insp.	Investig.	Smoke Alarms Installs	Car Seat Installs	Pub Ed Children	Pub Ed Adult
January	\$100.00	\$175,000.00	\$174,900.00	2	\$75.99	10	18	2	3	1	1	0	0	0	13	2	17
February	\$600.00	\$107,000.00	\$106,400.00	9	\$0.00	16	9	3	0	0	0	0	1	2	10	64	53
March	\$0.00	\$0.00	\$0.00	11	\$758.30	14	18	8	0	1	2	42	0	4	8	15	40
April	\$26,100.00	\$111,100.00	\$85,000.00	5	\$214.20	38	26	2	0	0	0	21	2	1	4	2	8
May	\$105,500.00	\$148,400.00	\$42,900.00	14	\$1,239.86	8	9	5	1	3	0	23	1	1	11	143	43
June	\$98,000.00	\$17,846,200.00	\$17,748,200.00	6	\$517.16	15	14	4	3	3	3	10	3	1	3	113	19
July	\$7,250.00	\$8,100.00	\$850.00	14	\$1,159.18	14	19	3	4	1	1	7	3	1	14	48	20
August	\$309,262.00	\$1,469,204.00	\$1,159,942.00	3	\$68.34	16	20	4	1	4	1	13	2	7	13	219	332
September	\$14,000.00	\$28,337,600.00	\$28,323,600.00	11	\$765.00	38	18	4	0	2	0	6	3	1	19	137	101
October	\$31,550.00	\$2,313,150.00	\$2,281,600.00	6	\$363.12	54	37	7	0	0	0	20	1	0	11	2668	1629
November					\$0.00												
December					\$0.00												
TOTAL	\$592,362.00	\$50,515,754.00	\$49,923,392.00	81	\$5,161.15	223	188	42	12	15	8	142	16	18	106	3411	2262



2013 Station/Apparatus Statistics

Month	Station Logbook Runs			
	1	2	4	5
January	174	73	151	196
February	148	71	122	180
March	188	80	180	215
April	164	80	161	203
May	173	72	157	226
June	168	77	137	218
July	202	89	152	229
August	183	72	156	194
September	168	76	148	221
October	176	80	147	216
November				
December				
TOTAL	1744	770	1511	2098

FIRE PREVENTION MONTH

October 2013



Great Things Are Happening!

The Fire and Rescue Department had a very busy and exciting Fire Prevention Month this year. Once again we promoted the National Fire Protection Association campaign, "Prevent Kitchen Fires", and urged citizens to be safer in the kitchen and increased awareness that more fires start in the kitchen than in any other part of the home.

In addition to supporting the NFPA campaign the department provided support at many local events throughout the month including public safety awareness events at City National Bank, Home Depot, and K-Mart. We also attended the annual Halloween Spooktacular event on the Old Town Mall and handed out glow-in-the-dark wrist bands to make children more visible while out trick-or-treating.



To provide a safer option to typical trick-or-treating, the Fire and Rescue Department and Police Department teamed up to hold our first ever "Public Safety Trunk-or-Treat" event at Shawnee Fire Company. The event was geared towards providing safe, healthy fun coupled with some educational messages in fire and crime prevention. We experienced a great turnout for a first year event and welcomed almost 300 adults and

Events and Attendance

In-Station Events	261
Preschools	421
Elementary Schools	1,964
Community Events	2,203

The Puppets Have Returned

After spending more than 25 years in hiding the Winchester Fire and Rescue Department puppets have resurfaced and are more excited than ever to provide fire safety education to the citizens of Winchester. Zack and Stan showed up at all four city elementary schools and taught the students how important it is to have a fire escape plan and to test and maintain your smoke alarms.

Reintroducing the puppet program was a big goal of the department's Public Education Committee, who is responsible for developing and presenting an educational program to the public and private schools within the city.

