

**ORD-3258**

1 AN ORDINANCE TO AMEND SECTIONS 30-57,  
2 30-58, 30-60, 30-60.1, 30-71, 30-73, 30-74 AND  
3 30-77 AND ADD SECTIONS 30-62 AND 30-76.1  
4 OF THE CITY CODE PERTAINING TO SOIL  
5 REMOVAL AND OTHER LAND-DISTURBING  
6 ACTIVITIES

7 Sections Amended: §§ 30-57, 30-58, 30-60, 30-  
8 60.1, 30-61, 30-71, 30-73, 30-74, and 30-77

9 Sections Added: §§ 30-62 and 30-76.1

10 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VIRGINIA  
11 BEACH, VIRGINIA:

12 That Sections 30-57, 30-58, 30-60, 30-60.1, 30-61, 30-71, 30-73, 30-74 and 30-  
13 77 of the Code of the City of Virginia Beach, Virginia, are hereby amended and  
14 reordained and Sections 30-62 and 30-76.1 are added to read as follows:

15 **Chapter 30 - SOIL REMOVAL, OTHER LAND-DISTURBING ACTIVITIES**

16 . . . .

17 **ARTICLE III. - EROSION AND SEDIMENT CONTROL AND TREE PROTECTION**

18 **DIVISION 1. – GENERALLY**

19 . . . .

20 **Sec. 30-57. - Definitions.**

21 As used in this article, the following words and terms shall have the meanings  
22 ascribed to them in this section, unless the context requires a different meaning:

23 *Agreement in lieu of a plan* means a contract between the ~~plan-approving~~  
24 VESCP authority and the owner which specifies conservation measures which must be  
25 implemented in the construction of a single-family residence; this contract may be  
26 executed by the ~~plan-approving~~ VESCP authority in lieu of a formal site plan.

27 . . . .

28 *Certified plan reviewer* means an employee or agent of the City of Virginia Beach  
29 who (i) holds a certificate of competence from the board in the area of plan review, (ii) is

30 enrolled in the board's training program for plan review and successfully completes such  
31 program within one (1) year after enrollment, or (iii) is licensed as a professional  
32 engineer, architect, certified landscape architect or land surveyor pursuant to article 1 (§  
33 54.1-400 et seq.) of chapter 4 of title 54.1 of the Code of Virginia, as amended, or  
34 professional soil scientist as defined in §54.1-2200 of the Code of Virginia, as amended.

35 . . . .

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

43 . . . .

44 *Erosion and sediment control plan or plan* means a document containing material  
45 for the conservation of soil and water resources of a unit or group of units of land. It may  
46 include appropriate maps, an appropriate soil and water plan inventory and  
47 management information with needed interpretations, and a record of decisions  
48 contributing to conservation treatment. The plan shall contain all major conservation  
49 decisions to ensure that the entire unit or units of land will be so treated to achieve the  
50 conservation objectives.

51 . . . .

52 *Land-disturbing activity* means any man-made change to the land change surface  
53 which may result in soil erosion from water or wind and the movement of sediments into  
54 state waters or onto lands in the city, including, but not limited to, clearing, grading,  
55 excavating, transporting, and filling of land, except that the term shall not include:

56 (1) Minor land-disturbing activities such as home gardens and individual home  
57 landscaping, repairs and maintenance work;

58 . . . .

59 ~~(5) Surface or deep mining;~~

60 ~~(65) Exploration or drilling for oil and gas, including the well site, roads, feeder lines~~  
61 ~~and off-site disposal areas; Permitted surface or deep mining operations and~~  
62 ~~projects, or oil and gas operations and projects conducted pursuant to Title~~  
63 ~~45.1 of the Code of Virginia;~~

64 (76) Tilling, planting or harvesting of agricultural, horticultural or forest crops, or  
65 livestock feedlot operations, or as additionally set forth by the Board in  
66 regulations, including engineering operations as follows: construction of  
67 terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches,  
68 strip cropping, lister furrowing, contour cultivating, contour furrowing, land  
69 drainage and land irrigation; however, this exception shall not apply to  
70 harvesting of forest crops unless the area on which harvesting occurs is  
71 reforested (artificially or naturally) in accordance with the provisions of Code of  
72 Virginia, chapter 11 (section 10.1-1100 et seq.), or is converted to bona fide  
73 agricultural or improved pasture use as described in Code of Virginia,  
74 subsection B of section 10.1-1163

75 (87) Repair or rebuilding of the tracks, right-of-way, bridges, communication  
76 facilities and other related structures and facilities of a railroad company;

77 (98) Agricultural engineering operation including, but not limited to, the construction  
78 of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not  
79 required to comply with the Dam Safety Act, ditches, strip cropping, lister  
80 furrowing, contour cultivating, contour furrowing, land drainage and land  
81 irrigation;

82 (409) Disturbed land areas of less than two thousand five hundred (2,500) square  
83 feet in size;

84 (4410) Installation of fence and sign posts or telephone and electric poles and other  
85 kinds of posts or poles;

86 (4211) Shoreline erosion control projects on tidal waters when all of the ~~land~~  
87 ~~disturbing~~ land-disturbing activities are within the regulatory authority of and  
88 approved by the wetlands board of the City of Virginia Beach, the Marine  
89 Resources Commission or the United States Army Corps of Engineers;  
90 however, any associated land that is disturbed outside of this exempted area  
91 shall remain subject to this article and the regulations adopted pursuant  
92 thereto;

93 (4312) Emergency work to protect life, limb or property and emergency repairs;  
94 however, if the land-disturbing activity would have required an approved  
95 erosion and sediment control and tree protection plan if the activity were not  
96 an emergency, then the land area disturbed shall be shaped and stabilized in  
97 accordance with the requirements of the ~~city engineer~~ VESCP authority .

98 ~~Local erosion and sediment control program or local control program means an~~  
99 ~~outline of the various methods employed by the City of Virginia Beach to regulate land-~~  
100 ~~disturbing activities and thereby minimize erosion and sedimentation in compliance with~~  
101 ~~the state program and may include such items as local ordinances, policies and~~  
102 ~~guidelines, technical materials, inspection, enforcement, and evaluation.~~

103 Natural channel design concepts means the utilization of engineering analysis and  
104 fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open

105 conveyance system for the purpose of creating or recreating a stream that conveys its  
106 bankfull storm event within its banks and allows larger flows to access its bankfull bench  
107 and its floodplain.

108 . . . .

109 Peak flow rate means the maximum instantaneous flow from a given storm  
110 condition at a particular location.

111 Permit-issuing authority means the director of planning or his designees.

112 Permittee means the person to whom the local permit authorizing land-disturbing  
113 activities is issued or the person who certifies that the approved erosion and sediment  
114 control plan will be followed.

115 Periodic inspections are required during or immediately following initial installation  
116 of erosion and sediment controls, at least once in every two week period, within 48  
117 hours following any runoff producing storm event, and at the completion of the project  
118 prior to the release of any performance bonds.

119 Person means any individual, partnership, firm, association, joint venture, public or  
120 private corporation, trust, estate, commission, board, public or private institution, utility,  
121 cooperative, county, city, town or other political subdivision of the commonwealth,  
122 governmental body, including a federal or state entity as applicable, any interstate body  
123 or any other legal entity.

124 ~~Plan-approving authority means the director of planning or his designee, based~~  
125 ~~upon the city engineer's determination of the adequacy of a conservation plan submitted~~  
126 ~~for land-disturbing activities on a unit or units of land.~~

127 ~~Planning Department or director of Planning shall also include any designees~~  
128 ~~made by the Director of Planning.~~

129 ~~Program authority means the City of Virginia Beach, also referred to as the city.~~

130 . . . .

131 Runoff volume means the volume of water that runs off the land development  
132 project from a prescribed storm.

133 ~~State erosion and sediment control program or state program means the program~~  
134 ~~administered by the Virginia Soil and Water Conservation Board pursuant to sections~~  
135 ~~10.1-560 through 10.1-571 of the Virginia Code, including regulations designed to~~  
136 ~~minimize erosion and sedimentation.~~

137 . . . .

138 Virginia Erosion and Sediment Control Program or VESCP means a program  
139 approved by the Board that has been established by a VESCP authority for the effective  
140 control of soil erosion, sediment deposition, and nonagricultural runoff associated with a  
141 land-disturbing activity to prevent the unreasonable degradation of properties, stream  
142 channels, waters, and other natural resources and shall include such items where  
143 applicable as local ordinances, rules, permit requirements, annual standards and  
144 specifications, policies and guidelines, technical materials, and requirements for plan  
145 review, inspection, enforcement where authorized in this article, and evaluations  
146 consistent with the requirements of this article and its associated regulations.

147 Virginia Erosion and Sediment Control Program Authority or VESCP authority  
148 means the City of Virginia Beach, also referred to as the city.

149 Water quality volume means the volume equal to the first one-half inch of runoff  
150 multiplied by the impervious surface of the land development project.

151 **Sec. 30-58. - ~~Erosion and sediment control program~~ VESCP; regulations,**  
152 **standards and specifications for erosion and sediment control and tree**  
153 **protection.**

154 (a) The city council hereby adopts the regulations promulgated by the Virginia  
155 Soil and Water Conservation Board pursuant to section 10.1-562 of the Code of Virginia  
156 for the effective control of soil erosion, sediment deposition and nonagricultural runoff  
157 which must be met in any ~~control program~~ VESCP to prevent the unreasonable  
158 degradation of properties, stream channels, waters and other natural resources. Said  
159 regulations, standards and specifications for erosion and sediment control are included  
160 in but [are] not limited to Chapter 3 of the "Virginia Erosion and Sediment Control  
161 Handbook," Third Edition, 1992 and the Virginia Erosion and Sediment Control  
162 Regulations and all future amendments thereto and editions thereof.

163 (b) The program and regulations provided for in this article shall be made  
164 available for public inspection at the office of the director of planning.

165

166 **Sec. 30-60. - Monitoring reports and inspections of land-disturbing activities.**

167 (a) With respect to approved plans for erosion and sediment control and tree  
168 protection in connection with land-disturbing activities which involve the issuance of a  
169 grading, building or other permit, the director of planning or his designees shall (1)  
170 provide for periodic inspections of the land-disturbing activity, and require that a . . . .

171 (b) Upon receipt of a sworn complaint of a violation of this article from the  
172 representative of the department of planning the city manager or his designee may, in  
173 conjunction with or subsequent to a notice to comply as specified in section 30-60(a)  
174 above, issue an order requiring that all or part of the land-disturbing activities permitted  
175 on the site be stopped until the specified corrective measures have been taken or, if  
176 land-disturbing activities have commenced without an approved plan as provided in  
177 section 30-71 of this article, requiring that all of the land-disturbing activities be stopped

178 until an approved plan or any required permits are obtained. Where the alleged  
179 noncompliance is causing or is in imminent danger of causing harmful erosion of lands  
180 or sediment deposition in waters within the watersheds of the commonwealth, or where  
181 such land-disturbing activities have commenced without an approved plan or any  
182 required permits, such an order may be issued whether or not the alleged violator has  
183 been issued a notice to comply as specified in section 30-60(a) above. Otherwise, such  
184 an order may be issued only after the alleged violator has failed to comply with a notice  
185 to comply. The order for noncompliance with a plan shall be served in the same manner  
186 as a notice to comply, and shall remain in effect for seven (7) days from the date of  
187 service pending application by the director of planning or his designee or alleged  
188 violator for appropriate relief to the circuit court of the jurisdiction wherein the violation  
189 was alleged to have occurred. The order for disturbance without an approved plan or  
190 permits shall be served upon the owner by registered or certified mail to the address  
191 specified in the land records, shall be posted on the site where the disturbance is  
192 occurring, and shall remain in effect until such time as permits and plan approvals are  
193 secured, except in such situations where an agricultural exemption applies. If the  
194 alleged violator has not ~~obtained an approved plan or any required permits~~ implemented  
195 the specified corrective measures within seven (7) days from the date of service of the  
196 order, the city manager or his designee may issue ~~an~~ a subsequent order to the owner  
197 requiring that all construction and other work on the site, other than corrective  
198 measures, be stopped until ~~an approved plan and any required permits have been~~  
199 ~~obtained.~~ Such an such corrective measures are implemented. The subsequent order  
200 shall be served upon the owner by registered or certified mail to the address specified in  
201 the permit application or the land records of the locality in which the site is located. The  
202 owner may appeal the issuance of ~~an~~ any order to the circuit court of the jurisdiction  
203 wherein the violation was alleged to have occurred. Any person violating or failing,  
204 neglecting or refusing to obey an order issued by the city manager or his designee may  
205 be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the  
206 violation was alleged to have occurred to obey same and to comply therewith by  
207 injunction, mandamus or other appropriate remedy. Upon completion and approval of  
208 corrective action, or obtaining an approved plan or any required permits, the order shall  
209 immediately be lifted. Nothing in this section shall prevent the city manager or his  
210 designee from taking any other action specified in section 30-75.

211 **Sec. 30-60.1. – Stop work orders by board; civil penalties.**

212 (a) An aggrieved owner of property sustaining pecuniary damage resulting from  
213 a violation of an approved plan or required permit, or from the conduct of land-disturbing  
214 activities commenced without an approved plan or required permit, may give written  
215 notice of the alleged violation to the city and to the director of the board.

216 (b) Upon receipt of the notice from the aggrieved owner and notification to the  
217 city, the director of the board shall conduct an investigation of the aggrieved owner's  
218 complaint.

219 (c) If the city has not responded to the alleged violation in a manner which  
220 causes the violation to cease and abates the damage to the aggrieved owner's property

221 within thirty (30) days following receipt of the notice from the aggrieved owner, the  
222 aggrieved owner may request that the director of the board require the violator to stop  
223 the violation and abate the damage to his property.

224 (d) If (i) the director of the board's investigation of the complaint indicates that  
225 the city has not responded to the alleged violation as required by the ~~local program~~  
226 VESCP, (ii) the city has not responded to the alleged violation within thirty (30) days  
227 from the date of the notice given pursuant to subsection (a) of this section, and (iii) the  
228 director of the board is requested by the aggrieved owner to require the violator to  
229 cease the violation, then the director of the board shall give written notice to the city that  
230 the director of the board will request the board to issue an order pursuant to subsection  
231 (e) of this section.

232 **Sec. 30-61. - Program administration, plan review and inspection fee.**

233 (a) At the time an erosion and sediment control plan is submitted a plan review  
234 fee in the amount of one hundred dollars (\$100.00) shall be required. Additional fees  
235 include a permit fee in the amount of seventy-five dollars (\$75.00) and inspection fees in  
236 the amount of one and five-tenths (1.5) percent of the total cost of construction as  
237 provided in the engineer's cost estimate for the stormwater management facility, with a  
238 fifty dollar (\$50.00) minimum. Such fees shall be submitted to the director of planning or  
239 his designee and made payable to the treasurer of the City of Virginia Beach.

240 (b) At the time easement or dedication plats are submitted, a review fee in the  
241 amount of eighty-four dollars (\$84.00) shall be required.

242 (c) The VESCP authority shall report to the Department of Conservation and  
243 Recreation, in a method and on a time schedule established by the Department of  
244 Conservation and Recreation, a listing of each land-disturbing activity in the locality for  
245 which a plan has been approved under this ordinance.

246 **Sec. 30-62. – Right of entry.**

247 (a) The VESCP authority or any duly authorized agent of the VESCP may, at  
248 reasonable times and under reasonable circumstances, enter any establishment or  
249 upon any property, public or private, for the purpose of obtaining information or  
250 conducting surveys or investigations necessary in the enforcement of the provisions of  
251 this chapter.

252 (b) In accordance with a performance bond with surety, cash escrow, letter of credit,  
253 or any combination thereof acceptable to the city attorney, a VESCP authority or any  
254 duly authorized agent of the VESCP may also enter any establishment or upon any  
255 property, public or private, for the purpose of initiating or maintaining appropriate actions  
256 which are required by the permit conditions associated with a land-disturbing activity

257 when a permittee, after proper notice, has failed to take acceptable action within the  
258 time specified.

259 **DIVISION 2. - EROSION AND SEDIMENT CONTROL AND TREE PROTECTION**  
260 **PLAN FOR LAND-DISTURBING ACTIVITIES**

261 **Sec. 30-71. - Regulated land-disturbing activities; submission and approval of**  
262 **control plan.**

263 (a) The standards contained within the “Virginia Erosion and Sediment Control  
264 Regulations” and the Virginia Erosion and Sediment Control Handbook, as amended,  
265 are to be used by the applicant when making a submittal under the provisions of this  
266 ordinance and in the preparation of an erosion and sediment control plan. The VESCP  
267 authority, in considering the adequacy of a submitted plan, shall be guided by the same  
268 standards, regulations and guidelines. When the standards vary between the  
269 publications, the State regulations shall take precedence.

270 (b) Except as provided in section 10.1-564 of the Virginia Code (state agency and  
271 federal entity projects), no person may engage in any land-disturbing activity until such  
272 person has submitted to the planning department an erosion and sediment control and  
273 tree protection plan for the land-disturbing activity and the plan has been reviewed and  
274 approved by the planning department. Such plan must be in compliance with the  
275 regulations, references, guidelines, standards and specifications promulgated by the  
276 Board for the effective control of soil erosion and sediment deposition to prevent the  
277 unreasonable degradation of properties, stream channels, waters and other natural  
278 resources. Said regulations, references, guidelines, standards and specifications for  
279 erosion and sediment control are included in, but not limited to, the “Virginia Erosion  
280 and Sediment Control Regulations” and the Virginia Erosion and Sediment Control  
281 Handbook, as amended.

282 (c) Where land-disturbing activities involve lands under the jurisdiction of more  
283 than one local control program VSECP an erosion and sediment control plan may, at  
284 the option of the applicant, be submitted to the board for review and approval rather  
285 than to each jurisdiction concerned. Where the land-disturbing activity results from the  
286 construction of a single-family residence, an agreement in lieu of a plan may be  
287 substituted for an erosion and sediment control plan if executed by the director of  
288 planning or his designee.

289 (d) In accordance with Virginia Code Section 10.1-561:

290 (1) Stream restoration and relocation projects that incorporate natural channel  
291 design concepts are not man-made channels and shall be exempt from  
292 any flow rate capacity and velocity requirements for natural or man-made  
293 channels; and



294 (2) Any land-disturbing activity that provides for stormwater management  
295 intended to address any flow rate capacity and velocity requirements for  
296 natural or man-made channels shall satisfy the flow rate capacity and  
297 velocity requirements for natural or man-made channels if the practices  
298 are designed to

299 (i) detain the water quality volume and release it over 48 hours;

300 (ii) detain and release over a 24-hour period the expected rainfall  
301 resulting from the one year, 24-hour storm; and

302 (iii) reduce the allowable peak flow rate resulting from the 1.5, 2 and  
303 10-year, 24-hour storms to a level that is less than or equal to the peak  
304 flow rate from the site assuming it was in a good forested condition,  
305 achieved through multiplication of the forested peak flow rate by a  
306 reduction factor that is equal to the runoff volume from the site when it was  
307 in a good forested condition divided by the runoff volume from the site in  
308 its proposed condition, and shall be exempt from any flow rate capacity  
309 and velocity requirements for natural or man-made channels.

310 **Sec. 30-73. – Approval or disapproval**

311 (a) The planning department shall review ~~conservation~~ erosion and sediment  
312 control plans submitted to it and grant written approval within forty-five (45) days of the  
313 receipt of the plan if it determines that the plan meets the requirements of the board's  
314 regulations and if the person responsible for carrying out the plan certifies that he will  
315 properly perform the conservation measures included in the plan and will conform to the  
316 provisions of this article.

317 (b) When a plan is determined to be inadequate, written notice of disapproval  
318 stating the specific reasons for disapproval shall be communicated to the applicant  
319 within forty-five (45) days. The notice shall specify such modifications, terms and  
320 conditions that will permit approval of the plan. If no action is taken by the ~~plan-~~  
321 ~~approving~~ VESCP authority within the time specified above, the plan shall be deemed  
322 approved and the person authorized to proceed with the proposed activity.

323 **Sec. 30-74. - Changing approved plan.**

324 An approved plan may be changed by the planning department ~~or the city engineer~~  
325 in the following cases:

326 (1) Where inspection has revealed that the plan is inadequate to satisfy  
327 applicable regulations; or

328 (2) Where the person responsible for carrying out the approved plan finds that  
329 because of changed circumstances or for other reasons the approved plan

330 cannot be effectively carried out, and proposed amendments to the plan,  
331 consistent with the requirements of this article, are agreed to by the  
332 planning department and the person responsible for carrying out the plan.

333 . . . .

334 **Sec. 30-76.1. – Variances.**

335 The VESCP authority may waive or modify any of the standards contained herein  
336 that are deemed to be too restrictive for site conditions. Such variance may be granted  
337 under the following conditions:

338 (1) At the time of plan submission, an applicant may request a variance to  
339 become part of the approved erosion and sediment control plan. The  
340 applicant shall explain the reasons for requesting such variances in  
341 writing. Approved variances shall be documented in the plan.

342 (2) During construction, the person responsible for implementing the  
343 approved plan may request a variance in writing from the VESCP  
344 authority. The VESCP authority shall respond in writing either approving  
345 or disapproving the request. If the request is not approved within ten (10)  
346 days of receipt of the request, the request shall be considered to be  
347 disapproved. Following disapproval, the applicant may resubmit the  
348 request with additional documentation.

349 (3) The VESCP authority shall consider variance requests judiciously,  
350 keeping in mind both the need of the applicant to maximize cost  
351 effectiveness and the need to protect off-site properties and resources  
352 from damage.

353 **Sec. 30-77. – ~~Conservation~~ Erosion and sediment control plan for erosion impact**  
354 **area.**

355 In order to prevent further erosion a ~~local program~~ VESCP may require approval  
356 of a ~~conservation~~ erosion and sediment control plan for any land identified in the ~~local~~  
357 ~~program~~ VESCP as an erosion impact area.

Adopted by the Council of the City of Virginia Beach, Virginia, on the 28<sup>th</sup> day of  
August, 2012.