

ORDINANCE NO. 3518

AN ORDINANCE (i) to redesignate existing Section 5-4-1 (APPROVED EROSION AND SEDIMENT CONTROL PLAN REQUIRED--CONSTRUCTION OF BUILDINGS) as Section 5-4-1.1, (ii) to add a new Section 5-4-1 (DEFINITIONS), (iii) to amend and reordain Section 5-4-5 (EXCEPTIONS), subsection (11) (UNDERGROUND UTILITY CONSTRUCTION) of subsection (b) (MINIMUM REQUIREMENTS) of Section 5-4-7 (MINIMUM CRITERIA; CITY HANDBOOK), Section 5-4-11 (INSPECTIONS AND AMENDMENTS OF PLANS), Section 5-4-13 (ACCEPTANCE OF PERFORMANCE), and subsection (b) (WRITTEN NOTICE) of Section 5-4-14 (NONCOMPLIANCE AND CORRECTIVE ACTIONS), (iv) to repeal Section 5-4-20 (TRANSITION), and (v) to add a new Section 5-4-20.1 (INCORPORATION OF STATE REGULATIONS), all of Chapter 4 (EROSION AND SEDIMENT CONTROL), Title 5 (TRANSPORTATION AND ENVIRONMENTAL SERVICES) of The Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 5-4-1 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is redesignated to read as follows.

Sec. 5-4-1.1 Approved erosion and sediment control plan required--construction of buildings.

Except as provided in section 5-4-5 of this code, it shall be unlawful for any person to construct or erect any building or structure on any land within the city unless there is in force an approved erosion and sedimentation control plan issued under the provisions of this chapter.

Section 2. That Chapter 4 of Title 5 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended by adding thereto a new section 5-4-1 to read as follows:

Sec. 5-4-1 Definitions.

As used in this chapter, the following terms shall have the meanings set forth below, unless the context requires a different meaning:

(a) "Applicant" shall mean any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

(b) "Erosion and sediment control plan," or "plan," shall mean 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 needed interpretations,

and a record of decisions contributing to conservation treatments. 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.

(c) "Director" shall mean the director of transportation and environmental services, his designee or his duly authorized agent.

(d) "Land-disturbing activity" shall mean any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land.

(e) "Owner" shall mean the owner or owners of the freehold of the premises or of a lesser estate therein, a mortgagee or vendee in possession, an assignee of rents, a receiver, an executor, a trustee, a lessee or another person, firm or corporation in control of a property.

(f) "Permittee" shall mean the person to whom the permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

(g) "Person" shall mean any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the commonwealth, interstate body, or other legal entity.

(h) "Plan-approving authority" shall mean the department of transportation and environmental services which shall be responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit or group of units of lands and for approving plans.

(i) "State waters" shall mean all waters on the surface and or wholly or partially under ground that is within or bordering the commonwealth or that is within the jurisdiction of the commonwealth.

(j) "Subdivision" shall mean the division of a lot, parcel, sites, tracts or other divisions of land into two or more lots, plots, sites, parcels or other divisions for the purpose, whether immediate or future, of sale or building development, including the resubdivision of existing lots, parcels, sites, tracts or other divisions of existing and duly recorded subdivisions. Any tract of land upon which a street, alley, or public right-of-way is dedicated shall be considered a subdivision.

Section 3. That Section 5-4-5 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended and reordained to read as follows:

Sec. 5-4-5 Exceptions.

The provisions of this chapter shall not apply to any construction, reconstruction, repair or alteration of any building or structure when no land is disturbed and no trees, shrubs, grass or vegetation is destroyed or removed, nor to any of the following:

(a) The construction or erection of any building or structure when the disturbed land area of the site is less than 10,000 square feet in size, provided there is no natural or man-made drainage ditch, swale draining in excess of 10,000 square feet, or storm sewer on the disturbed land and no existing or proposed grade on the disturbed land exceeds 10 percent.

(b) The alteration of any building or structure when the disturbed land area of the site will be less than 10,000 square feet, provided there is no natural or man-made drainage ditch, swale draining in excess of 10,000 square feet, or storm sewer on the disturbed land and no existing or proposed grade on the disturbed land exceeds 10 percent.

(c) The clearing, grading, excavating, filling or changing the contour of, or removing topsoil from, less than 10,000 square feet of land, provided there is no natural or man-made drainage ditch, swale draining in excess of 10,000 square feet, or storm sewer on the disturbed land and no existing or proposed grade on the disturbed land exceeds 10 percent.

(d) The clearing, grading, excavating, filling or changing the contour of, or removing topsoil from, less than 500 square feet of land, provided there is no natural or man-made drainage ditch, swale, draining in excess of 10,000 square feet or storm sewer on the disturbed land, and further provided the disturbance of the land does not cause sedimentation on land outside the exterior boundaries of the land disturbed.

(e) The removal or destruction of trees, shrubs, grass, weeds, vegetation, ground cover or other plant life which covers less than 10,000 square feet of land, provided there is no natural or man-made drainage ditch, swale draining in excess of 10,000 square feet, or storm sewer on the disturbed land and no existing or proposed grade on the disturbed land exceeds 10 percent.

(f) The planting, trimming, pruning or removal of trees, shrubs, grass, weeds, vegetation, ground cover or other plant life pursuant to chapter 2 of title 6 of this code.

(g) The removal or destruction of trees, shrubs, grass, weeds, vegetation, ground cover or other plant life which is dead, poisonous or infected with disease or injurious insects or pests.

(h) The gardening and care of lawns.

(i) The removal or destruction of trees, shrubs, grass, weeds, vegetation, ground cover or other plant life from lots of less than 20,000 square feet on which there now exists a dwelling.

(j) The exploration or drilling for oil and gas including the well site, roads, feeder lines and off-site disposal areas.

(k) The repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company.

(l) The preparation for single-family residences separately built, unless in conjunction with multiple construction in subdivision development.

(m) Shore erosion control projects on tidal waters when the projects are approved by local wetlands boards, the Marine Resources Commission or the U.S. Army Corps of Engineers.

(n) Emergency work to protect life, limb or property, and emergency repairs; provided, that, if the land-disturbing activity would have required an approved erosion and sediment control plan if the activity were not an emergency, the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan-approving authority.

Section 4. That subsection (11) of subsection (b), Section 5-4-7 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended and reordained to read as follows:

(11) Underground utility construction.

a. The construction of nonexempt underground utility lines shall be subject to the following criteria:

1. No more than 100 feet of trench are to be opened at one time.

2. Where consistent with safety and space considerations, excavated material is to be placed on the uphill side of trenches.

3. Trench dewatering devices shall discharge in a

manner which will not adversely affect flowing streams, drainage systems or off-site property.

b. Nonexempt utility construction includes the installation, maintenance or repair of all utilities which disturb more than 10,000 square feet except:

1. individual service connections;
2. installation of fence and sign posts, telephone and electric poles and other kinds of posts or poles; or
3. underground public utility lines under existing hard surfaced roads, streets or sidewalks, provided such land-disturbing activity is confined to the area which is hard-surfaced.

Section 5. That Section 5-4-11 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended and reordained to read as follows:

Sec. 5-4-11 Inspections and amendments of plans.

(a) The plan-approving authority or, where a grading, building or other permit is issued in connection with land-disturbing activities, the permit-issuing authority shall provide for periodic inspections of the authorized land-disturbing activity or activities and may, in addition, require monitoring and reports from the person responsible for carrying out the approved plan to ensure compliance with the plan and to enable the authority to determine whether the measures required in the plan are effective in controlling erosion and sediment. The owner, occupier or operator shall be given an opportunity to accompany an inspector during an inspection. If the plan-approving or permit-issuing authority determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities. Where the plan-approving authority serves such a notice, a copy of the notice shall be sent to the permit-issuing authority. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply with such measures within the time specified, the permit may be revoked, and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this chapter and upon conviction shall be subject to the penalties provided in section 5-4-18.

(b) The director may authorize amendments to an approved plan

when he has determined that an inadequacy exists or that the plan cannot be carried out effectively because of changed circumstances.

Section 6. That Section 5-4-13 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended and reordained to read as follows:

Sec. 5-4-13 Acceptance of performance.

Upon completion of adequate stabilization of an approved erosion and sedimentation control plan, the permittee shall notify the director of such completion. The director shall then inspect the work and planting and, upon his determination that they are in compliance with the approved plan, he shall issue a letter of preliminary acceptance. A condition of any such preliminary acceptance shall be that the permittee guarantee all erosion and sedimentation control work for a period of one year from the date of its preliminary acceptance, or for a period of one year from any repair or replanting ordered by the director, or until such time that all control structures and a minimum of 90 percent of all plantings shall have survived for a year without need of further replanting or repair. During the one year period of the guarantee, the director may order in writing such replanting or repair work as shall be deemed necessary to enforce compliance with the approved plan or the guarantee. Such an order shall serve to revoke the preliminary acceptance and shall cause the permittee to renew the guarantee for an additional one year from the date of replanting or repair. Final acceptance shall occur when preliminary acceptance has remained unrevoked for a period of one year, or when all control structures and a minimum of 90 percent of all plants have survived for a period of one year without need of further replanting or repair. For purposes of this section, normal cleaning of silt basins alone shall not be construed to be repair work.

Section 7. That subsection (b) of Section 5-4-14 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended and reordained to read as follows:

(b) Written confirmation of this notice to comply shall be sent, by certified mail, to the applicant for the erosion and sedimental control permit or hand-delivered at the site of the land-disturbing activities to the agent or employee supervising such activities, citing a detailed description of the conservation measures necessary for compliance.

Section 8. That Section 5-4-20 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is repealed.

Section 9. That Chapter 4 of Title 5 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended by adding thereto a new section 5-4-20.1 to read as follows:

Sec. 5-4-20.1 Incorporation of regulations of the Virginia Soil and Water Conservation Board.

The erosion and sediment control regulations of the Virginia Soil and Water Conservation Board, effective September 13, 1990, and as subsequently amended, are incorporated herein by reference. The text of these regulations is on file in the office of the director.

Section 10. That this ordinance shall become effective upon the date and at the time of its final passage.

PATRICIA S. TICER
Mayor

Final Passage: June 15, 1991