

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 15.2-961.3 of the Code of Virginia, relating to replacement of trees during*
 3 *development process in localities; tree canopy fund.*

4 [H 2630]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 15.2-961.3 of the Code of Virginia is amended and reenacted as follows:**8 **§ 15.2-961.3. Replacement of trees during development process in localities.**9 A. Any locality may adopt an ordinance providing for the planting and replacement of trees during the
 10 development process pursuant to the provisions of this section.11 B. The ordinance shall require that the site plan for any subdivision or development include the planting
 12 or replacement of trees on the site to the extent that, at 20 years, minimum tree canopies or covers will be
 13 provided in areas to be designated in the ordinance, as follows:

- 14 1. Ten percent tree canopy for a site zoned business, commercial, or industrial;
- 15 2. Ten percent tree canopy for a residential site zoned 20 or more units per acre;
- 16 3. Fifteen percent tree canopy for a residential site zoned more than 10 but less than 20 units per acre;
- 17 4. Twenty percent tree canopy for a residential site zoned 10 units or less per acre; and

18 5. The tree canopy percentage for a mixed-use development shall be the percentage applicable to the
 19 predominant use of the development. For purposes of this subdivision, "predominant use" means the use
 20 within the development that constitutes the largest percentage of gross land area or, in the case of a building
 21 or buildings, the largest percentage of the total floor area.22 However, the City of Williamsburg may require at 10 years the minimum tree canopies or covers set out
 23 in this subsection.24 C. The ordinance shall require that the site plan for any subdivision or development include, at 20 years,
 25 that a minimum 10 percent tree canopy will be provided on the site of any cemetery as defined in §
 26 54.1-2310, notwithstanding any other provision of this section. In no event shall any local tree replacement or
 27 planting ordinance adopted pursuant to this section exceed the requirements of this subsection.28 D. The ordinance shall provide for reasonable provisions for reducing the tree canopy requirements of
 29 subsection B or granting tree cover credit in consideration of the preservation of existing tree cover or for
 30 preservation of trees of outstanding age, size, or physical characteristics.31 E. The ordinance shall provide for reasonable exceptions to or deviations from these requirements to
 32 allow for the reasonable development of farm land or other areas devoid of healthy or suitable woody
 33 materials, for the preservation of wetlands, or otherwise when the strict application of the requirements would
 34 result in unnecessary or unreasonable hardship to the developer. In such instances, the ordinance may provide
 35 for a tree canopy bank *or fund* whereby a portion of a development's tree canopy requirement may be met
 36 from off-site planting or replacement of trees at the direction of the locality.37 F. Any ~~such~~ *tree canopy* bank shall be within the locality and located as closely as feasible to where the
 38 development project is situated. If there is no bank within the locality of the development project with
 39 sufficient credits to meet the project's off-site needs, and with the approval of the locality where the
 40 development project is located, the unmet portion of a development's tree canopy requirement may be met by
 41 payment of an amount equal to no less than the development project's avoided costs for the unmet portion to
 42 the *locality's tree canopy fund established pursuant to subsection G or the state treasury and to be credited to*
 43 the Natural Resources Commitment Fund, pursuant to subsection A of § 10.1-2128.1. Amounts credited to
 44 the Natural Resources Commitment Fund pursuant to this subsection shall be distributed to the Virginia
 45 Agricultural Best Management Practices Cost-Share Program and applied to the implementation of riparian
 46 forested buffer best management practices. The following shall be exempt from the requirements of any tree
 47 replacement or planting ordinance promulgated under this section: dedicated school sites, playing fields and
 48 other nonwooded recreation areas, and other facilities and uses of a similar nature.49 ~~F. G.~~ *A locality may, by ordinance, establish a tree canopy fund to collect, maintain, and distribute fees*
 50 *collected from developers that cannot provide full tree canopy requirements on-site where permitted pursuant*
 51 *to subsection E. For purposes of establishing consistent and predictable fees, such ordinance shall establish*
 52 *cost units that are based on average costs of two-inch caliper nursery stock trees. The locality may use*
 53 *moneys from the tree canopy fund to (i) plant and maintain trees on public or private property or (ii) make a*
 54 *disbursement to a community-based organization that is exempt from income tax pursuant to § 501(c)(3) of*
 55 *the Internal Revenue Code and is operated for tree planting, stewardship, or community-beautification*
 56 *missions that benefit the community at large. Any funds collected by localities in accordance with this*

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57 *subsection shall be spent within a five years of the collection date.*

58 *H.* The ordinance may designate tree species that cannot be planted to meet minimum tree canopy
59 requirements due to tendencies of such species to (i) negatively impact native plant communities, (ii) cause
60 damage to nearby structures and infrastructure, or (iii) possess inherent physiological traits that cause such
61 trees to structurally fail. All trees to be planted shall meet the specifications of the AmericanHort. The
62 planting of trees shall be done in accordance with either the standardized landscape specifications adopted by
63 the Virginia Nursery and Landscape Association, the Virginia Society of Landscape Designers, or the
64 Virginia Chapter of the American Society of Landscape Architects or, if applicable, the road and bridge
65 specifications of the Virginia Department of Transportation.

66 ~~G.~~ *I.* Existing trees that are to be preserved may be included to meet all or part of the canopy
67 requirements, and may include wooded preserves, if the site plan identifies such trees and the trees meet
68 standards of desirability and life-year expectancy that the locality may establish.

69 ~~H.~~ *J.* For purposes of this section, "tree canopy" or "tree cover" includes all areas of coverage by plant
70 material exceeding five feet in height, and the extent of planted tree canopy at 10 or 20 years' maturity.
71 Planted canopy at 10 or 20 years' maturity shall be based on published reference texts generally accepted by
72 landscape architects, nurserymen, and arborists in the community or standards adopted by the Virginia State
73 Forester, and the texts shall be specified in the ordinance.

74 ~~I.~~ *K.* Penalties for violations of ordinances adopted pursuant to this section shall be the same as those
75 applicable to violations of zoning ordinances of the locality.

76 ~~J.~~ *L.* In no event shall any local tree replacement or planting ordinance adopted pursuant to this section
77 exceed the requirements set forth herein. Nothing in this section shall prohibit or unreasonably limit
78 silvicultural practices in accordance with § 10.1-1126.1.

79 ~~K.~~ *M.* Nothing in this section shall invalidate any local ordinance adopted by the City of Williamsburg
80 that imposes standards for 10-year-minimum tree cover replacement or planting during the development
81 process.

82 ~~L.~~ *N.* Nothing in this section shall invalidate any local ordinance adopted pursuant to the provisions of §
83 15.2-961 or 15.2-961.1.