



MEMORANDUM

TO: Timothy J. Baroody, City Manager
FROM: Kate Schwartz, Historic Resources Planner
DATE: April 6, 2021 (for the April 13, 2021 City Council Meeting)
SUBJECT: The City of Fredericksburg proposes amendments to the Unified Development Ordinance to require the preservation and accommodation of archaeological resources as a component of land development processes.

ISSUE

Shall the City Council approve amendments to the Unified Development Ordinance for the purpose of identifying, evaluating, preserving, excavating, and interpreting archaeological resources located within the City of Fredericksburg during the land development process?

RECOMMENDATION

Open the public hearing and accept public input. Accept written comment until April 27, 2021. On April 27, approve the UDO text amendments on first read.

PLANNING COMMISSION REVIEW AND RECOMMENDATION

The Planning Commission held a public hearing on the proposed ordinance on March 10, 2021. The hearing was held open until March 24, 2021, at which time the Planning Commission took action to recommend approval of the ordinance to the City Council. No public comments were received for either meeting.

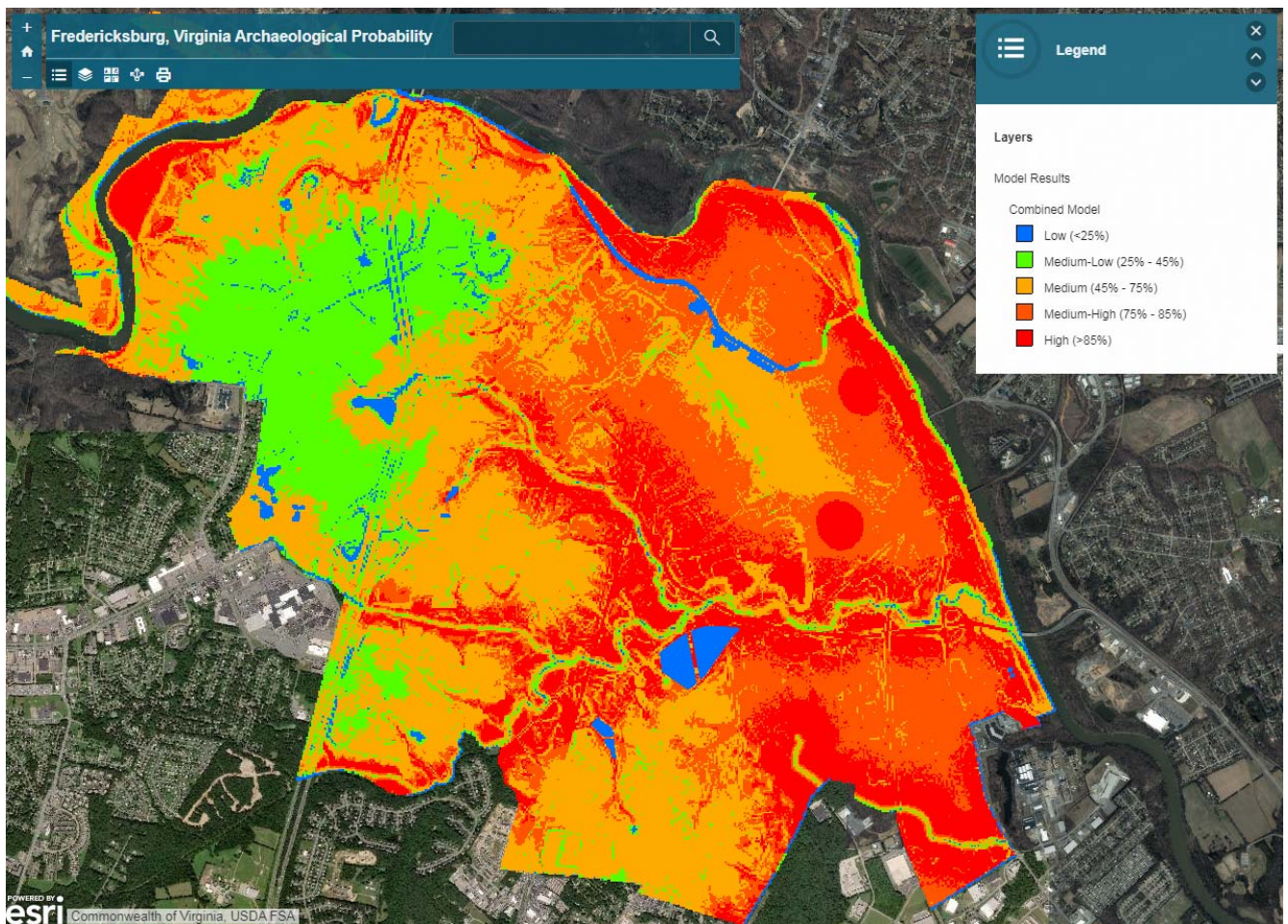
DISCUSSION

City Council adopted Ordinance 20-01 on February 11, 2020, amending the Unified Development Ordinance to require the preservation and accommodation of archaeological resources. The ordinance advanced the City's goal to establish an archaeological preservation program, stated in the 2015 Comprehensive Plan, Chapter 8, "Historic Preservation," The City's 2010 Historic Preservation Plan, and City Council's Goals and Initiatives for 2016-2018. The ordinance was the result of work accomplished through the City's archaeology working group, created by City Council in 2017.

Originally scheduled to take effect on July 1, 2020, City Council suspended the effective date of the ordinance through the adoption of Ordinance 20-11 on June 23, 2020 due to revenue shortfalls experienced as a result of the COVID-19 public health emergency. With that action, the City Council required that the archaeological ordinance would need to be re-ordained through the full UDO text amendment process before taking effect. The proposed ordinance is unchanged from that recommended for approval by the Planning Commission in November

2019 and approved by the City Council in February 2020, with the exception of a new effective date of July 1, 2021.

The program is structured with the purpose of identifying and investigating archaeological resources in those areas of the City with the highest potential for their existence. The ordinance references a predictive model created for the city and requires evaluation and potential investigation of sites located in areas where archaeological resources are most likely present. The model was developed through a grant-funded project with Marstel-Day in 2018. This included a citywide assessment of known archaeological sites and the evaluation of data sources including typical site features, historic maps, and extensive archival research. Accounting for both the prehistoric and historic periods, the model essentially functions as a heat map, and is divided into a range of five probability levels: low, medium-low, medium, medium-high, and high. The ordinance includes regulations for identifying, investigating, and protecting areas in the medium-high and high probability zones in the course of land disturbance.



The predictive model was created through a citywide archaeological assessment and is available to view [online](#).

Two tiers of regulation are included in the proposed ordinance, and these are established based on existing land development review processes. For large-scale projects that require a major site plan, which involve the disturbance of more than 2500 square feet of land, preliminary archaeological survey of areas where the land will be disturbed is required. This Phase IA survey will be submitted with the major site plan application for review by staff and the City's on-call archaeological consultants. Further investigation, excavation, or avoidance will be required if a site is determined to be present. Excavation or avoidance will be carefully targeted based on the specific circumstances of the project through a memorandum of agreement, with the goal of coordinating any land disturbance to avoid excessive expense or delay. While avoidance is prioritized where feasible, this condition would not be used to prevent or substantially alter a design otherwise permitted by the City Code.

The requirement to conduct archaeological investigation applies citywide; however, three exemptions are provided for projects requiring a major site plan. If the site is shown as low, medium-low, or medium probability on the City's predictive model; if evidence shows that the site has been previously graded or disturbed; or if the development has been approved through the compliance process for Section 106 of the National Historic Preservation Act, then the archaeological requirements are waived.

For smaller projects that require a minor site plan (land disturbance less than 2500 square feet), residential lot grading plan, or certificate of appropriateness, the application will be evaluated administratively to determine archaeological impacts. If an archaeological site is likely to exist and be impacted by the project, the City will coordinate with the property owner to have professional archaeologists monitor the site during land disturbance. If archaeological resources are found, the City can take up to one week to further study the area before work in that area proceeds. For all evaluation processes, the City is working to establish an on-call contract with professional archaeologists to ensure qualified reviews.

These requirements will be incorporated into §72-50 "General Standards" of the UDO as a new section titled "Archaeological Resources." Additionally, §72-84 "Definitions" will be amended to include the terms archaeological resource, archaeological site, and archaeologist. Administrative requirements will be fulfilled by the Zoning Administrator, or by the appropriately deputized Historic Resources Planner, with assistance from professional archaeologists under an on-call contract. These on-call services will be used to review submitted plans, develop additional scopes of work, provide on-site monitoring when needed, and respond to unexpected discoveries.

FISCAL IMPACT

The primary expense for the archaeology program's budget will be the on-call archaeological services for evaluation and monitoring. In addition, public education through annual publication, workshops, exhibits, or other means is vital to the program and central to its purpose. The annual program budget is estimated at \$50,000, but this number will be variable based on the number of projects submitted and reviewed annually. Once the program is

functioning for a period of time, analysis of the actual costs and number of projects completed annually will determine if there is a need for a permanent staff archaeologist.

Approximately one-third of the budget will be funded through a 5% fee on development application fees and the rest will be funded through the City's general fund. The proposed fee schedule is attached for reference, but will be proposed for adoption through an additional budgetary process. The percentage permit fee allows some costs to be shared throughout the City, as the program provides a public benefit through education initiatives and is structured to allow the City to respond to unexpected discoveries citywide. For large-scale projects, property owners or developers bear much of the cost of archaeological investigation. For small-scale projects, investigation and monitoring is largely funded through the City's general fund. For most individual homeowners, the only associated costs will be the percentage added to application fees.

CONCLUSION

Fredericksburg is a city that recognizes the value of its heritage both as an economic driver and a public benefit that gives the community unique character. Fredericksburg's many historic buildings are readily visible and the City has a clear structure in place for ensuring their protection. Alternatively, archaeological resources, by their very nature, are not visible and can easily be overlooked. Through this archaeological program, the City seeks to identify and protect these places in order to enhance Fredericksburg's historical record and disseminate these discoveries to the public. The Planning Commission should recommend approval of the amendments to the City Council.

ATTACHMENTS:

1. Draft Ordinance
2. Proposed Fee Schedule



City of Fredericksburg
Community Planning and Building Department
Planning Services Division
PROPOSED 2021 SCHEDULE OF FEES

| Zoning and Land Use Permit Fees | |
|--|--|
| Accessory Structure Permit (Structures < 256 sq. ft. and No Building Permit Required) | \$0 |
| Administrative Adjustments Including: Administrative Modification / Alternative Landscape Plan / Alternative Parking Plan / Site Plan Exception / Subdivision Exception | \$120 |
| Architectural Review Board (Certificate of Appropriateness) | |
| Signs, Fences, Accessory Structures | \$60 |
| Alterations and Demolition | \$120 |
| New Construction and Additions | \$180 |
| Board of Zoning Appeals – Appeal, Variance, Chesapeake Bay Overlay District RPA Exception | \$400 for an Individual SF Lot \$600 All Others |
| Certificate of Zoning Use Permit | \$30 |
| City Council – Appeal, Exception | \$400 for an Individual SF Lot \$600 All Others |
| Corridor Overlay Design Review – New Construction | \$60 |
| Downtown Parking Fund | \$7,150 / Parking Space |
| Fence Permit | \$0 |
| Home Occupation Permit / Homestay Permit | \$30 |
| Non-Conforming Use – Change, Expansion | \$300 |
| Sidewalk Café | \$0 |

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| Signs, A-Frame | \$25 |
| Signs, Illuminated | \$90 / sign |
| Signs, Non-Illuminated | \$60 / sign |
| Signs, Temporary | \$50 |
| Special Exception Permit | \$750 + \$150 / acre |
| Special Use Permit | \$300 for an Individual sq. ft. Lot \$750 + \$150 an acre for All Others |
| Temporary Use Permit | \$30 |
| Text Amendment | N/A |
| Vacation of Easement / Right-of-Way | \$300 |
| Zoning Letter – Confirmation, Verification, DMV | \$60 for an Individual sq. ft. Lot \$120 All Others |
| Zoning Map Amendment, ≤ 2 acres | \$750 + \$150 / acre |
| Zoning Map Amendment, > 2 acres | \$1,500 + \$150 / acre |
| Zoning Map Amendment, Proffer Amendment | 100% of Zoning Map Amendment Fee |

| DEVELOPMENT REVIEW FEES | |
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| Subdivision Plats | |
| Preliminary Subdivision Plat <i>Major Subdivision (>50 lots)</i> <i>Minor Subdivision (10-50 lots)</i> | \$1,500 + \$60 / lot |
| Final Subdivision Plat | Minor Subdivision without Preliminary Subdivision Plat Approval \$1,600 + \$120 / lot All Others \$1,200 + \$120 / lot |
| Final Subdivision Plat – Boundary Line Adjustment, Consolidation, Easement / ROW Dedication | \$600 |
| Vacation of a Recorded Subdivision Plat | \$150 |
| Minor Site Plan Land Disturbance < 2,500 sq. ft. | |
| Application Fee | \$575 |
| <i>Archaeological Review Fee</i> | <i>\$60</i> |
| Revision to Approved | \$250 |
| Major Site Plan – Land Disturbance ≥ 2,500 sq. ft. and Construction Plan (Subdivision) | |
| Administrative Base Fee | \$1,000 |
| <i>Archaeological Review Fee</i> | <i>\$120</i> |
| E&S/SWM Plan Review Fee | Residential Site Plans < 10 lots, Multi- Family, and Non-Residential Projects \$700 Residential Site Plans ≥ 10 lots and Mixed-Use Projects \$1,000 |
| Utilities / Water, Sewer, Storm Sewer | \$120 + \$0.60 / linear ft of storm sewer \$120 + \$0.60 / linear ft of sanitary sewer \$120 + \$0.60 / linear ft of waterline |

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| Public Streets | \$600 + \$0.60 / linear ft of each travel lane |
| Parking Areas / Vehicular Travel Lanes | \$120 + \$0.04 / square ft of paved area |
| Fire Lane | \$150 |
| Revision to Approved | 50% of original fee Minimum fee \$575 |
| Grading Plan | |
| Administrative Base Fee | \$700 |
| <i>Archaeological Review Fee</i> | <i>\$120</i> |
| E&S/SWM Plan Review Fee | \$700 |
| Land Disturbance Permit Fees | |
| Land Disturbing Activity less than 10,000 sq. ft. not associated with single family dwelling or residential accessory improvements (valid for six months) - Renewal fee for each succeeding 6 month period | \$200 \$200 / renewal |
| Land Disturbing Activity less than two month's duration - Renewal fee for additional two month period (may only be renewed once) | \$200 \$200 / renewal |
| Land Disturbing Activity 10,000 sq. ft. or greater (valid for twelve months) - Renewal fee for each succeeding 6 month period | \$600 + \$300/acre Max. \$3,600 \$800 / renewal |
| Land Disturbing Activity 10,000 sq. ft. or greater associated with single family attached/detached of 10 lots or more and mixed use development (valid for 30 months) - Renewal fee for each succeeding 6 month period | \$5,600 + \$600/acre, no limit to acreage ¹ \$1,600 / renewal |
| ¹ Single Family attached/detached residential units in subdivisions also pay the Residential Lot Grading Plan fee of \$350 when the building permit is applied for on the individual lot. | |

| Other Development Review Fees | |
|--|---|
| As-Built Plan Application | \$200 |
| Development Review Fee Refunds | <p>If a site / subdivision application is withdrawn, the applicant may submit a request in writing for a refund. A refund will be issued subject to the following:</p> <ol style="list-style-type: none"> 1. The initial staff review has not been completed. 2. A plan review and processing fee will be deducted from the original fee. <p>Plan Review and Processing Fee: 50% of the original fee; Minimum fee \$600</p> |
| Performance Guarantee – Intake / Contract Management | \$200 |
| Performance Guarantee – Reduction, Release, Replacement / Substitution of Agreement, Contract Extensions | \$100 |
| Performance Guarantee – Default Action | \$500 |
| Performance Guarantee – Report Requests | \$50 |
| Residential Lot Grading Plan (Individual Lots) | <p style="text-align: right;">\$350 / SF Dwelling Unit (Attached/Detached) + \$60 for <i>Archaeological Review*</i></p> <p style="text-align: center;"><i>*Lots within a subdivision with an approved major site plan are exempt from the Archaeological Review fee.</i></p> <p style="text-align: right;">\$175 Amendment</p> |



April 13, 2021
Regular Meeting
Ordinance No. 21-__

MOTION:

SECOND:

RE: Amending the Unified Development Ordinance to Require the Preservation and Accommodation of Archaeological Resources

ACTION: APPROVED: Ayes: 0; Nays: 0

FIRST READ: _____ SECOND READ: _____

It is hereby ordained by the Fredericksburg City Council that City Code Chapter 72, "Unified Development Ordinance," is amended as follows.

Sec. I. Introduction.

The purpose of this amendment is to advance the policy of the Commonwealth of Virginia as set forth in Virginia Constitution Article 11, §§1 and 2, to conserve, develop, and utilize the historical sites of the Commonwealth through the preservation and accommodation of archaeological resources, as authorized under Code of Virginia §15.2-2306. In addition, this ordinance advances the City's goal of establishing an archaeological program, as stated in the 2015 Comprehensive Plan, Chapter 8, "Historic Preservation," the City's Historic Preservation Plan, and the City Council's Goals and Initiatives for 2016-2018. This ordinance is the result of work accomplished through the City's archaeological working group which was created by City Council in spring 2018.

The City Council adopted a resolution to initiate a text amendment at its meeting on February 23, 2021. The Planning Commission held its public hearing on the amendment on March 10, 2021 and took action on March 24, 2021 to recommend approval of this text amendment to the City Council. The City Council held its public hearing on this amendment on _____.

In adopting this ordinance, City Council has considered the applicable factors in Virginia Code § 15.2-2284. The City Council has determined that public necessity, convenience, general welfare and good zoning practice favor the requested amendment.

Sec. II. City Code amendment.

City Code Chapter 72, "Unified Development Ordinance," is amended as follows:

1. Section 72-50 shall be amended by adding a new section 72-50.5, "Archaeological Resources," as follows:

Sec. 72-50.5 Archaeological Resources.

- A. Purpose and Intent. The purpose of this section is to identify, evaluate, preserve, excavate, and interpret archaeological resources located within the City of Fredericksburg during the process of land development in order to promote the general welfare, education, and economic well-being of the City and to disseminate archaeological and historical data.
- B. A reconnaissance (Phase IA) archaeological report shall be required for any development that requires major site plan approval. The developer shall submit the report for review with the major site plan application. In the alternative, the developer may begin the application process with a Phase IB, II, or III study.
1. The reconnaissance report process shall be completed by an archaeologist.
 2. Tasks included in the reconnaissance study shall include a background literature and records review at the City of Fredericksburg and the Virginia Department of Historic Resources (DHR), archival research as appropriate, field study, and preparation of a report.
 3. Associated field studies shall include a visual inspection of the property including documentation through photography, written notes, and mapping.
 4. The archaeologist shall perform limited subsurface investigation as part of the reconnaissance when he or she deems necessary. In those instances, the following standards apply: (a) excavation shall include a minimum of two judgmentally placed shovel test pits to assess soil integrity and the potential for intact archaeological deposits; (b) shovel test pits shall be no smaller than 15 inches in diameter, excavated at intervals no greater than 50 feet, and will continue to sterile subsoil, if possible; (c) all soils from shovel test pits must be screened through one-fourth inch hardware cloth and all materials retained for analysis. Recovered artifacts are the property of the landowner.
 5. Data gathered during the background review, archival research, and field study shall be incorporated in a report that meets the DHR's guidelines for technical documents. The report shall be reviewed by an individual meeting the Secretary of the Interior's Professional Qualification Standards as part of the major site plan application through the process set forth in §72-26.1(C).
 6. If the Zoning Administrator finds, after review of the reconnaissance report, that an archaeological site does not exist or that no significant archaeological resources

will be adversely affected by the development, the major site plan application may proceed through the remainder of the review process.

7. When the Zoning Administrator finds, after review of the reconnaissance report, that an archaeological site may exist and that significant archaeological resources may be adversely affected by the development, the Zoning Administrator shall request an identification-level survey (Phase IB) accompanied by archival research, as needed. The identification-level survey shall meet DHR guidelines for archaeological studies and include one of the following subsurface studies as approved by the Zoning Administrator: a) the excavation of systematic shovel test pits at a maximum of 50-foot intervals; b) the excavation of systematic shovel test pits using a close-interval grid (10- or 25-foot intervals); c) the excavation of backhoe trenches in areas with the potential to contain features; or d) the excavation of sample test units. Soils removed during the fieldwork shall be screened through one-fourth inch mesh as meets state guidelines, and all artifacts shall be analyzed. The results of the archival research and fieldwork shall be included in an identification-level report and submitted to the Zoning Administrator for review.
8. If the Zoning Administrator finds, after review of the identification-level (Phase IB) archaeological field survey, that an archaeological site exists and is likely to be significant, and that the project will adversely impact the site, then he or she may require the applicant to submit Phase II evaluation testing or Phase III data recovery, as appropriate.
 - a. The major site plan shall incorporate mitigation measures to preserve or accommodate archaeological resources, such as avoidance or recovery, reduction in the size or scope of land-disturbing activities, or the implementation of other mitigation measures as recommended by the archaeologist, to the degree possible.
 - b. Should avoidance not be achievable, a memorandum of agreement shall be executed between the Zoning Administrator and the developer to outline the steps required to meet this ordinance. The memorandum of agreement shall be prepared in accordance with DHR procedures, and shall include an archaeological scope of work developed in consultation with an Archaeologist.
 - c. Failure to implement mitigation measures in accordance with the memorandum of agreement shall constitute a violation of this chapter subject to Section 72-72.

- d. The Zoning Administrator may approve the major site plan application before the completion of the required Phase II or Phase III investigations, only if feasible and consistent with the purposes of this section and upon ratification of a memorandum of agreement.
9. If unexpected archaeological resources are discovered on the development site after approval of the major site plan without the imposition of appropriate mitigation measures, then the Zoning Administrator shall issue an order to cease and desist all development activity in the affected area for up to seven days in order to develop and implement mitigation measures that meet the criteria in section 8 (b).
- C. The administrator shall waive the requirement for a Phase IA archaeological report after determining that a site is unlikely to contain archaeological resources based on a finding that:
1. The site is assessed or predicted to have a low, medium-low, or medium probability of yielding archaeological resources as determined by application of the City's archaeological assessment and predictive model;
 2. The site has been previously graded or disturbed to the extent and in a manner that would significantly diminish the research or public value of archaeological resources on the site, as evidenced by existing site features, historic aerial photography, or other documentation;
 3. The development has been approved through the compliance process for Section 106 of the National Historic Preservation Act.
- D. Upon receipt of an application for a development that requires a minor site plan, residential lot grading plan, or certificate of appropriateness, within an area designated as medium-high or high priority, the Zoning Administrator shall evaluate the development to determine if an archaeological site is likely to exist and if significant archaeological resources may be adversely affected by the development. The Zoning Administrator is authorized to monitor the site during approved land-disturbing activities. If the Zoning Administrator identifies archaeological resources, then he or she shall issue an order to cease and desist all development activity in the affected area for up to seven days in order to evaluate the deposits and develop and implement mitigation measures that meet the criteria in subsection A.

- E. The reports and field surveys required under this section shall conform to the criteria established in the Guidelines for Conducting Historic Resources Survey in Virginia published by DHR.
- F. Determinations of the significance of archaeological resources shall be made on the following criteria:
 - 1. Research value. The extent to which the archaeological data that might be located in the development area would contribute to the expansion of knowledge of that type of resource.
 - 2. Rarity. The degree of uniqueness of the resources in the development area and their potential for providing archaeological information about a person, building, structure, event, or historical process, for which there are few examples in the Fredericksburg area.
 - 3. Public value. The level of importance that archaeological resources in the development area possess due to association with a significant person, building, structure, event or historical process.
 - 4. Site integrity. The extent to which soil stratigraphy and original placement and condition of archaeological resources in the development area have not been disturbed or altered in a manner which appreciably reduces their research or public value.
 - 5. Presence of materials. The extent to which archaeological resources or evidence of historic buildings or structures are present in the development area.
 - 6. Impact upon resources. The extent to which any proposed land-disturbing activities will alter or destroy archaeological resources which have archaeological data potential.

- 2. Section 72-84, "Definitions," is amended by adding the following definitions:

ARCHAEOLOGICAL RESOURCE shall include human remains and objects, such as tools, bottles, dishes, flora and fauna, artifacts, features or ecofacts of prehistoric American Indian and historic American periods, that can reveal information on past lifeways, and areas which contain these objects such as graves, wells, privies, trash pits, cellars, kilns, basements, foundations, postholes, ditches, trenches, historic roadways or archaeological sites.

ARCHAEOLOGICAL SITE means the physical remains of any area of human activity greater than fifty years of age for which a boundary can be established. Examples of such sites include domestic/habitation sites, campsites, industrial sites, earthworks, mounds, quarries, canals, and roads.

ARCHAEOLOGIST means one who meets the United States Secretary of the Interior's Professional Qualification Standards for archaeology. For the purpose of Section 72-50.5, an Archaeologist must be a Registered Professional Archaeologist or be associated with a member firm of the American Cultural Resources Association.

Sec. III. Effective date.

This ordinance is effective on July 1, 2021.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

Approved as to form:

Kathleen Dooley, City Attorney

Clerk's Certificate

I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 21- duly adopted at a meeting of the City Council meeting held Date, 2021 at which a quorum was present and voted.

Tonya B. Lacey, MMC
Clerk of Council