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**MEMORANDUM**

**TO:** Timothy J. Baroody, City Manager  
**FROM:** Kate Schwartz, Historic Resources Planner  
**RE:** Initiating amendments to the Unified Development Ordinance to adopt “Archaeological Preservation District” regulations and to amend the Official Zoning Map to designate the overlay district.  
**DATE:** August 6, 2019 (for the August 13, 2019 meeting)

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**ISSUE**

Shall the City Council initiate amendments to the Unified Development Ordinance to adopt the “Archaeological Preservation District” and accompanying regulations and to amend the Official Zoning Map to designate the overlay district in order to identify and interpret archaeological resources within the City of Fredericksburg?

**RECOMMENDATION**

Fredericksburg has an incredibly rich history spanning thousands of years, and archaeological study has the ability to expand the knowledge of this history in ways no other study can. Archaeology transcends the limits of written record-keeping and tells the stories of the city’s past where no documents exist. Protection of archaeological resources has long been prioritized as a goal of the City Council and this ordinance will incorporate archaeological considerations into land development projects citywide. The City Council should initiate the amendments and refer the proposal to the Planning Commission for review.

**BACKGROUND**

The 2017 City Council Priorities include “Priority #20: Complete the Archaeology Ordinance.” For a number of years, the City Council has supported the creation of an archaeology ordinance as the most comprehensive methodology for protecting and investigating archaeological resources throughout the city. Several working groups have advanced this initiative over the years, and the most recent archaeology working group began meeting in January 2017. The draft regulations and proposed Archaeological Preservation District were developed by this group after extensive work to study best practices and sample ordinances, consult with cultural resource professionals, and conduct an evaluation of the City’s archaeological potential. This proposal creates the structure for a citywide archaeology program and creates a process for archaeological investigation in coordination with land development activities.

Chapter 8 of the 2015 Comprehensive Plan, “Historic Preservation,” states that, “Fredericksburg’s archaeological resources are an integral part of the City’s history,” and that, “Archaeological sites, when properly excavated, can provide information that contributes to the general history of the community and to the particular histories of its inhabitants.” Chapter 8 identifies the creation of a program “that will identify and protect Fredericksburg’s archaeological resources” as a key step in implementing the City’s long-term goals for historic preservation and an active downtown community. The ordinance is further supported by Issue 1, Goal 2 of the 2010 Historic Preservation Plan which seeks to “establish controls to assure archaeological sites and subsurface materials are properly identified, evaluated, and mitigated prior to excavation projects throughout the city.” The adoption of archaeological preservation regulations is supported by Virginia Constitution Article 11, and authorized by Virginia Code §15.2-2306.

The proposed archaeological overlay district was developed through a citywide assessment of known archaeological sites and the creation of a GIS-based predictive model that shows the areas of the City where archaeological resources are most likely to be found. 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 overlay district includes those areas with a medium-high or high probability for archaeological resources, and the proposed ordinance includes regulations for identifying, investigating, and protecting these areas in the course of land disturbance.

Two tiers of regulation for archaeological resources 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, preliminary archaeological survey of areas where land will be disturbed is required. This information will be submitted with the major site plan application for administrative review, and 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.

For smaller projects that require a minor site plan, 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 will establish an on-call contract with professional archaeologists to ensure qualified reviews.

The extent of archaeological study for all projects will be determined based on established research priorities. The goal of archaeology is not simply to dig every site, but rather to enhance the understanding of specific periods of history. At times, the most valuable course of action is simply to preserve a site in place for future study. Current research priorities identified include the history of urban slavery, gold mining and stone quarrying in the region, the city’s free black community, the canal systems, and the city’s diverse multicultural

community at the time the port was active. The primary expense for the archaeology program's budget will be on-call archaeological services for evaluation and monitoring; however, public education through annual publication, workshops, exhibits, or other means is vital to the program and central to its purpose.

At this time, the City Council is requested to initiate the amendments to adopt these regulations and the archaeological overlay, and to refer these to the Planning Commission to begin the public hearing process. Several public engagement components will also be incorporated into this process. A GIS Story Map is available online to help share information about the program, and includes the predictive model. Meetings with the public, members of the development community, and City boards and commissions are also proposed to take place in the near future. The goal of this program is to ensure that Fredericksburg's rich and unique archaeological record is not lost. The knowledge gained will contribute to Fredericksburg's sense of place and continue to define the city as an historical and cultural destination. The policies proposed are intended to balance this value with the needs of those seeking to develop land in the city.

### **CONCLUSION**

The proposed amendments are the result of many years of evaluation and consideration and will form the foundation of a City archaeology program that greatly expands the understanding of Fredericksburg's history. This program will allow Fredericksburg to further the discovery, investigation, and protection of archaeological resources, but also provide tools to make the process predictable for those developing land within the city. It is recommended that the amendments be initiated and referred to the Planning Commission for their review and public hearing.

### **Attachments:**

1. Resolution initiating UDO text amendments and zoning map amendment for archaeological preservation
2. Proposed amendments creating section 72-34.8 Archaeological Preservation District



**MOTION:**

August 13, 2019

**SECOND:**

Regular Meeting

Resolution 19-\_\_

**RE:           Initiating amendments to the Unified Development Ordinance to adopt  
“Archaeological Preservation District” regulations and to amend the Official  
Zoning Map to designate the overlay district.**

**ACTION:     APPROVED: Ayes:0; Nays: 0**

Chapter 8 of the 2015 Comprehensive Plan, “Historic Preservation,” states that “Fredericksburg’s archaeological resources are an integral part of the City’s history,” and that “Archaeological sites, when properly excavated, can provide information that contributes to the general history of the community and to the particular histories of its inhabitants.” Chapter 8 identifies the creation of a program “that will identify and protect Fredericksburg’s archaeological resources” as a key step in implementing the City’s long term goals for historic preservation and an active downtown community.

The adoption of an archaeological preservation district is further supported by the City’s Historic Preservation Plan and the City Council’s Goals and Initiatives for 2016-2018.

City Council has appointed several working groups to advance this initiative including, most recently the archaeology working group that begin meeting in January 2017. The working group has prepared draft regulations and a proposed district map which shows areas with either a medium-high or high priority for archaeological preservation.

The adoption of archaeological preservation regulations is supported by Virginia Constitution Article 11, and authorized by Virginia Code §15.2-2306.

Therefore, the City Council hereby resolves that:

- The City Council hereby initiates amendments to City Code Chapter 72, the Unified Development Ordinance, to provide for an “Archaeological Preservation District” as an overlay district, and to amend the zoning map to show the boundaries of the overlay district.
- The City Council refers this proposal to the Planning Commission for review, public hearing, and recommendation under the procedures set forth in City Code §72-22.1.

**Votes:**

**Ayes:**

**Nays:**

**Absent from Vote:**

**Absent from Meeting:**

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***Clerk's Certificate***

*I certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Resolution No. 19-\_\_, adopted at a meeting of the City Council held August 13, 2019, at which a quorum was present and voted.*

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***Tonya B. Lacey, CMC***  
***Clerk of Council***



**MOTION:**

**SECOND:**

[date]  
Regular Meeting  
Ordinance No. 19-\_\_

**RE:** Amending the Unified Development Ordinance and Official Zoning Map to add a new overlay zoning district for 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.

**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 late 2016.

The City Council adopted a resolution to initiate this text and map amendment at its meeting on August 13, 2019. The Planning Commission held its public hearing on the amendment on \_\_\_\_\_, after which it voted to recommend the 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 rezoning.

**II. City Code Amendment.**

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

1. Section 72-34, "Overlay Zoning Districts," shall be amended by adding a new section 72-34.8, "Archaeological Preservation District," as follows:

**Sec. 72-34.8 Archaeological Preservation District.**

- A. Purpose and intent. The Archaeological Preservation District is established for the purpose of identifying, evaluating, preserving, excavating, and interpreting 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. District boundaries. The district boundaries encompass areas within the City that have special public value because of the probable presence of notable archaeological features relating to the cultural heritage of the City, of such significance as to warrant preservation in place or, if not achievable, professional archaeological excavation. The district map shows areas with either a medium-high or high priority, as shown on the predictive model used by the City to define the district. The boundaries are shown on the City's official zoning map as an overlay zoning district.
- C. Administration. The implementation of district standards takes place during the administrative review of a major or minor site plan, residential lot grading plan, or certificate of appropriateness. Thus, the Zoning Administrator is authorized to administer the requirements of this district. The administrator shall consult with qualified City staff meeting the Secretary of the Interior's Professional Qualification Standards or, to the extent funds are appropriated for this purpose, with a qualified archaeologist, as needed for the enforcement of district regulations.
- D. Archaeological investigations and surveys. The reports and field surveys required for development within this district shall conform to the criteria established in the Guidelines for Conducting Historic Resources Survey in Virginia published by the Virginia Department of Historic Resources (DHR).
- E. Significance of archaeological resources. 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.
- F. Developments requiring major site plan approval. A reconnaissance (Phase IA) 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 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 and will be returned upon completion of analysis.
  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, as provided in §72-26.1(D)(1). 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 crafted to outline the steps required to meet this ordinance. The memorandum of agreement shall be prepared in accordance with DHR procedures, and the Zoning Administrator and the landowner shall be signatories on the ensuing document.
  - c. 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 the district and upon ratification of the 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 (b).
- G. Developments that require a minor site plan, residential lot grading plan, or certificate of appropriateness. 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 of the district 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 8(a).
- H. Exempt developments. A development approved through the compliance process for Section 106 of the National Historic Preservation Act shall be exempt from review under this section.

2. Section 72-84, "Definitions," is amended as follows:

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.

**SEC. III. Effective Date.**

This ordinance is effective immediately.

**Votes:**

**Ayes:**

**Nays:**

**Absent from Vote:**

**Absent from Meeting:**

Approved as to form:

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Kathleen Dooley, City Attorney

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***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. 19- duly adopted at a meeting of the City Council meeting held Date, 2019 at which a quorum was present and voted.*

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**Tonya B. Lacey, CMC**  
**Clerk of Council**