

# TITLE 7

## WETLANDS PROTECTION AND CONSERVATION

### Articles and Sections:

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#### **I. WETLANDS PROTECTION**

##### 7-1 Purpose.

The purpose of this ordinance is to protect the wetlands, related water resources, and adjoining land areas in the City by controlling activities deemed to have significant effect upon wetland values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, fisheries, recreation, agriculture, aquaculture, and historic values, (collectively, the "interests protected by this ordinance").

##### 7-2 Jurisdiction.

Except as permitted by the Conservation Commission or as provided in this Ordinance, no person shall remove, fill, dredge, alter or build within 150 feet of any fresh water wetland, marsh, meadow, bog or swamp; upon or within 150 feet of any lake, river, pond, stream; upon or within any land under said waters; or upon any

land subject to flooding or inundation by groundwater or surface water. (Prior Ch. 9-A, sec.4; new Ord. dated 06/24/87).

### 7-3 Exceptions.

The permit and application required by this ordinance shall not be required for maintaining, repairing, or replacing an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, sanitary sewer, storm drainage, public roadway, telephone, telegraph, or other telecommunication services, provided that the structure or facility is not substantially changed or enlarged, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

The permit and application required by this ordinance shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to the commission prior to commencement of work or within 24 hours after commencement, provided that the Conservation Commission certifies the work as an emergency project, and provided that the work is performed only for the time and place certified by the Conservation Commission for the limited purposes necessary to abate the emergency. Within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided in this ordinance.

Other than stated in this section, the exceptions provided in the "Wetlands Protection Act" (G.L. Ch. 131 Sec.40, as amended) shall not apply.

### 7-4 Applications for Permits.

Written application shall be filed with the Commission to perform work regulated by this ordinance on resource areas protected by this ordinance. The application shall include such plans as are deemed necessary by the Commission to describe proposed activities and their effects on the environment. No work shall commence without receiving and complying with a permit issued pursuant to this ordinance.

The application and plans shall contain data as required by this ordinance and regulations adopted by the Commission.

The Commission in an appropriate case may accept as the application and plans under this ordinance the Notice of Intent and plans filed under the Wetlands Protection Act, MGL ch. 131, Sec. 40.

At the time of application the applicant shall pay a filing fee specified in regulations of the Commission.

Any person desiring to know whether or not proposed work on the area is subject to this ordinance may in writing request a determination from the Commission. Such a request for determination shall contain data and plans specified by the regulations of the Commission.

#### 7-5 Notice and Hearings.

Any person filing an application or a request for determination with the Commission at the same time shall give written notice thereof, by certified mail or hand delivery, to all abutters according to the most recent records of the assessors, including those across a traveled way, or railroad bed. The notice shall enclose a copy of the application or request, with plans, or shall state where copies may be examined by abutters. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any application or request for determination, with written notice given at the expense of the applicant five working days prior to the hearing, in a newspaper of general circulation in the City.

The Commission shall commence the public hearing on any application or request for determination within 21 days from receipt.

The Commission shall issue its permit or other action, or determination in writing within 21 days of the close of the public hearing thereon.

The Commission in an appropriate case may combine its hearing under this ordinance with the hearing conducted under the Wetlands Protection Act, M.G.L. ch. 131, Sec. 40.

For reasons announced by the Commission at the hearing, the Commission shall have authority to continue or postpone the hearing to a date certain announced at the hearing, either for receipt of additional information offered by the applicant or others, or for information required of the applicant, deemed necessary by the Commission in its discretion. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

#### 7-6 Coordination with Other Boards.

Any person filing a permit application or request for determination with the

Commission shall provide one complete copy, including appropriate plans, at the same time, by certified mail or hand delivery, to the Clerk of the City Council, Planning Board, Board of Health and Building Commissioner. The Commission shall not take final action until such boards and officials have had 14 days from receipt of the notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission.

#### 7-7 Permit and Conditions.

If the Commission after a public hearing determines that the area which is the subject of the application is likely to be significant to the interests protected by this ordinance, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the work requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those interests, and all work shall be done in accordance with those conditions.

If the area is deemed not likely to be significant to the interests protected by this ordinance, the Commission shall so inform the applicant that the work does not require a permit.

Permits shall expire three years from the date of issuance. Any permit may be renewed once for an additional one year period, provided that a request for an extension is received in writing by the Commission prior to expiration.

For good cause the Commission may revoke or modify a permit issued under this ordinance, provided, however, that no such revocation or modification shall occur until the Commission has conducted a public hearing on the matter.

The Commission in an appropriate case may combine the permit or other action on an application issued under this ordinance with the Order of Condition issued under the Wetlands Protection Act.

#### 7-8 Regulations.

After public notice and public hearing the Commission shall promulgate rules and regulations, including a filing fee schedule, to effectuate the purposes of this ordinance. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this ordinance.

At a minimum these regulations shall define key terms in this ordinance not inconsistent with this ordinance.

## 7-9 Definitions.

The following definitions shall apply in the interpretation and implementation of this ordinance.

The term "person" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth of political subdivision thereof to the extent subject to city ordinances, administrative agencies, public or quasi-public corporations or bodies, the City of Woburn, and any legal entity, its legal representatives, agents, or assigns.

The term "alter" shall include, without limitation, the following actions when undertaken in resource areas subject to this ordinance:

- (a) Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- (b) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- (c) Drainage or other disturbance of water level or water table;
- (d) Dumping, discharging or filling with any material which may degrade water quality;
- (e) Placing of fill, or removal of material, which would alter elevation;
- (f) Driving of piles, erection of buildings, or structures of any kind;
- (g) Placing or obstructions of objects in water;
- (h) Destruction or dislocation of plant life including cutting and moving of trees;
- (i) Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
- (j) Any activities, changes or work which pollute or cause displacement of any body of water or groundwater.

## 7-10 Security.

As part of a permit issued under this ordinance, in addition to any security required by any other city or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

- (a) By a proper bond or deposit of money or negotiable securities sufficient in the opinion of the Commission;
- (b) By a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the City and members of the public, whereby

the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

7-11 Enforcement.

The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this ordinance and may make cause to be make such examinations, surveys or sampling as the Commission deems necessary.

The Commission shall have authority to enforce this ordinance, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions.

Upon request of the Commission, the City Solicitor shall take legal action for enforcement under civil law. Upon request of the Commission the Chief of Police shall take legal action for enforcement under criminal law.

In the alternative to criminal prosecution the Commission may elect to utilize the non-criminal disposition procedure set forth in M.G.L. c. 40, Section 21D.

City boards and officers, including any City police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates any provision of this ordinance, regulations thereunder, or permits issued thereunder, shall be punished by a fine of not more than \$300.00. Each calendar day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the ordinance, regulations or permit violated shall constitute a separate offense.

7-12 Burden of Proof.

The applicant for a permit shall have the burden of proof by a preponderance of the credible evidence that the work proposed in the application will not harm the interests protected by this ordinance. Failure to provide evidence to the Commission supporting a determination that the proposed work will not harm the interests protected by this ordinance shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

7-13 Relation to the Wetlands Protection Act.

This ordinance is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, M.G.L. ch. 131, Section 40, and regulations thereunder.

7-14 Severability.

The invalidity of any section or provision of this ordinance shall not invalidate any other section or provision thereof, nor shall it invalidate any Order of Conditions which previously has been issued. (Ord. dated 4/19/85).

7-15 Consultant Fees.

Pursuant to M.G.L. c.44, §53G and regulations adopted by the Commission, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other experts in order to aid in the review of proposed projects. The cost of such review shall be paid for by the applicant. Such funds shall be deposited with the city treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services. Any consultant hired under this provision shall be selected by the Commission, and shall report exclusively to the Commission and/or its administrator. (added 2/7/2014)

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