

ARTICLE VII. - WETLANDS PROTECTION

Sec. 15-101. - Purpose.

The purpose of this article is to protect the wetlands and all other resources currently protected under the MA Wetlands Protection Act (M.G.L.A. c. 131 § 40) and Regulations (310 CMR 10.00 et seq.) in the city. This article regulates activities deemed by the conservation commission likely to have a significant or cumulative effect on resource area values, including, but not limited to, public or private water supply, groundwater supply, flood control, storm damage prevention, prevention of pollution, protection of fisheries, protection of land containing shellfish, and protection of wildlife habitat. This article reflects and enforces the conservation commission fee schedule and shall further authorize the conservation commission to amend said fee schedule as needed, to reflect the expenditures for administrative and technical staff review time required to perform their duties. This article permits the conservation commission the ability to enforce, through criminal or noncriminal disposition.

(Ord. of 4-19-11, § 1(1))

Sec. 15-102. - Jurisdiction.

Except as permitted by the conservation commission, or as provided in this article, no person shall remove, fill, dredge, alter, or build upon or within one hundred (100) feet of any bank; upon or within one hundred (100) feet of any lake, river, pond (or) stream; land under any fresh or salt waters; or upon any land subject to flooding or inundation by groundwater or surface water.

Resource areas protected under this article shall mean all wetland resource areas protected in M.G.L.A. c. 131, § 40 and its regulations: 310 CMR 10.00 et seq. The conservation commission will also work with each individual applicant to achieve up to a twenty-five-foot setback from resource areas, however this twenty-five-foot setback is not a mandate of this article. Science and conservation commission experience have proven the significant benefits of a twenty-five-foot setback to the resource areas and the residents.

(Ord. of 4-19-11, § 1(2))

Sec. 15-103. - 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, 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 conservation commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the conservation commission. For any work proposed to the north of the southerly terminus of the hurricane barrier, and within one hundred (100) feet of a coastal wetland resource area protected under the Massachusetts Wetlands Protection Act and corresponding regulations, a copy of the notice shall also be sent to the United States Environmental Protection Agency, which is implementing the cleanup of the New Bedford Harbor Superfund Site.

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 conservation 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 certified by the conservation commission for the limited purposes necessary to abate the emergency. For any work proposed to the north of the southerly terminus of the hurricane barrier, and within one hundred (100) feet of a coastal wetland resource area protected under the Massachusetts Wetlands Protection Act and corresponding regulations, a copy of the notice shall also be sent to the United States Environmental Protection Agency, which is implementing the cleanup of the New Bedford Harbor Superfund Site. If the emergency requires a permanent repair; then within sixty (60) days of commencement of an emergency project a permit application shall be filed with the conservation commission for review as provided in this ordinance.

In addition to those stated in this section, the exceptions provided in Wetlands Protection Act (M.G.L.A. c. 131 § 40 as amended) shall apply.

(Ord. of 4-19-11, § 1(3); Ord. of 7-27-17, § 1)

Sec. 15-104. - Application for permits.

Written application for a permit to perform work regulated by this ordinance (hereinafter "application") shall be filed with the conservation commission. For any work proposed to the north of the southerly terminus of the hurricane barrier, and within one hundred (100) feet of a coastal wetland resource area protected under the Massachusetts Wetlands Protection Act and corresponding regulations, a copy of the application shall also be sent to the United States Environmental Protection Agency, which is implementing the cleanup of the New Bedford Harbor Superfund Site. The application shall include such plans as are necessary to describe proposed activities and their effects on the environment. No work shall commence except upon receipt and in compliance 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 conservation commission. The plans and documentation required shall be determined to be adequate by the conservation commission.

The conservation commission may accept as the application and plans under this ordinance the notice of intent (hereinafter known as a "NOI") and plans filed under the Wetlands Protection Act, M.G.L.A. c. 131, § 40. Any person planning on conducting work in or within one hundred (100) feet of a resource area shall file a NOI.

Any person desiring to know whether proposed work or an area is subject to this ordinance may in writing file a request for determination of applicability (hereinafter known as an "RDA") from the conservation commission. Such a request for determination shall contain data and plans specified by the regulations of the conservation commission. The conservation commission may accept as the application and plans under this ordinance the RDA application and plans filed under the Wetlands Protection Act, M.G.L.A. c. 131, § 40. 5.

(Ord. of 4-19-11, § 1(4); Ord. of 7-27-17, § 2)

Sec. 15-105. - Notice and hearings.

Any person filing an RDA or NOI with the conservation commission shall, at the same time of filing, give written notice thereof, by certified mail or hand delivery, to all abutters (owning land within one hundred (100) feet of the property line of the property at which the work is proposed) according to the most recent records of the assessors, including those across a traveled way, way of water, 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 an applicant is other than the

owner, the application shall be signed by the record owner(s) of the property and the request, the notice of the hearing and the determination itself shall be sent by the applicant to the owner via certified mail.

The conservation commission shall commence the public hearing on any application or request for determination, with written notice given, in a newspaper of general circulation in the city five (5) working days prior to the hearing. The expense of the legal ad shall be paid by the applicant.

The conservation commission shall commence the public hearing on any application or request for determination within twenty-one (21) days from receipt of a complete application.

The conservation commission shall issue its permit, determination, or other action in writing within twenty-one (21) days of the close of the public hearing thereon.

The conservation commission may combine its hearing under this article with the hearing conducted under the Wetlands Protection Act, M.G.L.A. c. 131 § 40.

For reasons announced by the conservation commission at the hearing, the conservation commission shall have authority to continue or postpone the hearing to a date 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 conservation commission shall take action on such information as is available.

(Ord. of 4-19-11, § 1(5))

Sec. 15-106. - Permit and conditions.

If the conservation 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 article, the conservation commission, within twenty-one (21) days of the close of the hearing, shall issue or deny a permit for the work requested. If it issues a permit, the conservation commission shall impose conditions which the conservation 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 article, the conservation commission shall inform the applicant that the work does not require a permit.

Permits shall expire three (3) years from the date of issuance. A permit issued in response to a NOI application may be extended for one (1) or more periods of up to three (3) years each, provided that a request for an extension is received in writing by the conservation commission thirty (30) days prior to expiration. A permit issued in response to a RDA application shall not be extended.

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

The conservation commission may combine the permit or other action on an application issued under this article with the order of conditions issued under the Wetlands Protection Act.

(Ord. of 4-19-11, § 1(6))

Sec. 15-107. - Rules and regulations.

The conservation commission may promulgate rules and regulations and may establish and amend fees to effectuate the purposes of this article.

(Ord. of 4-19-11, § 1(7))

Sec. 15-108. - Enforcement.

- A. No person shall remove, fill, dredge, build upon, degrade, damage vegetation, or otherwise alter resource areas protected by this article, or cause, suffer, or allow such activity, or leave in place unauthorized fill or otherwise fail to restore illegally altered land to its original condition or fail to comply with a permit or an enforcement action issued pursuant to this article.
- B. The conservation commission and its agents and employees shall have the authority to enter upon privately owned land for the purposes of performing their duties under the article and may make or cause to be made such examinations, surveys, or sampling as the conservation commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.
- C. The conservation commission shall have the authority to enforce this article and regulations and permits issued hereunder by violation notices, administrative orders and civil and criminal court actions.

- D. Upon request of the majority of the conservation commission, the city solicitor may commence civil or criminal legal action for enforcement under the law. Environmental officers, police officers or other officers having police powers, shall have the authority to assist the conservation commission in the enforcement of this article.
- E. Any person who violates any provision of this article or regulations promulgated hereunder, or any person who violates any permit, enforcement order or violation notice issued by the conservation commission or its authorized agent, shall be punished by a fine of not more than three hundred dollars (\$300.00). Each day or portion thereof during which a violation continues, or unauthorized fill or other alterations remain in place, shall constitute a separate offense and each provision of the article, regulation, permit, enforcement order or violation notice shall constitute a separate offense.
- F. The conservation commission and its authorized agents shall have the right to enforce this article pursuant to the noncriminal disposition procedures set forth in section 17-18 of this Code.

(Ord. of 4-19-11, § 1(8))

Sec. 15-109. - Burden of proof.

The applicant for a permit shall have the burden of proving, by a preponderance of the credible evidence, that the work proposed in the permit application will not have unacceptable significant or cumulative effect upon the resource area values protected by this article. Failure to provide adequate evidence to the conservation commission supporting this burden shall be sufficient cause for the conservation commission to deny a permit or grant a permit with conditions.

(Ord. of 4-19-11, § 1(9))

Sec. 15-110. - Appeals.

A decision of the conservation commission shall be reviewable in the superior court in accordance with M.G.L.A. c. 249 § 4.

(Ord. of 4-19-11, § 1(10))

Sec. 15-111. - Relation to the wetlands protection act.

This article 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.A. c. 131 § 40) and Regulations (310 CMR 10.00) thereunder. It is the intention of this article that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall not be interpreted and administered as stricter than those under the Wetlands Protection Act and Regulations.

(Ord. of 4-19-11, § 1(11))

Sec. 15-112. - Severability.

The invalidity of any section or provision of this article shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, approval or determination which previously has been issued.

(Ord. of 4-19-11, § 1(12))

Secs. 15-113—15-119. - Reserved.