

Chapter 50 WETLANDS PROTECTION AND CONSERVATION*

***Cross references:** Boats and waterways, ch. 10; building, electricity and plumbing regulations, ch. 12; planning and development, ch. 30; waters and sewers, ch. 46.

State law references: Removal, fill, dredging or altering land bordering waters, M.G.L.A. c. 131, § 40.

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Sec. 50-1. Definitions.

(a) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alter includes, without limitation, the following actions when undertaken in areas subject to this chapter:

(1) Removal, excavation or dredging of soil, sand, gravel, or aggregate material of any kind.

(2) Changing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns and flood retention characteristics.

(3) Drainage or other disturbance of the water level or water table.

(4) Dumping, discharging or filling with any material which may degrade water quality.

(5) Driving of piles, erection of buildings or structures of any kind.

(6) Placing of obstructions, whether or not they interfere with the flow of water.

(7) Destruction of plant life, including cutting of trees.

(8) Changing of water temperature, biochemical oxygen demand or other physical or chemical characteristics of the water.

Applicant, bog, coastal wetlands, freshwater wetlands, swamps, wet meadows, and marshes shall have the meanings defined in M.G.L.A. c. 131, § 40.

Banks means that part of land adjoining any body of water which confines the water.

Person includes any individual, groups of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivisions thereof to the extent subject to city ordinances, administrative agencies,

public or quasipublic corporations or bodies, the city, and any other legal entity, its legal representatives, agents or assigns.

(b) The conservation commission may adopt additional definitions consistent with this section in its regulations promulgated pursuant to section 50-8.

(Code 1973, § 34-1)

Cross references: Definitions generally, § 1-2.

Sec. 50-2. Prohibited activities; determination of applicability.

No person shall remove, fill, dredge, alter or build upon or within 100 feet of any brook, stream, river, pond, lake, estuary or bank, freshwater wetland, coastal wetland, beach, dune, flat, marsh, wet meadow or swamp or upon any land under such waters or any land subject to tidal action, coastal storm flowage, flooding or inundation or within 100 feet of the 100-year floodline, other than in the course of maintaining, repairing, or replacing but not substantially changing or enlarging an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, telephone, telegraph and other telecommunication services, without filing written application for a permit so to remove, fill, dredge, alter, or build upon, including such plans as may be necessary to describe such proposed activity and its effect on the environment, and receiving and complying with a permit issued pursuant to this chapter. Such application may be identical in form to a notice of intention filed pursuant to M.G.L.A. c. 131, § 40, shall be sent by certified mail to the conservation commission, shall be accompanied by a filing fee of \$25.00 payable to the city and may be filed before other permits, variances and approvals required by the zoning ordinance, the Subdivision Control Law or any other ordinance or regulation have been obtained, provided that a complete application has been filed for each such permit, variance or approval. Upon written request of any person, the conservation commission shall, within 21 days of its receipt, make a written determination as to whether this chapter is applicable to any land or work thereon. When the person requesting a determination is other than the owner, notice of the determinations shall be sent to the owner as well as to the requesting person.

(Code 1973, § 34-2)

Sec. 50-3. Hearing on permit application; access to property.

(a) The conservation commission shall hold a public hearing on the application for the permit required in section 50-2 within 21 days of its receipt. Notice of the time and place of the hearing shall be given by the conservation commission, at the expense of the applicant, not less than five days prior to the hearing, by publication in a newspaper of general circulation in the city and by mailing a notice to the applicant, the board of health, the city council, the city engineer, the planning board, all abutters, and to such other persons as the conservation commission may by regulation determine.

(b) The conservation commission, its agents, officers and employees may enter upon privately owned land for the purpose of performing their duties under this chapter.

(Code 1973, § 34-3)

Sec. 50-4. Issuance of permit and conditions.

If, after the public hearing as provided in section 50-3, the conservation commission determines that the area which is the subject of the application is significant to the public

or private water supply, to the groundwater supply, to flood control, to storm damage prevention, to prevention of pollution, to protection of land containing shellfish, or to the protection of fisheries (collectively referred to as the "interests protected by this chapter"), the conservation commission shall, within 21 days of such hearing, issue or deny a permit for the work requested. If it issues a permit after making such determination, the conservation commission shall impose such conditions as it determines are necessary or desirable for protection of those interests, and all work shall be done in accordance with those conditions. If the conservation commission determines that the area which is the subject of the application is not significant to the interests protected by this chapter or that the proposed activity does not require the imposition of conditions it shall issue a permit without conditions within 21 days of the public hearing. (Code 1973, § 34-4)

Sec. 50-5. Relationship to state statute.

The conservation commission shall not impose additional or more stringent conditions pursuant to M.G.L.A. c. 131, § 40 than it imposes pursuant to this chapter, nor shall it require an applicant filing a notice of intention pursuant to M.G.L.A. c. 131, § 40 to provide materials or data in addition to those required pursuant to this chapter. (Code 1973, § 34-5)

Sec. 50-6. Emergency projects.

This chapter shall not apply to any emergency project as defined in M.G.L.A. c. 131, § 40. (Code 1973, § 34-6)

Sec. 50-7. Restoration of land in violation.

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of this chapter or in violation of any permit issued pursuant to this chapter shall forthwith comply with any such order or restore such land to its conditions prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless commenced within three years following the date of acquisition of the real estate by such person. (Code 1973, § 34-7)

Sec. 50-8. Promulgation of regulations.

After due notice and public hearing, the conservation commission may promulgate rules and regulations to effectuate the purposes of this chapter. Failure by the conservation 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 chapter. (Code 1973, § 34-8)

Sec. 50-9. Burden of proof.

The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application for the permit required by this chapter will not harm the interests protected by this chapter. Failure to provide adequate evidence to the conservation commission supporting a determination that the proposed work will

not harm the interests protected by this chapter shall be sufficient cause for the conservation commission to deny a permit or to grant a permit with conditions or, in the conservation commission's discretion, to continue the hearing to another date to enable the applicant or others to present additional evidence.

(Code 1973, § 34-9)

Sec. 50-10. Security.

The conservation commission may require, as a permit condition, that the performance and observance of other conditions be secured by one or both of the following methods:

(1) A bond or deposit of money or negotiable securities in an amount determined by the conservation commission to be sufficient and payable to the conservation commission upon default.

(2) A conservation restriction, easement or other covenant running with the land, executed and properly recorded or registered, in the case of registered land, with the Essex South District of Registry of Deeds.

(Code 1973, § 34-10)

Sec. 50-11. Appeal.

(a) The applicant, an owner of land abutting the land upon which the proposed activity is to be done, any ten residents of the city or any other person aggrieved by a determination of the conservation commission to deny or issue a permit pursuant to this chapter, with or without conditions, may appeal the determination to the city council by filing a notice of appeal within ten days of issuance or denial of the permit.

(b) A notice of appeal shall be deemed filed when sent, by certified mail, return receipt requested, to the city council. A copy of the notice shall be sent by the appellant by certified mail, return receipt requested, to the applicant if not the appellant, to the conservation commission, and to all other parties at the conservation commission hearing.

(c) Within 60 days following such filing, the city council shall review the conservation commission's determination and shall either affirm the action of the conservation commission or remand the application to the conservation commission for further proceedings. Review by the city council shall be limited to consideration of whether the conservation commission's action was arbitrary, capricious, in excess of its authority under this chapter or unsupported by evidence.

(Code 1973, § 34-11)

Sec. 50-12. Enforcement.

Any person who violates any section of this chapter or any condition of a permit issued pursuant to this chapter shall be punished by a fine of not more than \$200.00. Each day or portion thereof during which a violation continues shall constitute a separate offense; if more than one, each condition violated shall constitute a separate offense. This chapter may be enforced by a police officer or other officer having police powers. Upon request of the conservation commission or of the city council, the mayor and city solicitor shall take such legal action as may be necessary to enforce this chapter and permits issued pursuant to this chapter.

(Code 1973, § 34-12)