

Chapter 636

WETLANDS PROTECTION

GENERAL REFERENCES

Stormwater management — See Ch. 570.

Zoning — See Ch. 650.

§ 636-1. Purpose.

- A. The purpose of this bylaw is to protect the floodplains, wetlands and related water resources, riverfront areas and adjoining land areas in the Town of Webster by prior review and control of activities deemed to have a significant effect upon wetland or resource area values, including, but not limited to, the following: public or private water supply, ground water, water quality, flood control, sedimentation and erosion control, storm damage prevention and flowage, water pollution control, wildlife and wildlife habitats, fisheries, fish and shellfish habitats, rare plant and animal species, agriculture, aquaculture and recreation values deemed important to the community (collectively, the "wetland values protected by the bylaw"). This bylaw is adopted under authority of Section 6, Article 89 of the Amendments to the Massachusetts Constitution, known as the Home Rule Amendment, and MGL c. 40, § 21.
- B. All of the procedures and requirements set forth in the Wetlands Protection Regulations of 310 CMR 10.00 et. seq. are hereby incorporated and made a part of these regulations except where they differ from or depart from these regulations. Where these regulations differ from or depart from the state regulations, they shall take precedence over the state regulations. The applicant should first address the regulations at 310 CMR 10.00 et. seq. and then supplement them with the Webster Wetlands Protection bylaw. Unless otherwise indicated in the bylaw or these regulations, definitions, timeframes, forms and procedures shall be the same as stated in the Massachusetts Wetlands Protection Act.
- C. 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 bylaw and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

§ 636-2. Conditional exceptions.

- A. The Order of Conditions and application required by this bylaw shall not be required for 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 to provide electric, gas, water, telephone, telegraph, and other telecommunication services provided that written notice has been given to the Commission prior to the commencement of any work, and provided that the work conforms to

performance standards and design specifications in regulations adopted by the Commission.

- B. Any agricultural activity as defined by the Farm Assessment Act, MGL c. 61, 61A, 61B, and/or c. 132 exempt from the provisions of the Wetlands Protection Act, MGL c. 131, § 40, MGL c. 128, § 1A, and from the Wetlands Protection Regulations 310 CMR 10.00 (normal maintenance or improvement of land in agricultural use) will also be exempt under this bylaw.

§ 636-3. Fees.

A. Fee Schedule.

- (1) At the time an application is filed, the applicant shall pay a fee specified in the regulations of the Commission. The filing fee is in addition to that required by the Wetlands Protection Act (MGL c. 131, § 40 and Regulations 310 CMR 10.00 et. Seq.). These filing fees are nonrefundable.
- (2) The Conservation Commission shall use such fees to implement this bylaw, the regulations promulgated hereunder, and any policies developed by the Conservation Commission including, but not limited to, the employment of a Conservation Consultant/Agent. The responsibilities of the Conservation Consultant/Agent may include, but are not limited to: review of resource areas, performing site visits, briefing the Conservation Commission, serving as liaison between the Conservation Commission, applicants, abutters, consultants and other interested parties, drafting Determinations of Applicability and Orders of Conditions, verifying implementation of erosion control measures, facilitating Public Hearings, reviewing requests for certificates of compliance and enforcing the provisions of this article, the regulations promulgated hereunder, and the policies developed by the Conservation Commission.
- (3) The Conservation Commission may waive the filing fee for a Notice of Intent application or a Request for Determination of Applicability filed by a government agency.

B. Wetlands Consultant Fees.

- (1) In order to enforce the regulations promulgated hereunder, and the policies developed by the Conservation Commission to the extent consistent with MGL c. 44, § 53G and any other law pertaining thereto, or at any point during the review of an application until a Certificate of Compliance is issued, the Conservation Commission may find that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project or because the project may have a significant effect upon the values the Conservation Commission is authorized to protect. The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision.

- (2) In such instances where consulting fees are required, the Commission shall notify the applicant of this need and shall provide the opportunity for the application to be amended or withdrawn. Should an applicant choose to proceed, the Commission shall require the applicant to pay the fees for these consulting services. The consultant services may include, but shall not be limited to, ascertaining the extent of the Conservation Commission's jurisdiction, analyzing resource area functions and values, evaluating ecosystem management such as wildlife habitat, analyzing hydrogeologic and drainage conditions, providing assistance during appeal or litigation, researching environmental or land use law, and inspecting work to insure compliance. The Commission shall return any unused portion of the consultant fee to the applicant unless the Commission decides at a public meeting that other action is necessary.
- (3) Outside consultants shall be chosen by the Commission. Any applicant aggrieved by the imposition of, or size of the consultant fee, or any act related thereto, may appeal to the Board of Selectmen, in accordance with the provisions of the MGL c. 44 § 53G. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of Interest or does not possess the minimum required qualifications. The standard of qualification shall consist of Massachusetts certification or license in the field at issue or references mutually acceptable to the Commission and the applicant, showing expertise and experience in the field at issue. The required time limit for action upon an application by the Commission shall be extended by the duration of the administrative appeal.

§ 636-4. Violations and enforcement.

- A. No person shall remove, fill, dredge, build upon, degrade, or otherwise alter protected resource areas, 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 order issued.
- B. When possible violations are reported, a Commissioner or the Conservation Consultant/Agent will determine whether a violation exists and if an Enforcement Order is necessary. The Commission Consultant/Agent may consult with the Commission Chairman and other members as necessary, but if time or other constraints exist, may proceed employing best judgment. Any Enforcement Order issued by any individual must be ratified by the Commission at a public meeting.
- C. If a Commissioner or the Conservation Consultant/Agent confirms or strongly suspects a violation, an Enforcement Order will be issued. Enforcement Orders will direct the property owners and contractors to (1) stop work, (2) identify resource areas on the site, (3) install erosion controls, and (4) meet with the Commission to discuss the violation.
- D. If a wetland line has been previously approved by the Commission, its location will be the basis for evaluation of the violation. If a wetland line has not been established or approved by the Commission, then the

Commission or Enforcement Order may require the owner, developer, and contractor to employ a wetland scientist to identify wetland resource areas with flagging within a time frame not longer than two weeks from the date of the Enforcement Order. All Enforcement Orders will be maintained in the Conservation database and placed on file. At the subsequent meeting, the Commission will consider the following aspects of the violation: value of the area to the statutory interests, harm of the damage, immediacy of the harm, value of restoration, feasibility of restoration, potential legal outcomes, and potential financial burden to the Town of Webster.

- E. The Commission shall have authority to enforce its regulations and permits by the issuance of Enforcement Orders, administrative orders and the initiation of civil and criminal court actions. Any person who violates the provisions may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, fined, or both. The enforcing officers in the noncriminal disposition procedure shall be members of the Conservation Commission or its agents.
- F. Upon request of the Commission, the Town Administrator and the Town Counsel 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. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement. As an alternative to criminal prosecution in a specific case, the Commission may issue citations under the non-criminal disposition procedures set forth in MGL c. 40, § 21D.
- G. In addition to any other remedies available under any law or this bylaw, any person who violates any provision of this bylaw, regulation, permit or administrative order issued, may be fined according to the fine schedule below. The fine for filling in a wetland or resource area shall be seventy-five dollars (\$75) per square foot per day. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense with each provision of the bylaw, regulations, permits or administrative order(s) violated shall constitute a separate offense. For all other violations, each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw, regulations, permits or administrative order(s) violated shall constitute a separate offense. In a specific case, the Commission may issue the following penalties for wetland violations (not including filling of wetlands) after initial notification by the Webster Conservation Commission or its agents: First day of offense: one hundred dollars (\$100); Second day of offense: two hundred dollars (\$200); Third day and all subsequent days of offense: three hundred dollars (\$300).