

## CHAPTER 12

### WETLANDS PROTECTION

<u>Section</u>	<u>Item</u>
Sec. 12-1.	Application
Sec. 12-2.	Hearing
Sec. 12-2.1.	Permit and conditions
Sec. 12-2.2.	Relationship to Chapter 131, Section 40
Sec. 12-3.	Emergency projects
Sec. 12-4.	Pre-acquisition violation
Sec. 12-5.	Regulations
Sec. 12-6.	Burden of proof
Sec. 12-7.	Definitions
Sec. 12-8.	Security
Sec. 12-9.	Enforcement
Sec. 12-9A.	Right of entry
Sec. 12-10.	Filing fees
Sec. 12-11.	Feeding or baiting of migratory waterfowl
Sec. 12-12.	Employment of outside consultants

## **CHAPTER 12 - WETLANDS PROTECTION**

### **Section 12-1. Application**

The purpose of this ordinance is to protect the wetlands of the City of Methuen by controlling activities deemed to have a significant effect upon wetland values, including but not limited to the following: public or private water supply, ground water, flood control, erosion control, storm damage prevention, water pollution, fisheries, shellfish, wildlife, wildlife habitats, water recharge areas, flood plains, recreation and aesthetics (collectively, the "interests protected by this ordinance").

No person shall remove, fill, dredge, alter or build upon or within one hundred feet of any bank, fresh water wetland, coastal wetland, beach, dune, flat, marsh, meadow, bog, swamp, or on any estuary, creek, river, stream, pond or lake, or any land under said water or any land subject to tidal action, coastal storm flowage, flooding or inundation, or within one hundred feet of the one hundred year storm line, 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, sanitary sewers, public roadways, storm drainage systems, telephone, telegraph and other telecommunication services, provided however, that such person shall file with the Conservation Commission within forty-eight hours, a notice or as-built plan of such repair or replacement and listing individuals involved, work undertaken, location and date 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 ordinance.

Such application may be identical in form to a notice of intent filed pursuant to Chapter 131, Section 40 of the General Laws and shall be sent by certified mail to the Methuen Conservation Commission (the "Commission"), shall be accompanied by a filing fee as provided for in Section 12-10, payable to the City of Methuen, and may be filed before other permits, variances and approvals required by the Zoning Ordinance, Subdivision Control Law or any other ordinance or regulation have been obtained. Copies of the application shall be sent at the same time, by certified mail, to the Director of Public Works, the Community Development Board and the Board of Health. Upon written request of any person, the Commission shall, within twenty-one days, make a written determination as to whether this Ordinance is applicable to any land or work thereon. When the person requesting a determination is other than the owner, notice of the determination shall be sent to the owner as well as to the requesting person.

(As Amended by Ord. #274, Eff. Dec. 2, 1987.)

## **Section 12-2. Hearing**

The Commission shall hold a public hearing on the application within twenty-one days of its receipt. Notice of the time and place of the hearing shall be given by the 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 Methuen and by mailing a notice to the applicant, the Board of Health, the Director of Public Works, Community Development Board and to such other persons as follows: to all other abutters within one hundred feet of the property line of the land where the activity is proposed, at the mailing addresses shown on the most recent applicable tax list of the assessors, including, but not limited to, owners of land directly opposite said proposed activity on any public or private street or way, and in another municipality or across a body of water. The Commission, its agents, officers and employees, may enter upon privately owned land for the purpose of performing their duties under this Ordinance and may make or cause to be made such exam or survey as deemed necessary.

A final, definitive vote may be taken on the application on the night of the public hearing.

(As amended by Ord. #610, Eff. June 4th, 1997; as amended by Ord. #690, Eff. February 17<sup>th</sup>, 2000; as amended by Ord. # 885, Eff. February 4, 2015)

### **Section 12-2.1. Permit and Conditions**

A. If, after the public hearing, the Commission determines that the area which is the subject of the application is significant to the interests protected by this ordinance, the Commission shall, within twenty-one days of such hearing, issue or deny a permit for the work requested. If it issues a permit after making such determination, the 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 Commission determines that the area, which is the subject of the application, is not significant to the interests protected by this Ordinance, or that the proposed activity does not require the imposition of conditions, it shall issue a permit without conditions within twenty-one days of the public hearing. Permits shall have a maximum initial term of three years. Any request for an extension must be made at least thirty days prior to expiration; otherwise all work shall be completed prior to expiration.

B. In the event that a negative order of conditions should issue, the Conservation Commission shall state, in detail, its reasons why the proposal does not conform to the rules and regulations of the Commission or the wetlands Ordinance.

Should the applicant thereafter modify its plans and submittals in the notice of intent to conform to the rules and regulations and the wetlands Ordinance, then, and in that instance, it may request, and the Conservation Commission shall grant, a hearing, at which an amendment to allow approval or modification of the order of conditions shall be considered.

Such hearing on the amended notice of intent and order of conditions shall be duly publicized in a newspaper of general circulation, as well as service upon the abutters.

If, after the hearing, the Commission finds that the plans, as modified, now meet the rules and regulations, as well as the Ordinance, it shall revoke its negative order of conditions and grant a positive order of conditions.

This provision shall be applicable to all filings for the years 1987 and 1988 retroactively, and, prospectively as to all new filings.

(As amended by Ord. #316, effective December 12th, 1988)

### **Section 12-2.2. Relationship to Chapter 131, Section 40**

The Commission shall not impose additional or more stringent conditions pursuant to Chapter 131, Section 40 of the General Laws than it imposes pursuant to this Ordinance, nor shall it require a notice of intention pursuant to Section 40 to provide materials or data in addition to those required pursuant to this Ordinance, except as provided herein.

### **Section 12-3. Emergency Projects**

This Ordinance shall not apply to any emergency project as defined in Chapter 131, Section 40 of the General Laws, provided however, that a written notice shall be sent to the Conservation Commission within forty-eight hours after the emergency was declared as per terms and conditions stated in Section 12-1 of this Ordinance.

### **Section 12-4. Pre-Acquisition Violation**

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this Ordinance or in violation of any permit issued pursuant to this Ordinance shall forthwith comply with any such order or restore such land to this condition 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.

### **Section 12-5. Regulations**

After due notice and public hearing, the Commission may promulgate rules and regulations 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.

### **Section 12-6. 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 will not harm the interests protected by this Ordinance. Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not harm the interests protected by this Ordinance shall be sufficient to cause for the Commission to deny a permit or grant a permit with conditions, or, in the

Commission's discretion, to continue the hearing to another date to enable the applicant or others to present additional evidence.

## **Section 12-7. Definitions**

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

### **Section 12-7.1.**

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

### **Section 12-7.2.**

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

- (a) Removal, excavation or dredging of soil, sand, gravel or aggregate material of any kind;
- (b) Changing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns and 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) Driving of piles, erection of buildings or structures of any kind;
- (f) Placing of obstructions whether or not they interfere with the flow of water;
- (g) Destruction of plant life, including cutting of trees;
- (h) Changing of water temperature, bio-chemical oxygen demand or other physical or chemical characteristics of the water.

### **Section 12-7.3.**

The term "banks" shall mean that part of land adjoining any body of water, which confines the water.

#### **Section 12-7.4.**

The Commission may adopt additional definitions not inconsistent with this Section 12-7 in its regulations promulgated pursuant to Section 12-5 of this Ordinance.

#### **Section 12-8. Security**

The 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:

- (a) By a bond or deposit of money or negotiable securities in an amount determined by the Commission to be sufficient and payable to the City of Methuen upon default;
- (b) By a conservation restriction, easement or other covenant running with the land, executed and properly recorded (or registered, in the case of registered land).

#### **Section 12-9. Enforcement**

Any person who violates any provision of this Ordinance or of any condition of a permit issued pursuant to it, shall be punished by a fine of not more than One Hundred Dollars (\$100.00). 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 ordinance may be enforced by a City Police Officer or other officer having Police powers. Upon request of the Commission, the Mayor and City Solicitor shall take such legal action as may be necessary to enforce this Ordinance and permits issued pursuant to it.

For the purposes of this section, each day, or part thereof, shall constitute a separate offense where:

- (a) A person has filled a buffer zone or resource area and fails to obey, within the time periods specified, the original and subsequent enforcement orders to remove such fill.
- (b) A person has removed soils from a buffer zone or resource area and fails to obey, within the time periods specified, the original and subsequent enforcement orders to replace such soil.
- (c) A person has dredged a buffer zone or resource area and fails to obey, within the time periods specified, the original and subsequent enforcement orders to replace the materials dredged.
- (d) A person has altered a buffer zone or resource area and fails to obey, within the time periods specified, the original and subsequent enforcement orders to re-constitute the area.

(e) Where a person builds upon a buffer zone or resource area and fails to obey the original and subsequent enforcement orders to remove such structure or item so built.

It being the explicit intention of this Ordinance to establish a continuing offense penalty in accordance with the Grant decision of the Supreme Judicial Court.

(Ord. #322, effective March 15th, 1989)

### **Section 12-9(A). Right of Entry**

1. In the discharge of duties under Chapter 12, Methuen Municipal Code, the enforcing authority shall have the authority to enter at any reasonable hour any premises to enforce the provisions of this Chapter.

If any owner, occupant or other person refuses, impedes, inhibits, or obstructs entry and free access to every part of the premises where inspection for compliance with this Chapter is sought, the enforcing authority may:

- (a) Seek in a court of competent jurisdiction a search warrant so as to apprise the owner, occupant or other person concerning the nature of the inspection and justification for such inspection.
- (b) Revoke or suspend an order of conditions or determination of applicability authorized under this Chapter as it applies to the premises.

2. Any person who makes application for an order of conditions or a determination of applicability shall be presumed, for all purposes, to have granted authority to the Conservation Commission members, individually and/or collectively, and their agents, servants and employees to enter said premises at reasonable hours for the purposes of inspecting the same relative to their determination on said application or compliance with the order of conditions and the determination of applicability.

(Ord. #321, effective March 15th, 1989)

## Section 12-10. Filing Fees

Filing fees, under the provisions of this ordinance, shall be as follows:

Application	Project Type	Fee
Notice of Intent (NOI)	<b>Category 1</b> <b>*Category 2</b>  <b>*Category 3</b>  <b>*Category 4</b>  <b>Category 5</b> <b>* PLUS for Alteration of :</b> <b>Buffer Zones..... 0.05/sq/ft</b> <b>Land Subject to Flooding ..... 0.10/sq/ft</b> <b>Land Under Water..... 0.25/sq/ft</b> <b>Bank ..... 2.00/lin/ft</b> <b>Bordering Veg. Wetlands ..... 1.00/sq/ft</b>	<b>\$55.00</b> per activity <b>\$100.00</b> per activity <b>\$150.00</b> per activity <b>\$250.00</b> per activity <b>\$2.00</b> per linear foot, (w/ <b>minimum fee of \$50.00)</b>
Request for Determination of Applicability (RDA)	Addition, accessory structures, pool, septic and earthwork New single family dwelling and associated work Addition, parking lot, earthwork to non-residence  New non-residential building & associated work	<b>\$55.00</b> per activity  <b>\$100.00</b> per lot* <b>\$100.00</b> per activity*  <b>\$200.00</b> per activity* * PLUS Buffer Zone Fee
Certificate of Compliance (COC)	Single Family Residence Non-Residential Project Subdivision Project	<b>\$50.00</b> <b>\$100.00</b> <b>\$200.00</b>
Extension Permit	First three years Year four and beyond	<b>\$25.00</b> per year <b>\$100.00</b> per year
Enforcement Order	<i>To recommence work</i> Residence New Residence Other	<b>\$50.00</b> <b>\$100.00</b> <b>\$200.00</b>
True Attested Documents		<b>\$25.00</b> per document
Agent Site Visit	Single Family Lot Non-Residential Project or Subdivision	<b>\$50.00</b> <b>\$100.00</b>
Request to Amend OOC	<b>Category 1 Project</b> <b>Category 2 Project</b>  <b>Category 3 Project</b> <b>Category 4 Project</b>	<b>\$25.00</b> <b>\$50.00</b> <b>\$200.00</b> <b>\$300.00</b>



1. Category 1.

- a. Any work on a single family residential lot including a house addition, deck, garage, garden, pool, shed, or driveway. Activities excluded from Category 1 include driveways reviewable under 310 CMR 10.53(3)(e) (See Category 2f); construction of an unattached single family house; and construction of a dock, pier, or other coastal engineering structure.
- b. Site preparation of each single-family house lot, including removal of vegetation, excavation and grading, where actual construction of the house is not proposed under the Notice of Intent.
- c. Control of nuisance vegetation by removal, herbicide treatment or other means, from a resource area, on each single family lot, as allowable under 310 CMR 10.53(4).
- d. Resource improvement allowed under 310 CMR 10.53(4), other than removal of aquatic nuisance vegetation, as allowed under 310 10.53(4).
- e. Construction, repair, replacement or upgrading of a subsurface septic system or any part of such a system.
- f. Activities associated with installation of a monitoring well, other than construction of an access roadway thereto.
- g. New agriculture, including forestry on land in forest use (310 CMR 10.53(3)(r) and (s)), and aquacultural projects.

2. Category 2:

- a. Construction of each single-family house (including single family houses in a subdivision), any part of which is in a buffer zone or resource area. Any activities associated with the construction of said house(s), including associated site preparation and construction of retention/detention basins, utilities, septic systems, roadways and driveways other than those roadways or driveways reviewable under 310 CMR 10.53(3)(e)(See Category 2f), shall not be subject to additional fees if all said activities are reviewed under a single Notice of Intent. (For apartment/condominium type buildings see Category 3.)
- b. Parking lot of any size.
- c. The placement of sand for purposes of beach nourishment.
- d. Any projects reviewable under 310 CMR 10.24(7)(a) through (c).
- e. Any activities reviewable under 310 CMR 10.53(3)(d) and 310 CMR 10.53(3)(f) through (l), except for those subject to 310 CMR 10.03(7)(c)4.b. Where more than one activity is proposed within an identical footprint (*e.g.*, construction of a sewer within the footprint of a new roadway), only one fee shall be payable.
- f. Construction of each crossing for a driveway associated with an unattached single family house, reviewable under 310 CMR 10.53(3)(e).
- g. Any point source discharge.
- h. Control of nuisance vegetation, other than on a single family lot, by removal, herbicide treatment or other means, reviewable under 310 CMR 10.53(4).
- i. Raising or lowering of surface water levels for flood control or any other purpose.

- j. Any other activity not described in Categories 1, 3, 4 or 5.
- k. The exploration for (but not development, construction, expansion, maintenance, operation or replacement of) public water supply wells or wellfields derived from groundwater, reviewable under 310 CMR 10.53(3)(o).

3. Category 3:

- a. Site preparation, for any development other than an unattached single-family house(s), including the removal of vegetation, excavation and grading, where actual construction is not proposed in the Notice of Intent.
- b. Construction of each building for any commercial, industrial, institutional, or apartment/condominium/townhouse-type development, any part of which is in a buffer zone or resource area. Any activities associated with the construction of said building, including associated site preparation and construction of retention/detention basins, septic systems, parking lots, utilities, point source discharges, package sewage treatment plants, and roadways and driveways other than those roadways or driveways reviewable under 310 CMR 10.53(3)(e), shall not be subject to additional fees if all said activities are reviewed under a single Notice of Intent.
- c. Construction of each roadway or driveway, not reviewable under 310 CMR 10.53(3)(e), and not associated with construction of an unattached single-family house.
- d. Any activity associated with the clean up of hazardous waste, except as otherwise noted in Category 4, including excavation, destruction of vegetation, change in subsurface hydrology, placement of collection wells or other structures for collection and treatment of contaminated soil and/or water.
- e. The development, construction, expansion, maintenance, operation, or replacement of (but not exploration for) public water supply wells or wellfields derived from groundwater, reviewable under 310 CMR 10.53(3)(o).

4. Category 4:

- a. Construction of each crossing for a limited project access roadway or driveway reviewable under 310 CMR 10.53(3)(e) associated with a commercial, industrial, or institutional development or with any residential construction (other than a roadway or driveway associated with construction of an unattached single family house).
- b. Construction, modification, or repair of a flood control structure such as a dam, reservoir, tidegate, sluiceway, or appurtenant works.
- c. Creation, operation, maintenance or expansion of a public or private landfill.
- d. Creation, operation, maintenance or expansion of a public or private sand and/or gravel operation including but not limited to excavation, filling, and stockpiling.

- e. Construction of new railroad lines or extensions of existing lines, including ballast area, placement of track, signals and switches and other related structures.
  - f. Construction, reconstruction, expansion, or maintenance of any bridge, except to gain access to a single-family house lot.
  - g. Any alteration of a resource area(s) to divert water for the clean up of a hazardous waste site, for non-exempt mosquito control projects, or for any other purpose not expressly identified elsewhere in this fee schedule.
  - h. Any activities, including the construction of structures, associated with a dredging operation conducted on land under a waterbody, waterway, or the ocean. If the dredging is directly associated with the construction of a new dock, pier or other structure identified in Category 5, only the Category 5 fee shall apply.
  - i. Construction of, or the discharge from, a package sewage treatment plant.
  - j. Airport vegetation removal projects reviewable under 310 CMR 10.24(7)(c)5. and 10.53(3)(n).
  - k. Landfill closure projects reviewable under 310 CMR 10.24(7)(c)4. and 10.53(3)(p).
  - l. Any activities, including the construction of structures, associated with the assessment, monitoring, containment, mitigation, and remediation of, or other response to, a release or threat of release of oil and/or hazardous material reviewable under 310 CMR 10.24(7)(c)6. or 310 CMR 10.53(3)(q).
5. Category 5: Construction, reconstruction, repair or replacement of docks, piers, revetments, dikes, or other engineering structures on coastal or inland resource areas, including the placement of rip rap or other material on coastal or inland resource areas.

(Amended by Ord. #274, Eff. Dec. 2, 1987; as further amended by Ord. #754, Eff. July 1, 2003)

## **Section 12-11. Feeding or Baiting of Migratory Waterfowl**

No person, except the Director of the Division of Fisheries and Wildlife, or his agent, designee, as authorized pursuant to Chapter 131 of the General Laws, shall feed or bait any waterfowl or of the family of Anatidae (including, but not restricted to ducks, geese and swans) at any place within the City of Methuen. As used in this paragraph, "feeding" and "baiting" shall mean placing, exposing, depositing, distributing, or scattering, directly or indirectly, of shelled, shucked, or unshucked corn, wheat, or other grain, bread, salt, or any other feed or nutritive substances, in any manner or form, so as to constitute for such birds a lure, attraction, or enticement to, on, or over any such areas where such feed items have been placed, exposed, deposited, distributed, or scattered.

Nothing in this Ordinance shall be construed to limit the feeding of domesticated waterfowl, as defined by the Division of Marine Fisheries and Wildlife, by a farmer as defined in Section 1A of Chapter 128 on property owned or leased by him, or the feeding of waterfowl or

other birds by propagators licensed under Section 23 of Chapter 131 of the General Laws when such waterfowl or other birds are confined in such a manner as may be required pursuant to said Section 23 and any Rules and Regulations issued under authority thereof; or the feeding by any person or his agents, invitees or licensees of waterfowl lawfully kept as a pet by that person.

Notwithstanding any of the above, the Director of the Division of Fisheries and Wildlife, or his agent or designee, may authorize the emergency feeding of waterfowl and other birds when, in his opinion, such action is necessary in order to alleviate undue losses and suffering of such birds due to unusual weather conditions and other circumstances. The Director may authorize such action by such means as he deems necessary and expedient, but such means shall include the immediate notification of the City Council thereof by first class mail.

Any person who violates any provision of this Ordinance shall be subject to a fine of Fifty Dollars (\$50.00) for each offense thereof.

This ordinance may be enforced by Police Officers, Conservation Officers, Shellfish Constables, Harbormasters, Assistant Harbormasters, agents of the Board of Health, Environmental Police Officers, and other enforcement officers of the Division of Law Enforcement and by Deputy Environmental Police Officers.

Upon approval of this Ordinance, the City Council shall cause one copy thereof to be mailed to the Director of the Division of Fisheries and Wildlife and one copy to the Director of the Division of Law Enforcement.

(Amended by Ordinance #274, Eff. Dec. 2nd, 1987; as further amended by Ordinance #520, Eff. October 19th, 1994)

#### **Section 12-12. Employment of Outside Consultants**

In the instance where an applicant before the Conservation Commission desires that an outside consultative review be performed by the Conservation Commission due to the magnitude of the proposed project, the Conservation Commission, upon the payment of a fee covering the costs for the same, may retain an outside individual or firm to aid in its review of the application before the body. The Commission shall provide, by rule or regulation, a method whereby it chooses a pool of outside consultants to be used to implement this section. Said outside consultants shall only be used where (1) there is no conflict of interest between the consultant and the applicant before the Conservation Commission; and (2) the consultant shall have a minimum qualification of an educational degree in or related to the field at issue and three or more years of practice in the field at issue.

Any monies received from an applicant shall be placed in an account established by the City Treasurer and shall be kept separate and apart from other monies. The special account, including interest, if any, shall be expended at the direction of the Conservation Commission without further appropriation, provided, however, that such funds are to be expended by it only in connection with reviewing the application related to the fee which was submitted. Any excess amount in the account attributable to the specific project, including

accrued interest, at the completion of such review shall be repaid to the applicant or to the applicant's successor in interest and a final report of said account shall be made available to the applicant or applicant's successor in interest. The City Accountant shall submit an annual report of said special account to the City Council and the Mayor for their review.

(Ord. #591 Eff. Nov. 7th, 1996)