

Town of Palmer
Wetland Bylaw
Town of Palmer General Bylaws
Chapter 168

SECTION 1: PURPOSE

The purpose of this bylaw is to protect the wetlands, related water resources, and adjoining land areas in this municipality by controlling activities deemed by the Conservation Commission likely to have a significant cumulative 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 control, fisheries, wildlife habitat, recreation, aesthetics, and agriculture values (collectively, the “wetland values protected by this bylaw”).

SECTION 2: JURISDICTION

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, or alter the following resource areas: within 100 feet of any freshwater wetland, marsh, wet meadow, bog or swamp; within 100 feet of any bank or beach; any lake, river, pond, brook, creek or stream, intermittent or otherwise; any land under said waters; or within 100 feet of any land subject to flooding or inundation by groundwater or surface water.

SECTION 3: EXCEPTIONS

The permit 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 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 30 days 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 bylaw 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 or its agent certifies the work as an emergency project 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, and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as

provided in this bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

The provision of this section shall not apply to work performed for maintenance of land in agricultural use.

Other than stated in this section, the exceptions provided in the Wetlands Protection Act shall not apply.

SECTION 4: APPLICATIONS FOR PERMITS AND REQUESTS FOR DETERMINATION

Written application which may be identical in form to the Notice of Intent and plans filed under the Wetlands Protection Act, G. L. Chapter 131, Section 40, shall be filed via certified mail with the Commission to perform activities regulated by this bylaw affecting resource areas protected by this bylaw. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the environment. No activities shall commence without receiving and complying with a permit issued to this bylaw.

Any person desiring to know whether or not proposed activity or an area is subject to the Wetlands bylaw may submit a written request for determination from the Commission. (This request is NOT subject to a filing fee.) Within twenty-one (21) days of receipt of the request, the Commission shall make a written Determination of Applicability as to whether the bylaw applies to any land or work thereon. When the person requesting a determination is other than the owner, a notice of the Determination shall be sent to the owner as well as the requesting person.

At the time of an application or request the applicant shall pay a filing fee specified in regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act, G.L. c 131, Sec. 40. In addition, the Commission is authorized to require the applicant to pay the costs and expenses of any expert consultant deemed necessary by the Commission to revise the application or request up to a maximum of \$2, 500.00. The Commission may waive the filing fee and costs and expenses for an application or request if by a government agency and shall waive them for a request for determination filed by a person having no financial connection with the property which is the subject of the request.

SECTION 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 and/or across or downstream of a body of water of a distance to be determined by the Commission. The notice to abutters shall enclose a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters free of charge.

The Commission shall conduct a public hearing on any application. A 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 working days prior to the hearing by publication in the Palmer Journal or in a newspaper of general circulation in the municipality.

The Commission shall commence the public hearing within 21 days from receipt of a completed application of request for determination.

The Commission shall issue its permit 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 bylaw with the hearing conducted under the Wetlands Protection Act, G. L. c 131, Section 40.

The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required by the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials listed in Section 6. 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.

SECTION 6: COORDINATION WITH OTHER BOARDS

Any person filing a permit application with the Commission shall provide a copy thereof at the same time, by certified mail or hand delivery, to the Board of Selectmen, Planning Board, Board of Appeals, Board of Health, and Building Inspector. The Commission shall not take final action until such boards and officials have had 14 days from receipt of 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. The applicant shall have the right to receive any such comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

SECTION 7: PERMITS, DETERMINATIONS, AND CONDITIONS

If the Commission after a public hearing determines that the activities, which are the subject of the application, are likely to have a significant or cumulative effect upon the wetland values protected by this bylaw, the Commission within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions, which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions. Permits shall EXPIRE one (1) year from the date of issuance, unless renewed prior to expiration, and all work shall be completed prior to expiration. A request for renewal shall be made IN WRITING to the Conservation Commission at least two (2) weeks PRIOR to the date of expiration.

The Commission is empowered to deny a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Commission;

for failure to meet the design specifications, performance standards, and other requirements in regulation of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by this bylaw; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

For good cause the Commission may revoke or modify a permit issued under this bylaw after public notice and public hearing, and notice to the holder of the permit.

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

Pre-Acquisition. Any person who purchases, inherits or acquires real estate upon which work has been done in violation of the provisions of this bylaw shall forthwith comply with any such order or restore such land to its conditions prior to any such violation; however, that no action, civil or criminal, shall be brought against such person unless commenced within three (3) years following the date of acquisitions of the real estate by such person.

SECTION 8: REGULATIONS

After public notice and public hearing the Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw. 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 bylaw.

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

SECTION 9: DEFINITIONS

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

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 town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

The term “alter” shall include, without limitation, the following activities when undertaken to, upon, within, or affecting resource areas protected by this bylaw:

- (a) Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind.

- (b) Changing of pre-existing 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 or repair of buildings or structures of any kind.
- (g) Placing of obstructions or objects in water.
- (h) Destruction of plant life including cutting of trees.
- (i) Changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water.
- (j) Any activities, changes or work, which may cause or tend to contribute to pollution of any body of water or groundwater.

SECTION 10: SECURITY

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed there under 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 or other undertaking of financial responsibility 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 this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

SECTION 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 bylaw and may make or cause to be made such examinations surveys or sampling as the Commission deems necessary.

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

Upon request of the Commission, the Board of Selectmen and the Town Council 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.

Any person who violates any provision of this bylaw, regulations there under or permits issued there under shall be punished by a fine of not more than \$300.00. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw, regulations or permit violated shall constitute a separate offense. In the alternative to criminal prosecution the Commission may elect to utilize the non-criminal disposition procedure set Forth in G.L.c.40 21D.

SECTION 12: 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 the bylaw. Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will harm the interests protected by this bylaw shall be sufficient cause for 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 13: RELATION TO THE WETLANDS PROTECTION ACT

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetland Protection Act, G.L. C 131 & 40 and regulations there under.

SECTION 14: SEVERABILITY

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