CITY OF BOSTON
IN CITY COUNCIL

ORDINANCE PROTECTING LOCAL WETLANDS AND PROMOTING CLIMATE CHANGE ADAPTATION IN THE CITY OF BOSTON

WHEREAS: Climate change is an overriding public interest, against which current law and regulations do not sufficiently protect, and which the City's Conservation Commission could justifiably be empowered to address; *and,*

WHEREAS: A local wetlands ordinance will enable the improved management of the City's urban wetlands and enable the city to better protect against the effects of climate change; *and,*

WHEREAS: Boston is one of 20 Communities in the Coastal Zone without an Ordinance or a Bylaw.

WHEREAS: Wetlands provide important ecosystem services, such as water filtration, wildlife habitat, and pollution sequestration, including carbon dioxide and other greenhouse gases that contribute to climate change; *and,*

WHEREAS: Boston's plans for climate adaptation include the development of green infrastructure, including the option to construct, restore, and revitalize local wetlands; *and,*

WHEREAS: Developing a local wetlands ordinance is a stated goal for the City, as expressed in the Climate Ready Boston initiative to develop a wetlands protection action plan and every city council district in the City has wetlands or is affected by coastal storm flowage; *NOW*

THEREFORE BE IT ORDERED:

That the City of Boston Code, Ordinances be amended in Chapter VII by adding the following after 7-1.3:

7-1.4. WETLANDS PROTECTION AND CLIMATE ADAPTATION

a) Purpose. The purpose of this Ordinance is to protect the wetlands, water resources, flood- prone areas, and adjoining upland areas of the City of Boston from loss of their function, value, or acreage by controlling activities and mitigating effects deemed by the Boston Conservation Commission ("Conservation Commission" or "Commission") likely to have a significant individual or cumulative adverse effect upon protection of the following resource area values, including, but not limited to: protection of the public or private water supply and quality; protection of the public and private groundwater supply and quality; short term and long term coastal and stormwater flood control, erosion and sedimentation control; storm damage prevention, including coastal storm flowage; protection of surface water supply and quality, including water pollution control; flood conveyance and storage; protection of fisheries, land containing shellfish, wildlife habitat, rare and endangered plant and animal species and habitat, wetland plant habitat, and recreation, and to protect the health, safety, and welfare of the public and to mitigate impacts from climate change. Collectively, these are the resource area values and interests ("Resource Area Values") protected by this Ordinance.

This Ordinance is intended to utilize the Home Rule authority of the City of Boston to supplement the jurisdiction, authority, and procedures of the Conservation Commission, and to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act, M.G.L. c. 131, § 40,

(hereinafter, the "Act") and Regulations thereunder, 310 CMR 10.00 (hereinafter, the "Regulations").

b) Definitions. Except as otherwise provided in the Ordinance or its regulations, the definitions of terms in the Ordinance shall be as set forth in the Act and the Regulations. The following definitions shall apply in the interpretation and implementation of this Ordinance.

Abutter. The owner of any lot that is adjacent to (sharing property lines with) the project locus; the owner of any lot directly opposite on any public or private street or way; the owner of any lot within 300 feet of the property line where the activity is proposed; the owner of any of the above who may be in another municipality or across a body of water; the owner of any of the above whose mailing addresses are shown on the most recent tax assessors' records.. When work is in land under water bodies and waterways or on a tract of land greater than 50 acres, then written notification must be given only to abutters within 300 feet of the project site.

Act. The Wetlands Protection Act, M.G.L. c. 131, § 40 and, whenever appropriate, the Regulations thereunder, 310 CMR 10.00.

Activity. On or in any area subject to protection by the Ordinance and its regulations: any form of draining, dumping, dredging, damming, discharging, excavating, filling or grading; the erection, reconstruction or expansion of any building or structure; the driving of pilings; the construction or improvement of roads and other ways; the alteration of site hydrology or runoff characteristics; the intercepting or diverting groundwater or surface water; the installation of drainage, sewage and water systems; the discharging of pollutants; the destruction of plant life; and any other alteration of the physical characteristics of land or the physical or chemical characteristics of water. "Activity" shall also include any project by any public agency or person requiring a permit issued by the City of Boston Inspectional Services Department or its successor.

Adaptation. Measures designed or intended to protect resource areas from the impacts of climate change and to protect the ability of resource areas to mitigate the impacts of climate change through providing the Resource Area Values protected by the Ordinance.

Agent. Any Conservation Commissioner or City staff who is appointed agent by a majority vote of the Conservation Commission at a regularly scheduled meeting of the Conservation Commission, and upon written approval of the Mayor. (M.G.L. c. 40, § 8C).

Alter. To change the condition(s) of any area subject to protection by the Ordinance and shall include but not be limited to one or more of the following actions undertaken to, upon, within, under, or affecting the resource areas protected by this Ordinance:

i. fill, removal, excavation or dredging of soil, sand, gravel, or aggregate material of any kind;

ii. changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood storage retention areas;

iii. draining, disturbing, or lowering of the water level or water table;

iv. the dumping, discharging, or filling with any material;

v. driving of pilings, erection of buildings or structures of any kind;

vi. placing of any object or obstruction whether or not it interferes with the flow of water (other than boats, fish or shellfish traps)

vii. destruction, extensive trimming, or removal of plant life, vegetation, or trees;

viii. changing of water temperature, biochemical oxygen demand, nutrient concentration or chemical concentration, or other natural characteristics of the receiving water;

ix. any activity, alteration, or work which may cause or tend to contribute to pollution or degradation to the quality of any body of water;

x. application of pesticides and herbicides;

xi. any activity, alteration, or work;

xii. any incremental activity that will or may have a reasonably foreseeable cumulative adverse effect on the Resource Area Values protected by the Ordinance; or

xiii. decreasing the capacity of wetlands to respond to the impacts of climate change, including without limitation, changes in:

a. the timing, intensity and amount of precipitation;
b. temperatures;
c. intensity and/or frequency of storms, extreme weather events, and/or droughts.

Applicant. A person filing a Request for Determination of Applicability, an Abbreviated Notice of Resource Area Delineation, Notice of Intent or other application with the Commission.

Area of Critical Environmental Concern. An area so designated by the Secretary of Environmental Affairs of the Commonwealth of Massachusetts pursuant to regulations (301 C.M.R. 12.00), said designation being due to the particular environmental factors which impact upon the areas in question and which highlight the importance of each area so designated. The City of Boston may separately designate in the City areas of environmental concern according to criteria and guidelines established by the Commission and distinct from those used by the Secretary.

Area Subject to Protection Under the Ordinance. See definition for *Resource Area.*

Area of Special Flood Hazard. Derived from FEMA flood maps, the land in a floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, AE, or VE.

Base Flood. The flood having a one percent chance of being equaled or exceeded in any given year. This is the regulatory standard also referred to as the "100-year flood." The base flood is the national standard used by the National Flood Insurance Program (NFIP) and all Federal agencies for the purposes of requiring the purchase of flood insurance and regulating new development.

Base Flood Elevation. The computed elevation to which floodwater is anticipated to rise during the base flood. Base Flood Elevations (BFEs) are shown on Flood Insurance Rate Maps (FIRMs) and on the flood profiles.

Best Available Measures. The most up-to-date technology or the best designs, measures, data, or engineering practices that have been developed and that are commercially or readily available.

Best Management Practices. Technologies, designs, measures, data, or engineering practices that are in general use to protect the Resource Area Values of the Ordinance.

Bog. See definition for *Freshwater Wetlands.*

Bordering. Any portion of a marsh, freshwater wetland, coastal wetland, wet meadow, bog, swamp, bank, beach, dune, flat, fen that touches any portion of a river, stream, brook, creek, pond, vernal pool, reservoir, estuary, lake, or the ocean shall be considered bordering.

Boundary. The boundary of an area subject to protection under the Ordinance. A description of the boundary of each area is found in the appropriate section of the Ordinance or 310 CMR 10.00.

Brook. See definition for *Stream.*

Buffer Zone. The areas 100 feet horizontally lateral from the boundary of any Resource Area, including: freshwater or coastal wetland (excluding LSCSF) , marsh, wet meadow, bog, swamp, vernal pool, spring, bank, reservoir, stream, brook, creek, river, lake, pond of any size, beach, dune, estuary, flat, or the ocean.

Building. A combination of any materials, whether portable or fixed, temporary or permanent, having a roof enclosed within exterior walls or firewalls built to form a structure for the shelter of persons, animals, or property.

Certificate of Compliance. A written determination by the Conservation Commission as to whether work or a portion thereof has been completed in accordance with the permit issued under the Ordinance governing said work.

Coastal Bank. In addition to the definition found in the regulations under the Wetlands Protection Act,310 C.M.R. 10.30, "Coastal Bank" shall include seawalls and bulkheads existing on the effective date of this Ordinance unless the seawall supplies sediment to coastal beaches, coastal dunes, and barrier beaches. Existing seawalls and bulkheads are presumed significant to the purpose of the Act and Regulations as a Coastal Bank because they are designed to serve as vertical buffers to storm damage.

Coastal Beach: Unconsolidated sediment subject to wave, tidal, and coastal storm action that forms the gently sloping shore of a body of salt water and includes tidal flats. Coastal beaches extend from the mean low water line landward to the dune line, coastal bankline, or the seaward edge of existing man-made structures, when these structures replace one of the above lines, whichever is closest to the ocean.

Coastal Engineering Structure. A structure used to protect homes, buildings, roadways, utilities, or other inland or upland structures on or near the coast, such as seawalls, revetments, breakwaters, jetties, groins, weirs, gabions, sandbags, marine mattress, rip-rap, piers, wharfs, bulkheads, stairways, access ramps, boat ramps, boardwalks, tide gates or any other structure which by its design alters wave, tidal, current, ice, or sediment transport, or is intended to prevent or alleviate storm damage, tidal action, wave action, littoral flow, or erosion.

Coastal Flood Resilience Zone or CFRZ. The area of land beyond the current boundary of land subject to coastal storm flowage or land subject to tidal action that the Commission determines has a reasonable probability of becoming subject to future coastal storm flowage or tidal action due to sea level rise (SLR) within approximately the next 50 years. The "coastal flood resilience zone" as delineated on maps adopted by the Commission may be periodically reviewed and revised by the Commission, and may divided into sub-zones with different regulatory requirements.

Coastal Storm Flowage. Land subject to any inundation caused by coastal storms up to and including that caused by the 100-year storm, surge of record, or storm of record, whichever is greater.

Coastal Wetlands. Any bank, marsh, swamp, meadow, flat or other lowland subject to tidal action or coastal storm flowage.

Conditions. Those requirements set forth in a written permit issued by the Conservation Commission for the purpose of permitting, regulating, or prohibiting any activity that removes, fills, dredges, builds upon, degrades, discharges into, or otherwise alters an area subject to protection under the Ordinance.

Conservation Commission or *Commission.* That body in Boston comprised of members lawfully appointed pursuant to M.G.L. c. 40, § 8C and Chapter VII, 7-1.1 of the City of Boston Municipal Code.

Creek. See definition for *Stream.*

Cumulative Effect. An effect that is significant when considered in combination with other activities that have occurred,

that are occurring simultaneously, or that are reasonably foreseeable, whether such other activities are contemplated as a separate phase of the same project, or arise from unrelated but reasonably foreseeable future projects. Future activities within a site, district or institutional area identified within an annual budget, capital spending plan, Master Plan, Planned Development Agreement or equivalent document approved by the City of Boston or any other government agency are specifically considered to be reasonably foreseeable future projects for the purposes of this Ordinance. Future effects of sea level rise, coastal or inland flooding, or other future climate change effects are included among cumulative effects.

Determination:

i. *Determination of Applicability.* A written finding by the Conservation Commission as to whether a site or the work proposed thereon is subject to the jurisdiction of the Ordinance.

ii. *Determination of Significance.* A written finding by the Conservation Commission that the area on which the proposed work is to be done or which the proposed work will alter is significant to one or more of the Resource Area Values identified in and protected by the Ordinance and its regulations.

iii. *Notification of Nonsignificance.* A written finding by the Conservation Commission that the area on which proposed work is to be done, or which the proposed work will alter, is not significant to any of the Resource Area Values of the Ordinance.

Extended Riverfront Area. See Riverfront Area.

Extreme Weather Event. Weather at the extremes of the historical distribution lying in the outermost ten percent (10%) of City of Boston weather history, including but not limited to heat and humidity, droughts, winds and microbursts, blizzards and ice storms, rain and hail, fire, tornadoes, thunderstorms, hurricanes and tides affected by weather.

Federal Emergency Management Agency (FEMA). The federal agency responsible for administering the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for the development in the flood hazard areas.

Fill. To deposit any material so as to raise the elevation of land surface or ground, either temporarily or permanently or to deposit any material in any resource area covered by this ordinance so as to impair the resource values of the area.

Flood Control. The prevention or reduction of flooding and flood damage, both as currently expected to occur and as projected to occur based on the best available data regarding the impacts of climate change.

Flood Insurance Rate Map or FIRM. An official map of Boston on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to Boston.

Footprint. The total square feet within the outermost dimensions of a building or structure including decks, porches, roofs, overhangs, and staircases without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.

Freshwater Wetlands. The types of freshwater wetlands are wet meadows, marshes, swamps, bogs, and vernal pools. These include bordering vegetated wetlands (i.e., bordering on freshwater bodies such as on creeks, rivers, streams, ponds, and lakes), and isolated vegetated wetlands which do not border on any permanent water body. Freshwater vegetated wetlands are areas where soils are saturated and/or inundated such that they support wetland indicator plants. The ground water and surface water hydrological regime, soils, and the vegetational community which occur in each type of freshwater wetlands, including both bordering and isolated vegetated wetlands, are defined under this Ordinance based on M.G.L. c. 131, § 40.

Green Infrastructure. Projects and practices incorporating the natural environment or engineered systems that provide or supplement natural processes or work in concert with natural systems to provide flood, fire, or drought risk reduction, or clean water orair benefits. Green infrastructure practices protect, restore, augment, or mimic ecological processes.

Groundwater. All subsurface water contained in natural geologic formations or artificial fill including soil water in the zone of aeration.

Impacts of Climate Change. Include without limitation: extreme heat; the timing, frequency, intensity, and amount of precipitation, storm surges, and rising water levels; increased intensity or frequency of storm events or extreme weather events; and frequency, intensity, and duration of droughts.

In or *Within.* In, through, under, over, cantilevered over. With respect to structures, "In" is measured from the drip-line of the roof or foundation or footing, whichever is closer to the resource area.

Inland Flood Resilience Zone or IFRZ. The area of land beyond the current boundary of land subject to flooding that the Commission determines has a reasonable probability of flooding as the strength, duration or frequency of precipitation events increase within approximately the next 50 years. The "inland flood resilience zone" as delineated on maps adopted by the Commission may be reviewed and revised by the Commission as more accurate information and precipitation projections become available.

Intermittent Stream. See definition of stream.

Isolated Land Subject to Flooding. An isolated depression or closed basin without an inlet or an outlet. It is an area which at least once a year confines standing water to a volume of at least 1/4 acre-feet and to an average depth of at least six inches.

Isolated Vegetated Wetland. A freshwater wetland, of at least one thousand (1,000) square feet in area that does not border on creeks, rivers, streams, ponds or lakes. The types of Isolated Vegetated Wetlands may include wet meadows, marshes, swamps and bogs. In addition to the minimum size requirement, Isolated Vegetated Wetlands must also meet the definition of Bordering Vegetated Wetlands (310 CMR 10.55(2)) with the exception that these wetlands do not border any creeks, rivers, streams, ponds, lakes or other water bodies. The boundaries of Isolated Vegetated Wetlands are the same as those for Bordering Vegetated Wetlands as defined in 310 CMR 10.55 (2)(c).

Land Subject to Flooding or Inundation. The land within the estimated maximum lateral extent of flood water which will result from the statistical 1% annual chance storm. Said boundary shall be determined by reference to the most recently available flood profile data prepared for the City of Boston within which the work is proposed under the National Flood Insurance Program ("NFIP"). Where NFIP data are unavailable or deemed by the Commission to be outdated, inaccurate or not reflecting current or reasonably anticipated conditions, the boundary of said land shall be based on the maximum lateral extent of floodwater which has been observed or recorded, or other evidence presented and considered by the Commission. The Commission shall give special consideration to the best available data provided by the City of Boston and the Commonwealth on expected conditions due to climate change. Said land shall also include isolated areas which frequently or seasonably hold standing water to a volume of at least 1/4 acre-feet and to an average depth of at least six inches; such areas may or may not be characterized by wetland vegetation or soil characteristics.

Land Under Oceans and Estuaries. Land extending from the mean low water line seaward to the boundary of the municipality's jurisdiction and includes land under estuaries.

Land Under Waterbodies and Waterways. The land beneath any creek, river, stream, pond or lake.

Lot. An area of land in one ownership, with definite boundaries. When an area of land is comprised of more than one lot, the lots share a common boundary and are owned or controlled by the same entity or individual(s), and the lots combined are used for the same purpose or enterprise, the Commission may consider the lots as a single merged lot for the purposes of applying provisions of this Ordinance

Marsh. See definition for *Freshwater Wetlands.*

Notice of Intent. The written notice filed by any person intending to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter an area subject to protection under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40, or the Ordinance, or both.

Ordinance. This Section of the Boston Municipal Code.

Permit. The document issued by the Conservation Commission pursuant to this Ordinance which allows work in accordance with conditions set by the Commission in the resource areas protected by this Ordinance.

Permit Denial. The document issued by the Conservation Commission pursuant to the Ordinance which disallows proposed work.

Person. Any individual, group of individuals, associations, partnerships, corporations, business organizations, trust, estate, Commonwealth of Massachusetts or political subdivision thereof, any public or quasi-public corporation or body or any other legal entity, including the City of Boston or its legal representatives, agents, successors or assigns.

Plans. Such data, maps, engineering drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the Conservation Commission regarding the site and/or proposed work, current conditions and projected impacts of climate change on the resource areas and their functions, to determine the applicability of the Ordinance or to determine the impact of the proposed work upon the Resource Area Values identified in the Ordinance.

Pond. Any open body of fresh water, of a minimum of 5,000 sf in size, meeting the definition of 310 C.M.R. 10.04.

Prevention of Pollution. The prevention or reduction of chemicals (including without limitation nutrients, hydrocarbons, solvents, metals, vapors) determined to cause harm to humans, plants, or animals via exposure to any media (e.g. air, water, soil, sediment).

Private Water Supply. Any source or volume of surface or groundwater demonstrated to be in any private use or shown to have potential for private use for domestic purposes.

Project Locus. The Lot on which an applicant proposes to perform an activity subject to regulation under the Ordinance.

Project Site. The area within the Project Locus that comprises the limit of work for activities, including but not limited to, the dredging, excavating, filling, grading, the erection, reconstruction or expansion of a building or structure, the driving of pilings, the construction or improvement of roads or other ways, and the installation of drainage, stormwater treatment, environmentally sensitive site design practices, sewage and water systems.

Protection of Wildlife. The protection of any plant or animal species, including but not limited to those listed as endangered, threatened or special concern, or on the Watch List by the Massachusetts Natural Heritage Program; listed as Federally Endangered or Federally Threatened by the U.S. Fish and Wildlife Service; deemed locally threatened, in writing, by the Conservation Commission. "Protection of Wildlife" for the purposes of this Ordinance means protection of natural habitat and the capacity of any resource area to adequately provide food, breeding habitat, shelter or escape cover, for species falling within the definition of wildlife set forth in the Ordinance.

Request for Determination of Applicability. A written request made by any person to the Conservation Commission for a determination as to whether a site or work thereon is subject to the Ordinance.

Resilience. The ability to minimize the negative impacts of climate change and other natural hazards; to build capacity of a resource area to minimize negative impacts of climate change.

Resource Area. Each area subject to protection under the Ordinance and which is listed in the Ordinance.

Resource Area Enhancement. Removal or management of invasive species; removal of debris, garbage, or trash; restoration and/or stabilization of bank or other resource area; planting or management of non-invasive species of vegetation; prevention of the generation of stormwater and non-point source pollution by reducing impervious surfaces; minimizing disturbance; protecting natural features and processes; enhancing wildlife habitat; or other techniques that

advance the Resource Area Values of this Ordinance as the Commission may from time to time see fit to define.

River. Any natural flowing body of water that empties to any ocean, lake, pond, reservoir, stream, or other river.

Riverfront Area. The area of land between the mean annual high water line and a parallel line measured twenty-five (25) feet horizontally landward of the mean annual high water line of any river, stream, brook, or creek, except for areas the Commission may designate as Extended Riverfront Areas, in which the Riverfront Area may be extended up to two hundred (200) feet.

Salt Marsh: A coastal wetland that extends landward up to the highest high tide line, that is the highest spring tide of the year, and is characterized by plants that are well adapted to, or prefer living in, saline soils. A salt marsh may contain tidal creeks, ditches and pools.

Sea Level Rise. "Sea Level Rise" or "SLR" refers to the rise in sea level over time.

Storm Damage Prevention. The prevention of damage caused by water from storms, as currently occurs and is predicted by best available data to occur from the impacts of climate change, including but not limited to erosion and sedimentation, damage to vegetation, property or buildings or damage caused by flooding, waterborne debris or waterborne ice.

Stream. A body of running water, including brooks and creeks, which moves in a definite channel in the ground due to hydraulic gradient, and includes streamlets and rivulets. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year (i.e., which is intermittent) is a stream.

Swamp. See definition for *Freshwater Wetlands.*

Tidal Flat. Coastal wetlands that form in intertidal areas where sediments have been deposited by tides or rivers.

Vernal Pool. In addition to the areas so defined in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least two hundred (200) cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.

The boundary of the resource area for vernal pools shall be the mean annual high-water line defining the depression, or the maximum observed or recorded water level in a topographic depression. The presumption that any seasonal basin functions as a vernal pool shall prevail through a minimum of one spring/summer breeding season for the purpose of documenting the occurrence or lack of occurrence of breeding activity of vernal pool species. The buffer zone for vernal pools shall extend one hundred (100) feet from the highest extent of flooding.

Waterfront Area. The portion of the buffer zone which extends twenty-five (25) feet horizontally from the edge of the following wetland resource areas:

1. Any coastal beach, dune, bank, tidal flats, rocky intertidal shores, salt marshes or land containing shellfish; or

2. Any inland bank, lake, pond, intermittent stream, brook, creek or riverfront area.

Wet Meadow. See definition for *Freshwater Wetlands.*

Wetland Plants. Any plant listed in the U.S. Fish and Wildlife Service "National List of Plant Species That Occur in Wetlands: Massachusetts 1988" and condensed by the Massachusetts Department of Environmental Protection, Division of Wetlands and Waterways, April 1995, having an indicator category of obligate wetland (OBL), facultative wetland

(FACW), or facultative (FAC).

Within. See definition for *In.*

Wildlife. Any mammal, bird, reptile, amphibian, fish, mollusk, arthropod or other vertebrate or invertebrate, including species which are officially listed in 321 CMR 8.00: Endangered Wildlife and Wild Plants as endangered, threatened, or of special concern.

Wildlife Habitat. The area being used by or necessary to provide breeding or nesting habitat, shelter, food, and water for any animal species.

Work. See definition for *Activity.*

c) Jurisdiction. Except as permitted by the Conservation Commission no person shall commence or continue to remove, fill, dredge, build upon, over or under, degrade, discharge into, or otherwise alter or pose a significant threat to alter the following resource areas:

i. any freshwater or coastal wetlands, marshes, wet meadows, bogs, swamps, vernal pools, springs, banks, reservoirs, streams, brooks, creeks, rivers, lakes, ponds of any size, beaches, dunes, estuaries, flats, fens, the ocean, and lands under water bodies;

ii. lands adjoining these resource areas out to a distance of one hundred (100) feet, known as the Buffer Zone and excluding Land Subject to Coastal Storm Flowage and the Coastal Flood Resilience Zone.

iii. riparian lands adjoining rivers, streams, brooks, and creeks, whether perennial or intermittent out to a distance of twenty five (25) feet, known as the Riverfront Area, provided that the Conservation Commission in its regulations may include a separate designation for areas identified as an "Extended Riverfront Area," in which the Riverfront Area may be extended up to two hundred (200) feet.

iv. lands adjoining salt marsh out to a distance of one hundred (100) feet

v. lands subject to flooding or inundation by groundwater or surface water;

vi. lands subject to tidal action, coastal storm flowage, or flooding,

vii. the Coastal Flood Resilience Zone , as established by the Commission;

viii. the Inland Flood Resilience Zone as established by the Commission; and

Any activity proposed or undertaken which is not set forth above but which activity the Conservation Commission finds will alter an area subject to the Ordinance will require the filing of a Notice of Intent.

The Buffer Zone is presumed important to the protection of the resource areas because activities undertaken in close proximity to resource areas have a reasonable probability of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, degraded water quality, loss of wildlife habitat, degradation of wetland plant habitat, alteration of hydrology, soil contamination, and proliferation of invasive plants.

The Commission therefore may require that any person filing an application (hereinafter, the Applicant) restore or maintain a strip of continuous, undisturbed or restored vegetative cover or waterfront public access throughout the Waterfront Area, unless the Commission determines, based on adequate evidence, that the area or part of it may be altered without harm to the values of the resource areas protected by the Ordinance. Such disturbed areas must be minimized to the greatest extent possible.

The above-named resources are collectively known as the "resource areas protected by the Ordinance" or "resource areas." Said resource areas shall be protected whether or not they border surface waters.

d) Exemptions. The applications and permits required by this Ordinance may 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 written notice has been given to the Conservation Commission prior to commencement of work; the structure or facility will not be, as determined by the Commission or its agent, substantially changed or enlarged; and the work conforms to any performance standards and design specifications in regulations adopted by the Commission to the extent practicable as determined by the Commission..

The following exemptions shall apply and no application or permit is required under this Ordinance for:

i. normal maintenance or improvement of land in agricultural and aquacultural use as defined by the Wetlands Protection Act regulations at 310 CMR 10.04;

ii. minor activities, identified in 310 C.M.R. 10.02(2)(b)2 proposed or undertaken within the Buffer Zone to an area subject to protection under this Ordinance. In the judgment of the Commission any activity that will alter a resource area subject to this Ordinance is subject to regulation and requires the filing of a Notice of Intent ;

iii. emergency projects for the protection of the health and 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; provided that the 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 Commission for the limited purposes necessary to abate the emergency; and provided that within twenty one (21) days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this Ordinance. 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.

e) Applications and Fees

i. *Application and Applicability.* No one intending to conduct any of the above-named activities may commence such activity within the jurisdiction of this Ordinance without an applicant filing a written Notice of Intent and without an applicant receiving an Order of Conditions and provided all appeal periods have elapsed. Such Notice shall be sent by certified mail or hand delivered to the Conservation Commission, including all plans as may be necessary to describe the proposed activity and its effect on the environment. The Commission may make provision for electronic delivery of Notice and of required materials. The Conservation Commission may require information in addition to the plans and specifications required to be filed by an applicant under M.G.L. c. 131, § 40, in order to fulfill the requirements of this Ordinance. Such information shall take into consideration the effect that projected sea level rise, changes in storm intensity and frequency, and other consequences of climate change may have on resource areas and the activities proposed in the permit application. The Applicant shall, to the extent applicable as determined solely by the Commission, integrate climate resilience and adaptation considerations into their project. No application shall be deemed complete or timely without the submission of all application forms, plans, and all requested additional materials. No activities shall commence without receiving a permit issued pursuant to this Ordinance.

Any person desiring to know whether or not a proposed activity or an area is subject to this Ordinance may in writing request a determination from the Commission. Such a request filed under the Ordinance shall include information, plans and resource area delineations as deemed necessary by the Commission. The Conservation Commission shall make a determination as to whether or not this Ordinance applies to a specific situation prior to the filing of a written Notice of Intent under the provisions hereof, within twenty-one (21) days of the receipt of a written Request for Determination of

Applicability sent by certified mail or hand delivered from any person desiring such determination.

The Conservation Commission may by regulation establish procedures for administrative review of specified activities for designated areas within Coastal Flood Resilience Zone or Inland Flood Resilience Zone consistent with the protections provided by this Ordinance.

ii. *Filing Fee.* At the time of an application, the applicant shall pay a filing fee specified in regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act (M.G.L. c. 131, § 40) and regulations (310 CMR 10.00). No application shall be deemed complete or timely without the payment of all required fees.

iii. *Consultant Review.* Pursuant to M.G.L. c. 44, § 53G and regulations promulgated by the Commission, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists, or other experts in order to aid in the review of proposed projects. Such funds shall be deposited with the City Treasurer who shall create a revolving fund specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

In such instances the Commission shall notify in writing the applicant of this need and the estimated costs to be borne by the applicant, request payment of that fee, and provide the opportunity for the application to be amended or withdrawn. Notice shall be deemed to have been given on the date the Commission mails or hand delivers said notification. The applicant may withdraw the application or request within five (5) business days of the date notice is given without incurring any costs or expenses.

Consultants must meet the minimum qualifications of: An educational degree in or related to the field at issue; or three or more years of practice in the field at issue or a related field. Such consultants shall work for and represent the interests of the Commission. The Commission shall return any unused portion of the consultant fee to the applicant unless the Commission decides at a public meeting that other further or additional or different services of the consultant are necessary to make an objective decision.

The Commission may waive all application and consultant review fees for any permit application or notice filed by the City of Boston or another government agency. The Commission may waive all application and consultant review fees for any permit application or notice filed upon determination by the Commission that the proposed work will further the Resource Area Values of this Ordinance.

iv. *Additional Fees.* The Conservation Commission may adopt such additional fees as it may determine necessary to protect the Resource Area Values of this Ordinance.

f) Notice and Hearings.

The Commission may conduct a public hearing on any Request for Determination of Applicability, an Abbreviated Notice of Resource Area Delineation, or Notice of Intent and shall conduct a public hearing on any permit application. The Commission in an appropriate case may combine its hearing under this Ordinance with the hearing conducted under the Act and Regulations.

The Commission shall commence a public hearing within twenty-one (21) days from receipt of a completed request, notice, or permit application unless an extension is authorized in writing by the applicant. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its discretion.

Notice, including the date, time, place, and subject of any such hearing shall be given at least five (5) business days prior to the hearing, in a newspaper of general circulation in the municipality at the expense of the applicant, and on the Commission's Internet Web site, as well as by any other method determined by the Commission to provide adequate notice to parties in interest. Notices shall be publicized, and hearings shall be conducted in accordance with the Open

Meeting Law.

Any person filing a request, notice, permit, or other application with the Conservation Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, or by certificates of mailing to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred (300) feet of the project property line including any in another municipality or across a body of water. A copy shall be provided in the same manner to the Commission of the adjoining municipality, if the request, notice, permit, or application pertains to property within three hundred (300) feet of that municipality. The notice shall state a brief description of the project or other proposal and the date of any Commission hearing or meeting date if known. The notice to abutters also shall include a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, the notice of the hearing, and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

Within twenty-one (21) days of closing the public hearing, the Conservation Commission shall either:

i. Determine the proposed activity is not significant to any of the Resource Area Values identified by the Ordinance; or

ii. Decide that the proposed activity is significant to one or more of the Resource Area Values identified by the Ordinance and shall issue an Order of Conditions for the protection of said values.

g) Permits. i. Within twenty-one (21) days of the close of the hearing the Commission shall issue or deny a permit for the activities requested upon determining that the activities which are subject to the permit application, or the land and water uses which will result therefrom, are likely to have a significant individual or cumulative effect on the Resource Area Values protected by this Ordinance. The Commission shall consider the extent to which the applicant intends to avoid, minimize, and mitigate any impact from activities subject to permitting. The Applicant shall, to the extent applicable as determined solely by the Commission, integrate climate resilience and adaptation considerations into their project.

In evaluating the project and prior to issuing any permit, the Commission shall consider cumulative loss, degradation, isolation, and replacement or replication of such protected resource areas at the project site, resulting from past activities, whether by the applicant or any prior property owner and whether permitted, unpermitted, or exempt. The Commission shall also consider individual and cumulative adverse impacts on protected resources arising from reasonably foreseeable future activities when evaluating a project application.

The Conservation Commission shall explicitly consider climate change resilience and impacts in the issuance or denial of any permit through measurement of potential adverse impacts to resource areas for the protection of resource areas both as they currently exist and as are reasonably expected to exist based on the best available data on the projected impacts of climate change.

ii. The Commission shall enact guidelines, performance standards and implementing regulations establishing how climate change resilience will be considered during project review and ensuring consistency with other City regulations.

iii. Nothing in this Ordinance shall be intended to prevent beneficial projects whose primary purpose is protection of resource areas and reduction of risk from coastal flooding, inland flooding, extreme weather, sea level rise and other adverse impacts of climate change. The Commission may enact guidelines, performance standards and implementing regulations specific to beneficial projects identified through the Climate Ready Boston process or equivalent or successor initiatives to advance and expedite such beneficial projects. The Conservation Commission may issue an Order of Conditions for district scale flood resiliency and flood protection projects where such projects require fill, including coastal fill above and seaward of existing seawalls only when necessary for flood protection, provided that the Commission finds by a preponderance of the evidence that the project will protect and improve coastal, riparian or aquatic habit over current and projected conditions, including but not limited to change from vertical seawall to intertidal habitat.

iv. The Conservation Commission is authorized to approve a permit when it determines by findings supported by

substantial evidence that the proposed work meets all applicable performance standards and procedures under this Ordinance or when work can be conditioned to meet all such performance standards, and where it determines by findings supported by substantial evidence that the work will not result in significant or cumulative adverse effects upon wetland Resource Area Values protected by this Ordinance. If it issues a permit, the Commission may impose conditions that the Commission determines necessary or desirable to protect said Resource Area Values, and all activities shall be conducted in accordance with those conditions.

v. The Conservation Commission is empowered to deny permission for any activity that would remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter subject lands within its jurisdiction if, in its judgment, such denial is necessary to preserve environmental quality of either or both the subject lands and contiguous lands. The Conservation Commission is further empowered to deny a permit for failure to meet the requirements of this Ordinance; for failure to submit necessary information and plans requested by the Conservation Commission; for failure to meet the design specifications, performance standards and other requirements in regulations of the Conservation Commission; for failure to avoid or prevent significant or cumulative effects upon the Resource Area Values protected by this Ordinance; or where no conditions are adequate to protect those values, in its sole discretion as the issuing authority.

vi. Notwithstanding anything to the contrary herein, each permit, application, notice and hearing will be considered on its own merits. Due consideration shall be given to possible effects of the proposal on all values to be protected under this Ordinance. Any Order of Conditions or denial issued under this Ordinance may differ from any such order or denial issued by the Conservation Commission under the provisions of M.G.L. c. 131, § 40.

vii. In reviewing activities within the Buffer Zone, the Commission shall presume the buffer zone is important to the protection of other resource areas because activities undertaken in close proximity have a reasonable probability of adverse impact, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, loss of wildlife habitat, degradation of wetland plant habitat, alteration of hydrology, and proliferation of invasive plants. The Commission may establish, in its regulations, design specifications, performance standards, and other measures and safeguards, including setbacks, and other work limits for protection of such lands, including without limitation strips of continuous, undisturbed vegetative cover, unless the Commission determines, based on adequate evidence, that the buffer zone or part of it may be altered without harm to the values protected by the Ordinance.

viii. In reviewing activities within the riverfront area, the Commission shall presume the riverfront area is important to all the Resource Area Values unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless the Commission finds by preponderance of the evidence that there is no practicable alternative to the proposed project with less adverse effects, and that such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this Ordinance. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, and other factors at its discretion. The Commission will also consider if the project proposes ecological enhancement of the Riverfront Area. The Commission may separately designate areas of the city, where in its discretion and by a preponderance of evidence that such areas are significant for the protection of the Resource Area Values protected by the Ordinance, the riverfront area can be extended up to a distance of 200 feet.

ix. The adjacent areas to Land Subject to Coastal Storm Flowage (LSCSF), known as the Coastal Flood Resilience Zone (CFRZ), will become, or already may be part of, the 100- year floodplain due to sea level rise and changes in storm intensity or frequency. Because of this, activities undertaken within LSCSF and CFRZ have a reasonable probability of adverse impacts, including, without limitation, erosion, poor water quality, pollution of stormwater runoff, and lack of flood control. The Commission may establish, in its regulations, the extent of the CFRZ, Performance standards and other measures and safeguards for the protection of such resource area values within LSCSF and the CFRZ for the useful life of the project may vary within the CFRZ in accordance with, among other factors, the time when such areas are likely to become part of the floodplain. To the maximum extent possible, as determined by the Commission the CFRZ shall be consistent with other climate change planning documents used by other offices and agencies of the City. Furthermore, the Commission shall encourage salt marsh restoration and nourishment, land use that allows for the natural migration of salt marsh due to SLR, protection of potential salt marsh transitional areas, and may establish, in its regulations, design specifications, performance standards, and other measures and safeguards, to protect the values protected by the Ordinance.

x. The inland areas known as the inland flood resilience zone (IFRZ), will become, or already may be experiencing flooding as the intensity, duration, or frequency of precipitation events increase. Because of this, activities undertaken within the IFRZ have a reasonable probability of adverse impacts, including, without limitation, erosion, poor water quality, pollution of stormwater runoff, and lack of flood control. The Commission may establish regulations the extent of the IFRZ. Performance standards and other measures and safeguards for protection of such resource area values within the BLSF and the IFRZ for the useful life of the project may vary within the IFRZ in accordance with, among other factors, the time when such areas are likely to become part of the floodplain. To the maximum extent possible, as determined by the Commission the IFRZ shall be consistent with other climate change planning documents used by other offices and agencies of the City.

xi. To prevent resource area loss, the Commission shall require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide mitigation as determined by the Commission. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the statistical high probability of failure of such replication. The Commission may require an inventory and analysis of hydrology, vegetation, wildlife, and wildlife habitat of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless of the type of resource area or the amount or type of alteration proposed. The decision shall be based upon the Commission's determination of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife corridors in the area, the resource significance of the project area or actual or expected presence of rare and/or unique plant or animal species in the area. The work shall be performed by an individual who meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act Regulations (310 CMR 10.60).

xii. Any areas within the City of Boston which have been designated as Areas of Critical Environmental Concern by the Secretary of Energy and Environmental Affairs, Commonwealth of Massachusetts, are so designated due to the particularly unique environmental factors that affect such areas and that highlight the unique importance of each area so designated. As a result of such designation, it is incumbent upon the Commission to be even more diligent in its review of projects proposed within or bordering such areas. The highest standards of scrutiny as to the impact of any proposal are required and shall be exercised by the Commission. Close scrutiny shall be given by the Commission to any proposals involving an application of new pavement or newly installed other impervious materials within any area less than one hundred (100) feet from bordering vegetated wetland, bank, beach, and meadow.

xiii. The Conservation Commission may recommend to the Mayor and City Council that the City separately designate areas of environmental concern according to criteria and guidelines established by the Commission and distinct from those used by the Secretary of Environmental Affairs of the Commonwealth of Massachusetts.

xiv. The Commission shall presume that all areas meeting the definition of vernal pool, including the adjacent area known as "vernal pool habitat", perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, by a preponderance of the evidence demonstrates that the basin or depression or surrounding area does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act Regulations (310 CMR 10.60).

xv. The Commission may require that an applicant submit a Resources Management Plan to the Commission if the Commission determines such a plan is required to meet the goals and standards of this Ordinance and the Order of Conditions of the permit. A Resources Management Plan shall adequately describe measures at the site intended to protect and enhance site resources and to eliminate, mitigate, or minimize project impacts. The Commission may require that the Resources Management Plan include a detailed budget and identify the entity legally responsible for implementing the Plan.

xvi. Activities and their ancillary uses in FEMA Velocity zones which result in alterations to vegetative cover, interruptions in the supply of sediment to other wetland resources, or changes to the form or volume of a dune or beach

that will have an adverse effect on said landform's ability to provide storm damage prevention and flood control are, therefore, prohibited. These activities include, but are not limited to, construction of: foundations other than open pilings or columns; new or proposed expansions of roads, driveways or parking lots, or impermeable paving for existing unpaved roads, driveways or parking lots; new or proposed expansions of coastal engineering structure.

xvii. The permit shall be valid for three years from the date of its issuance.

xviii. The Conservation Commission may extend a permit for a period of up to an additional three-year period from date of issuance. The request for an extension shall be made to the Conservation Commission at least twenty-one (21) days prior to the expiration of the permit. The Commission shall hold a public hearing in accordance with the Ordinance and its regulations within twenty-one (21) days of receipt of said request. Should said public hearing be continued past the date of the expiration of the permit, the expiration date shall be stayed to the date on which the Commission votes on whether to extend the permit.

xix. The Order of Conditions shall be recorded in the County Registry of Deeds or Registry District of the Land Court, where appropriate, prior to the commencement of any of the proposed activities regulated by the Order of Conditions. No work shall commence until proof of recording is provided to the Commission. If work is undertaken without the applicant first recording the permit, the Conservation Commission may issue an enforcement order.

xx. The Commission may revoke a permit, order, determination, or decision issued under the Ordinance, but only for violation of this Ordinance and only after notice of violation to the permittee and abutters, and after a properly noticed public hearing. The Commission may establish written policies and procedures with respect to permit revocation, including provision for sufficient written warning and opportunity to cure.

xxi. Amendments to permits, orders, and determinations shall be handled in the manner set out in the Wetlands Protection Act regulations and policies thereunder.

h) Regulations. After public notice and public hearing, the Conservation Commission shall promulgate rules and regulations to effectuate the purposes of this Ordinance, effective when voted and filed with the city clerk. 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. At a minimum these regulations shall reiterate the terms defined in this Ordinance, define additional terms not inconsistent with the Ordinance, impose filing fees, set forth a policy for treatment of qualifying work in the flood resilience zones, take into account climate resilience, specify resource areas subject to Commission jurisdiction as provided for in the Ordinance including the Waterfront Area, Coastal Flood Resilience Zone and Inland Flood Resilience Zone, and prescribe performance standards for activities in any or all resource areas and their buffer zones.

The Commission may amend the rules and regulations after public notice and public hearing.

For all proposed reference maps delineating resource areas, the Commission shall conduct a public rule-making process, including but not limited to posted notice of a hearing on the proposed reference map or maps, posting of the proposed reference maps, written notice of posting to parties requesting such notice, a minimum 30-day comment period, a written "response to comments" posted not less than 7 days before any hearing and a properly noticed public hearing.

Unless otherwise stated in this Ordinance or in the rules and regulations promulgated under this Ordinance, the definitions, procedures, and performance standards of the Act and Regulations as most recently promulgated shall apply.

i) Security. As part of a permit issued under this Ordinance, in addition to any security required by any other municipal or state board, agency, or official, the Conservation Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by any combination of the methods described below:

i. By a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit.

ii. By accepting 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.

iii. By any other method the Commission determines effective by preponderance of the evidence to achieve the purposes and intent of this Ordinance.

j) Enforcement.

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this Ordinance, 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 pursuant to this Ordinance.

The Conservation Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this Ordinance 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.

The Commission shall have authority to enforce this Ordinance, its regulations, and permits issued thereunder by letters, phone calls, and electronic communication, violation notices, fines, noncriminal citations under M.G.L. c. 40, § 21D, and civil and criminal court actions. Any person who violates the provisions of this Ordinance may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations.

The Commission shall have the authority to set fine amounts and levy fines for violations under this ordinance and under the Wetlands Protection Act.

Upon request of the Commission, the Corporation 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.

Any person who violates any provision of this Ordinance, or regulations, permits, or administrative orders issued thereunder, shall be punished by a fine established by the Commission. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the Ordinance, regulations, permits, or administrative orders violated shall constitute a separate offense. Each resource area, buffer zone or portion thereof in which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the Ordinance, regulations, permits, or administrative orders violated shall constitute a separate offense

As an alternative to criminal prosecution in a specific case, the Commission may issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in M.G.L. c. 40, § 21D.

k) Burden of Proof. The applicant for a permit shall have the burden of proving by a preponderance of evidence that the work proposed in the permit application will not have unacceptable significant or cumulative adverse effect upon the Resource Area Values protected by this Ordinance. Failure to provide adequate evidence to the Conservation Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

l) Appeals. A decision of the Conservation Commission shall be reviewable in the Superior Court in accordance with M.G.L. c. 249, § 4.

m) Relation to the Wetlands Protection Act and Other Statutes. This Ordinance 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. c. 131, § 40) and regulations (310 CMR 10.00) thereunder, and other federal, state and local environmental statutes. Activities that may not require review or permitting under the Wetlands Protection Act, the Rivers Protection Act, or other federal, state or local statutes are not assumed to be exempt from this Ordinance. It is the intention of this Ordinance that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Wetlands Protection Act and regulations.

n) Climate Change Resilience. The Applicant shall, to the extent applicable as determined by the Commission, integrate climate change and adaptation planning considerations into their project to promote climate resilience to protect and promote Resource Area Values and functions into the future. These considerations include but are not limited to: sea level rise, increased heat waves, extreme precipitation events, stormwater runoff, changing precipitation patterns and changes in coastal and stormwater flooding.

o) Stormwater Management. Work or activity specified in a Request for Determination of Applicability or an application for a permit and subject to the Ordinance shall meet, at a minimum, the best management practices for stormwater management as set forth in the Stormwater Management Standards of the Massachusetts Department of Environmental Protection and any separate standards and guidelines prepared by the City and the Boston Water and Sewer Commission.

The Commission may require feasible stormwater measures consistent with the resource protection, climate change resiliency and all other applicable provisions of the Ordinance and as specified in regulations and performance standards.

p) Climate Equity and Environmental Justice. The Commission may issue regulations and guidelines addressing climate equity and environmental justice for inclusion within the Climate Change Resilience planning considerations, consistent with the intent and provisions of this Ordinance. Commission shall issue regulations and guidelines only after public notice, public hearing and direct engagement with residents and neighborhoods that may be adversely affected by disparate impacts of climate change.

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

r) Effective Date and Reporting. All of these provisions and requirements set forth in this Ordinance shall take effect immediately upon passage and the Commission shall promulgate implementing regulations to fully effectuate this Ordinance. Furthermore, the Commission will provide updates on its implementation of such regulations to the City Council at least quarterly.

Filed on: December 11, 2019