

Land Use Permitting Deadline Extensions: Municipal Relief Legislation (Chapter 53 of the Acts of 2020) April 3, 2020

Cities and towns have faced numerous challenges resulting from the novel coronavirus COVID-19 outbreak. City and town halls are closed to the public, there is limited staffing of public offices, and there are social distancing advisories, all resulting in significant concerns as to how Land Use Boards and Commissions can proceed during this unprecedented time. As detailed in our March 21, 2020 eUpdate, “Responses To Frequently Asked Questions Arising In the Land Use Context, In Light of the COVID-19 Virus Outbreak”, there are important deadlines that must be adhered to in a land use permitting context.

On April 2, 2020, both houses of the General Court approved, and on April 3, 2020 Governor Baker signed, a new law giving some reprieve to Land Use boards regarding applications, hearings and permits. Chapter 53 of the Acts of 2020, “An Act to Address Challenged Faced by Municipalities and State Authorities Resulting from COVID-19” (Act). We have summarized the highlights of the new law below. In general, Section 17 of the Act temporarily extends certain statutory deadlines for action by “Permit Granting Authorities” due to the current State of Emergency. It applies to the conduct of public meetings, public hearings, or other actions taken by local boards and commissions serving in a quasi-judicial (i.e., adjudicatory) capacity. In light of these deadline extensions, we have updated our March 21, 2020 eUpdate, referenced above, and this updated guidance can be found on our website, at <http://www.k-plaw.com/covid-19-resources/>.

Definitions and Applicability:

- “Permit” is defined as “a permit, variance, special permit, license, amendment, extension or other approval issued by a permit granting authority pursuant to a statute, ordinance, bylaw, rule or regulation, whether ministerial or discretionary”
- “Permit Granting Authority” is defined as “a local, district, county or regional official, or a local, district, county or regional multi-member body, that is authorized to issue a permit.”

Filing of an Application for a Permit: Notwithstanding any contrary provision of state or local law, the Act allows for the **electronic filing of applications** for a permit either through an electronic website or as attachments to an electronic mail sent to **the city or town clerk**. These electronic applications are deemed duly filed as of the date

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of the filing if certified as received by the city or town clerk. Certification of receipt may be via e-mail or other electronic means to the applicant, and must be provided electronically if the permit application is submitted electronically and the applicant requests an electronic receipt. Note that a permit granting authority may still contest the completeness of an application at the time of filing if the application is ultimately denied by the permit granting authority or the permit is ultimately appealed by the applicant.

Opening a Hearing: Any requirement of a statute, ordinance, bylaw, rule, or regulation that a hearing commence within a specific period of time after the filing of an application or request for permit approval shall be suspended as of March 10, 2020, and the suspension of that time will continue through to 45 days after the termination of the State of Emergency, or as of a date otherwise prescribed by law, whichever is later.

Tolling of Existing Permits: A permit in effect or existence as of March 10, 2020, is tolled and shall not lapse or otherwise expire during the State of Emergency. Additionally, any time period for meeting a deadline within a permit or for performance of a condition of the permit, shall toll during the State of Emergency.

Constructive Approval: No permits shall be constructively approved due to the failure of the permit granting authority to act within the time required by a statute, ordinance, bylaw, rule or regulation during the State of Emergency, so long as the permit granting authority acts on the permit application within 45 days after the termination of the State of Emergency or by a date otherwise prescribed by law, whichever is later.

Scheduling/Rescheduling Hearings: The Chair of a permit granting authority may schedule or reschedule on one or more occasions, a hearing or decision deadline on a permit application, whether or not a quorum of the body is present, to a date not more than 45 days after the termination of the State of Emergency or after a date otherwise prescribed by law, whichever is later. Notice of any rescheduled date shall be provided to the applicant at the applicant's address, and to the general public by posting electronically on the website of the city or town clerk.

Recording at the Registry of Deeds: If a permit is required to be recorded with the registry of deeds or filed with registry district of the land court within a certain period of time after its issuance, either to remain in force and effect or as a condition to exercising the permit, the period of time for recording the permit shall be suspended during such time as the relevant registry of deeds or registry district of the land court is closed or restricting public in-person access. Additionally, the failure to record the permit shall not preclude the permit holder from applying for, obtaining and commencing construction activities pursuant to other required permits and approvals such as a building permit.

Pending Applications: A hearing on a pending permit application which has been opened by a permit granting authority before March 10, 2020, shall be automatically tolled and continued to the first hearing date of the permit granting authority following the termination of the State of Emergency (provided said meeting must be within 45 days of the termination of the State of Emergency) or to a date otherwise prescribed by law, whichever is later.

Revocation, Modification or Extension of a Permit: Where applicable law or regulation allows a permit granting authority to revoke or modify a permit, a permit granting authority may proceed with a permit revocation or

modification, subject to applicable notice and hearing requirements. However, during the State of Emergency, and for 60 days after the State of Emergency is terminated, no permit shall be revoked or modified where the permit holder fails to exercise or otherwise commence work because of the State of Emergency, or started work on or before March 10, 2020 but stopped as a result of the State of Emergency.

Additionally, at the discretion of the permit granting authority and for good cause shown, the permit granting authority, or its Chair (with or without a quorum), may provide a permit holder with a reasonable, further extension of time to exercise or otherwise commence work pursuant to the permit.

Remote or Virtual Meetings: The Act codifies the Governor’s March 10, 2020 Order titled “[Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, § 20](#)”, allowing permit granting authorities to conduct meetings and public hearings remotely, during the State of Emergency, in accordance with the Governor’s Order as it may be amended. We previously provided guidance on the specific requirements to comply with such Open Meeting Law requirements during this time of an emergency for meetings and hearings, which is available online [here](#).

Decisions: A permit granting authority may issue decisions on permit applications for which duly held public hearings or meetings have been held and may not prohibit any permit granting official from issuing permits, including but not limited to, demolition or building permits.

Summary: While the Act provides some welcome relief to land use permitting boards, committees and commissions in these uncertain times, we expect that individual boards or permitting officials may still have questions about the scope and extent of the Act’s application to particular permitting matters. We are always available to assist our communities in navigating these complex issues for new or pending applications or projects in your community.

We will continue to keep you updated on additional developments in the face of this rapidly evolving pandemic. A reminder that we have established a **Coronavirus “hotline”**, at coronavirusinfo@k-plaw.com. A dedicated team of our attorneys is available through this “hotline” e-mail address to answer the most frequently-asked legal questions arising from COVID-19. One of these designated attorneys will respond promptly to your inquiries. In some instances, you may be referred to your primary or land use contact, and you should of course feel free to contact these attorney(s) directly with COVID-19 related questions.

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