

**UPDATED RESPONSES TO FREQUENTLY ASKED QUESTIONS  
ARISING IN THE LAND USE CONTEXT,  
IN LIGHT OF THE COVID-19 VIRUS OUTBREAK  
APRIL 3, 2020**

On April 2, 2020, both houses of the General Court approved, and on April 3, 2020 Governor Baker signed, Chapter 53 of the Acts of 2020 (Act), a new law giving some reprieve to Land Use boards regarding applications, hearings and permits. To that end, we are providing this update to our March 21, 2020 “Responses to Frequently Asked Questions Arising in the Land Use Context, in Light of the COVID-19 Virus Outbreak,” incorporating the provisions of this new Act. You should refer to this updated guidance moving forward, rather than our previous March 21, 2020 document. As always, we will continue to update you with new developments. In addition, you should contact your Land Use attorney at KP Law to discuss any specific situations or concerns.

**Are existing statutory deadlines for action on land use permit applications stayed or tolled due to the current State of Emergency? What if we cannot meet due to complications arising from the COVID-19 outbreak?**

With the enactment of Chapter 53 of the Acts of 2020 (Act), 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 current State of Emergency declared by the Governor, or as of a date otherwise prescribed by law, whichever is later.

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.

Additionally, 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 vote on a continuance, to a date not more than 45 days after the termination of the State of Emergency or to a date otherwise prescribed by law, whichever is later.

While the Act does not require written extensions from an applicant to hold or continue hearings, to ensure the parties are on the same page as to the applicable hearing timelines, we encourage all land use permitting boards/commissions to seek extensions of statutory (and/or local, if applicable) deadlines that regulate how long a hearing may be open. For example, a hearing on an application for a comprehensive permit pursuant to G.L.c.40B must be closed within 180 days of being opened. For such hearings opened prior to March 10, 2020, we suggest obtaining an extension of the 180 days commensurate with the hearing extension. While there are instances where you may not need or use an extension, it is better to have one.

**If city/town hall is closed, how do we (or should we) facilitate the filing with the clerk of Notices of Appeal under G.L. c. 40A, §17?**

In our opinion, the Act does not apply to court appeals of decisions pursuant to G.L.c.40A, §17, which requires that persons aggrieved who file an appeal in court must provide notice of the appeal to the city or town clerk. The burden is on the plaintiff to ensure that this notice is timely filed with the clerk, and unexpected closures of the clerk's office will not necessarily relieve plaintiffs of this burden. With that said, we are advising that alternative means through which these notices of appeal can be delivered to the clerk stay in place.

For instance, as we pointed out in our previous guidance, many communities are establishing an accessible "drop box", located outside city/town hall, in the police station lobby, or other location that is not closed off to the public. (Indeed, some communities already have such a drop box for bill payments, for example). It is important to establish a regular protocol for how frequently the drop box will be checked, as well as ensuring that filings are date stamped upon retrieval from the drop box. It is preferable that the drop box be checked daily, as of the close of business, and all items received be marked received that day. This protocol should be publicized through means that will reach the broadest possible public audience, such as postings on your website, local cable access, any government social media platforms, on external bulletin boards, and even the front door of town/city hall. Particularly with respect to notices of appeal, you will want to communicate to the public how frequently the clerk or staff on the clerk's behalf will be checking the drop box. Of course, notices of appeal can also be mailed, but again, it is the plaintiff's responsibility to ensure that such notices are received within the required appeal period.

**Can a city/town suspend acceptance of land use permit applications (whether for zoning relief, special permits, building permits, etc.)?**

A city or town may not suspend the acceptance of applications. However, 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 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.

We suggest that the electronic method chosen by the city or town be publicized broadly such as postings on your website, on the clerk's page of the website, local cable access, any government social media platforms, on external bulletin boards, and on the front door of town/city hall.

**What if we don't have the technology for a virtual meeting and/or the board/committee members are not comfortable conducting a meeting virtually and by remote participation?**

The Governor's March 10, 2020 Order titled "[Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, § 20](#)", allows for multi-member public bodies to conduct public meeting or public hearings "virtually." The Act specifically codifies this Order. In a nutshell, for public meetings, a public body may conduct the meeting entirely by virtual means, so long as the public has the ability to watch or listen to the proceedings in real time, through electronic means, unless the town/city is unable to provide that access due to economic hardship (limited technological resources) and "despite best efforts." (In the event that any of these situations occur, please contact your Land Use attorney at KP Law.) Accurate minutes should be taken of the meeting as well to ensure compliance with the Open Meeting Law.

For public hearings required by state or local law or regulation, where the rights of the public to attend, participate, and be heard, are implicated, both the applicant and/or applicant's representative(s) **and** the public must be provided with the ability to participate remotely through electronic means, without exception. Also, a reminder that where either a public meeting or a public hearing is conducted "remotely," all votes taken must be by roll call vote, and recorded in the minutes as a roll call vote.

Further explanation of the implementation of "virtual" or "remote" meetings and hearings can be found on our website, at <http://www.k-plaw.com/covid-19-resources/>.

**Does the answer to this question change if town/city hall is closed to the public?**

No. If your town/city hall, or other public buildings at which public body meetings are held, are closed to the public, then there will need to be coordination amongst the public body, staff, and administration to see how access might otherwise be provided for a virtual meeting. In light of the Governor's ban on gatherings of more than 10 people, effective through May 4, 2020 (unless further extended or rescinded), it is not recommended that face-to-face meetings occur. As stated above, the Act does allow the Chair of a permit granting authority to reschedule a hearing or decision deadline on a permit application, whether or not a quorum of the body is present.

**If we cancel or postpone a public hearing, are we required to send out new notices to abutters and/or re-advertise a public hearing?**

Our short answer is that we recommend continuing a public hearing, rather than canceling it, whenever possible. To maximize the deadline extensions authorized under the Act, we further recommend that the Chair continue the public hearing 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. The Act requires that notice of any rescheduled date 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. If a statutorily-required land use permitting public hearing cannot be continued by the Chair and must be cancelled, you will need to re-advertise public hearings and send out new notices to abutters, with the new hearing date.

We will continue to keep you updated on developments in the face of this rapidly-evolving pandemic. A reminder that we have established a **Coronavirus “hotline”**, at [coronavirusinfo@k-plaw.com](mailto: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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