

Chapter 238 of the Acts of 2024: An Act Relative to Strengthening Massachusetts' Economic Leadership.

December 12, 2024

On November 20, 2024 Governor Healey signed into law Chapter 238 of the Acts of 2024, an “Act relative to strengthening Massachusetts’ economic leadership” (the “Act”). Section 280 of this comprehensive economic development law, includes provisions to extend by two years many land use “approvals” issued by municipal, regional, and state entities. Section 171 of the Act amends G.L. c.40A, §6, relative to so-called “zoning freeze” protection for projects started within three years of the issuance of a special permit or site plan review. These provisions are reviewed, in turn, below. These two sections of the Act are now in effect.

Section 280 – The so-called Third Permit Extension Act

Section 280 of the Act provides that “an approval in effect or existence” during the “tolling period” of January 1, 2023 to January 1, 2025, shall be extended for a period of two years from its expiration date. This two-year extension is automatic by operation of law and thus does not need to be formally extended by the permit or approval granting authority. Also, the Act specifically provides that any approval in effect during the tolling period “shall be governed by the applicable provisions of any local ordinance or by-law, if any, in effect at the time of the granting of the approval”, unless the holder of the approval elects to waive this protection. This means that regardless of revisions made to applicable local legislation during the tolling period, the law applicable to the approval at issue will be that effective as of the time of the original approval.

It is also important to note that because the “tolling period” runs from January 1, 2023, to January 1, 2025, some already expired approvals will be revived. For example, a permit that had a stated expiration date of March 1, 2024 is now retroactively extended for two years with a new expiration date of March 1, 2026.

Section 280 defines the term “approval” as follows:

[A]ny permit, certificate, order, excluding enforcement orders, license, certification, determination, exemption, variance, waiver, building permit or other approval or determination of rights from any municipal, regional or state governmental entity, . . . concerning the use or development of real property, and any environmental permit, including certificates, licenses, certifications, determinations, exemptions, variances, waivers, building permits or other approvals or determinations of rights. . . .

Thus, the term “approvals” includes permits such as special permits, variances, subdivision approvals, site plans, comprehensive permits, building permits, and order of conditions. Note, however, that enforcement orders, Federal permits, and permits issued by the division of fisheries and wildlife under G.L. c.131 are excluded from the definition of “approvals” and, therefore, are not extended.

Section 280 provides further that any municipal, regional or state governmental entity may “revoke or modify a specific permit or approval, or extension of a specific permit or approval, under this section, when that specific permit or approval or the law or regulation under which the permit or approval was issued contains language authorizing the modification or revocation of the permit or approval.” Thus, the Act preserves the ability of a permit granting authority to seek modification if allowed by the permit or relevant applicable law.

Chapter 171 – Amendment to G.L. c.40A, §6

Additionally, Section 171 of the Act amends the Zoning Act, G.L. c.40A, Section 6, with respect to special permits and site plan approvals. The amendment to the Zoning Act provides so-called “zoning freeze” protection for construction or operation under a special permit or site plan approval that commences within three years of the date of issuance, and, for construction, provided that construction must be continued through to completion as continuously and expeditiously as is reasonable. This is important because it changes existing law, which protects a project with a special permit from zoning changes for only one year. With large development projects, work often does not begin within one year due to continued permitting or financing efforts and if the zoning changed, after one year, the project would be subject to new zoning. Here, projects requiring site plan approval or a special permit will now enjoy a three year freeze.

Please contact Attorney Amy E. Kwesell (akwesell@k-plaw.com) or your KP Law attorney at 617.556.0007 with any specific questions.

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