FY2027 BUDGET – G.L. 40A AMENDMENTS

July 13, 2026

On July 9, 2026, the Governor Healey signed the FY 2027 budget, House Bill No. 5555 ("Budget Billl"), which makes several significant changes to G.L. c. 40A (Chapter 40A), the Zoning Act, including amendments to Sections 5 and 11 (notice requirements), Section 6 (pre-existing nonconforming uses and structures and freeze protections) and Section 10 (variances). These amendments are substantial, and implementation requires review on a case by case basis, including potential revisions to existing zoning bylaws and ordinances. The Budget Bill had an effective date of July 1, 2026. While we have included, below, initial summaries of several important provisions, we anticipate that various state entities may provide implementation guidance.

Note that the so-called "Economic Development Bill" contains several different zoning-related amendments, including "commercial conversion" to multifamily housing by right, allowing land held by religious groups to be developed as multifamily housing by right, and codification of site plan review. These provisions are still in flux and have not been enacted into law. Our understanding is that the House and Senate bills vary and will therefore need to be reconciled. Any observations or questions about matters included in the Economic Development Bill should be directed to your State Legisators.

Chapter 40A, Sections 5 and 11 - Notice Changes (Budget Bill Sections 40, 41, 48, and 49)

Chapter 40A, Sections 5 (zoning amendments) and 11 (public hearing requirements), previously required notice of a hearing to be given by (1) posting at town hall, (2) publication in a newspaper, and (3) mail postage prepaid. While current posting and publication requirements continue to apply, the law now allows notice to be sent by electronic mail in lieu of regular mail. Implementation of this provision may require changes to the information collected by the assessing entity, as, in order to comply with other provisions, such e-mail addresses must be found on the assessing list and certified by the assessors.

Although e-mailing may substitute for regular mail for purposes of Sections 5 and 11 of Chapter 40A, no change was made to the Section 10 mailing requirement in connection with variance applications.

Chapter 40A, Section 6 - Changes to Nonconformity Protections, Abandonment Timelines, and Zoning Freezes (Bill Sections 43, 45 and 46)

Extension or alteration by right of pre-existing nonconforming structures or residential uses. The Budget Bill amends Section 6 of Chapter 40A relative to extension or alteration of pre-existing nonconforming structures or residential uses that do not conform to zoning because of "lot size or shape, frontage, lot coverage or floor area ratio requirements". The amendments to Section 6 allow a nonconforming structure or residential use to be extended or altered as of right, without the need for a finding by the special permit granting authority, provided that the extension or alteration complies with current dimensional regulations regarding height, stories and setback.

Abandonment determination extension. The Budget Bill amends Section 6 of Chapter 40A to allow a municipality, by ordinance or bylaw, to extend the timeline from two years or more to four years or more for determining abandonment of a nonconforming use or structure. Previously, nonconforming uses and structures determined to be abandoned or not used for a period of two years or more (depending on the ordinance or bylaw) would thereby become subject to current zoning requirements.

Expansion of protection from subsequent zoning changes. Previously, a project was protected from subsequent zoning changes only if a building permit or special permit was issued before the first publication of notice of a zoning change required under Section 5 of Chapter 40A. The amendments to Chapter 40A now protect a permit applicant from subsequent zoning changes if they have simply applied for a special permit, building permit, or any other entitlement under Chapter 40A.

Increase to duration of zoning freeze. Additionally, the Budget Bill increases the so-called "zoning freeze" from one year to two years that a zoning ordinance or by-law must establish after the issuance of the last permit necessary for construction, but excludes any period of time during which the applicant is actively seeking or obtaining other necessary permits. The actual substance of the zoning freeze remains unchanged and provides that subsequent amendments of the ordinance or bylaw do not apply. The requirement that the use or construction must commence and continue "through to completion as continuously and expeditiously as is reasonable" also remains.

Expansion of lot merger zoning protection. Section 46 of the Budget Bill also adds anti-merger protection for undeveloped lots of a certain size/frontage, that were lawful when created, and which later come into common ownership with any adjoining land. Previously, only lots for single and two-family residential uses were protected. The amendment strikes the residential use requirements, providing protection for all lots.

Chapter 40A, Section 10 - Changes to Variance Standards (Bill Section 47)

Easing of variance standards. Section 47 of the Budget Bill replaced entirely Section 10 of Chapter 40A, making it somewhat easier to obtain variances. Historically, hardship variances could be granted only if the applicant was able to demonstrate significant hardship due to soil, shape or topography. The new standard is whether "strict enforcement of the ordinance or by-law would result in practical difficulty."

To make this determination, a zoning board of appeals will now be required to weigh the benefits to the applicant and to the public interest, which is defined to include production of housing, as compared to the detriments to the public health, safety and welfare of the neighborhood impacted. A zoning board of appeals may also consider:

> (i) whether the practical difficulty relates to soil conditions, shape or topography of such land or structures; (ii) whether the strict enforcement would impose a financial hardship on the appellant or petitioner; (iii)

whether the benefit sought by the appellant or petitioner can be achieved by some other method feasible for the appellant or petitioner to achieve; and (iv) whether the practical difficulty was self-created"

Increases to maximum periods for variance duration and extensions. The Budget Bill extends from one to two years the period a variance is valid, and excludes (1) the time necessary to pursue other entitlements to construct the project, and (2) the time to await the determination of an appeal. Further, the bill allows zoning board of appeals to grant variance extensions of up to two years, rather than a maximum of six months, provided the request for an extension is filed prior to the expiration of the variance.

Finally, variances for residential uses are authorized pursuant to the amended statute, and therefore do not require an express allowance in a zoning ordinance or bylaw. If a municipality wishes to grant any other use variance, however, authority for the same must be provided by ordinance or bylaw.

Summary

The Budget Bill made significant amendments to Chapter 40A. We will continue to review the implications of these changes and the scope of potential zoning amendments municipalities may need to consider. The Budget Bill took effect on July 1, 2026, and, if and as more information emerges, we will supplement the information in this eUpdate.

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

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