



## A Robinson+Cole Legal Update

### Coronavirus (COVID-19)

April 13, 2020

## An Act to Address Challenges Faced by Municipalities and State Authorities Resulting from COVID-19

Authored by [Jessica D. Bardi](#), [Michael S. Giaimo](#), [Matthew J. Lawlor](#), and [Timothy C. Twardowski](#)

On April 3, 2020, Massachusetts Governor Charlie Baker signed into law “An Act to Address Challenges Faced by Municipalities and State Authorities Resulting from COVID-19” as Chapter 53 of the Acts of 2020 (the Act). A copy of the Act is [available here](#). Of most interest to the real estate industry is Section 17, which addresses how developers and municipal permit-granting authorities must handle mandatory deadlines in light of the current state of emergency. The Act suspends the timeframes for local bodies such as Planning Boards, Zoning Boards of Appeals, Conservation Commissions, Boards of Health, Select Boards and City Councils, to act on permits during the state of emergency. More important, the Act provides relief for developers who have received permits by suspending any timelines to act under those permits until the state of emergency is over. The highlights from the Act are summarized here:

### Definition of “Permit” Under the Act

A “permit” is “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.”

### Electronic Filing of Permit Applications

The Act provides for the electronic filing of permit applications either by submission through a website portal established by the permit granting authority or by e-mail sent to the “clerk, secretary or official” of the municipality. The date of filing is the date on which an application is filed with and certified as received by the city or town clerk. The completeness of the application may be challenged by the permit granting authority in two instances: (1) if the application is ultimately denied on grounds other than completeness of the application or (2) if the applicant appeals the permit. If a developer intends to electronically file an application for a permit at this time, they may want to request an electronic certification of receipt from the town or city clerk and keep hard copies of the application materials to submit once the Town or City Hall reopens, in case there are any technical issues with the electronic filing.

### Pending Permit Applications

Opening of the public hearing:

Effective March 10, 2020, the Act fully suspends any required timelines to open a public hearing on an application. The suspension will continue until 45 days after the state of emergency ends, unless otherwise provided by law. For example, if a local board had 65 days to open a hearing on an application that was filed on March 10, 2020, the Act provides that the 65-day deadline would not begin to run until 45 days after the state of emergency ends.

#### Continued public hearings:

The Act provides that public hearings that have been opened and continued as of March 10, 2020 are “automatically” tolled and continued to the first hearing date of the permit granting authority following the end of the state of emergency, provided that this date is within 45 days of the end of the state of emergency. Most municipalities post a schedule of public hearing dates on their websites for the various permit-granting authorities within the municipality. If an Applicant is concerned about a prospective date of a public hearing, the Applicant may want to consider reaching out to the Municipal Clerk or to the Town Planner, Conservation Agent or other municipal employee who works with the permit-granting authority that is hearing the application. One issue that is not clear is whether the intent of the Act is to have hearings that opened before March 10 “automatically” continued even if the permitting authority would be willing to meet virtually during the emergency to conclude a hearing and issue a decision so that a use or development is not unnecessarily delayed.

#### Notice:

The Act is silent on public notice requirements; however, if notice was already posted, published and sent to abutters for a hearing that did not occur as anticipated, or was opened and continued to a date on which a continued hearing could not be held, it will presumably need to be re-published, mailed and posted with the new public hearing date. Applicants may wish to confirm with the municipalities how this notice will be handled in order to avoid any potential defect in notice claims resulting from the delay in the public hearing. For hearings that will be opened or continued under rules for virtual meetings, applicants will be interested in affirming that the mechanism for public participation in the hearing is effectively announced to the public and disseminated to those who are entitled to individual notice, to reduce the likelihood of later procedural challenges.

#### Actions by the permit-granting authority:

The Act provides that all timelines for the permit-granting authority to act on a permit application are tolled during the state of emergency. Once the state of emergency ends, the permit granting authority has up to 45 days to act on an application, unless the applicant and the permit-granting authority agree in writing to an alternative timeline. During the state of emergency, no permits will be considered constructively granted, approved or denied as a result of the permit-granting authority’s failure to act. In general, this addresses the strict timelines for permit-granting authorities to act on applications to avoid a constructive grant. Frequent occurrences of constructive grants include: the failure of a Zoning Board of Appeals to take final action on a special permit application within 90 days of the close of the public hearing (G.L. c. 40A, § 9); failure of a Zoning Board of Appeals to render a decision on an application for a comprehensive permit within 40 days of the close of the public hearing (G.L. c. 40B, § 21); and failure of a Conservation Commission to issue a decision within 21 days of the close of the public hearing (G.L. c. 131, § 40 and 310 CMR 10.05(6)). Therefore, in instances in which a public hearing has been closed, whether before or after March 10, 2020, once the state of emergency is lifted, the permit-granting authority must take action on the permit application within 45 days.

The chair of the permit-granting authority may independently schedule or reschedule the hearing or decision deadlines on a pending application, except that such hearing or decision must take place within 45 days after the termination of the state of emergency. The chair must provide written notice of the rescheduled date to the applicant at their address and the general public via electronic posting to the city or town clerk’s website.

Whether a developer is seeking to file an application, has an application pending before a local permit granting authority, or is awaiting a decision on its application, Robinson+Cole's Massachusetts Land Use attorneys are available to assist with any questions you may have during the state of emergency.

### **Already-Issued-Permits**

The Act provides that for a permit that is in effect as of March 10, 2020, the expiration date and any deadlines for performing conditions of the permit are tolled for the duration of the state of emergency. Similarly, any requirement that the permit be recorded with the registry of deeds or filed with the land court before the permit holder can exercise any rights under the permit is tolled during the emergency. The Act does not prohibit a permit holder from applying for and obtaining other permits and approvals and commencing construction activities before the permit is recorded. For example, if a permit holder has received a special permit, but has not recorded it at the registry of deeds, that permit holder may still apply for a building permit from the municipality and exercise that permit if it is issued. If permit holders have any concerns over their obligations under a validly issued permit, Robinson+Cole's Massachusetts Land Use attorneys are available to assist.

The Act provides that a permit-granting authority cannot revoke or modify a permit due to the permit holder's failure to exercise their rights or otherwise commence or continue work authorized under the permit as a result of the state of emergency. The Act imposes a 60-day grace period for permit holders to commence or continue work or otherwise act under a validly issued permit after the state of emergency terminates. A permit holder may seek additional time to exercise rights under a permit at the discretion of the permit-granting authority for good cause shown. The chair of a permit-granting authority may independently grant such an extension request.

### **Specific Actions by Local Board and Officials Now Allowed During the State of Emergency**

The Act allows a permit granting authority to conduct public meetings and hearings remotely, consistent with the Governor's "Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20," which allows for virtual participation by applicants and the public in real time, and is [available here](#). Robinson+Cole is available to assist with any virtual public hearings conducted during the state of emergency.

A permit-granting authority may also issue decisions on permit applications for which public hearings or meetings have been properly conducted. Furthermore, building commissioners are not prohibited from issuing building and demolition permits.

It is important to bear in mind that the Act applies to the conduct of public hearings and public meetings by local town and city boards and commissions, but not to state agencies, departments, or commissions. The Governor's "Order Suspending State Permitting Deadlines and Extending the Validity of State Permits" (the Order), specifically applies to permitting by state agencies, and similarly suspends the timeframes for state agencies to conduct hearings and act on permit applications before them. The Order addressing state-issued permits is [available here](#). The state agency-related Order requires that applicable deadlines resume 45 days after the termination of the state of emergency.

### **Additional Thoughts**

It remains to be seen whether legislation similar to the 2010 Permit Extension Act will be enacted to further relax timelines for exercising newly-issued permits. For now, permit holders need to know that the Act provides that in covered circumstances they are not obligated to commence or continue work under a local permit during the state of emergency and they will have 60 days to begin or continue work under that permit once the state of emergency ends, unless they've been given a further extension by the chair of the permit-granting authority. For those with a submitted permit application awaiting the opening of a public hearing, or otherwise pending before a permit granting authority, the Act provides that all deadlines to hear

or act on the application are tolled until the state of emergency is terminated. However, boards are able, and may be willing, to conduct virtual meetings and hearings and issue permits during the emergency. Nothing in the Act provides for the tolling of any appeal periods (i.e. the 20-day appeal period for special permits).

## FOR MORE INFORMATION

Please contact Robinson+Cole with any questions regarding the impacts of this Act on municipally-issued permits and permit applications. The following Robinson+Cole Massachusetts [Land Use](#) attorneys are available to assist with your questions:

[Michael Giaimo](#) | [Matthew Lawlor](#) | [Timothy Twardowski](#) | [Karla Chaffee](#)

[Jessica Bardi](#) | [Alicia Selman](#) | [Kristen Elia](#)

Read more legal updates, blog posts, and speaking engagements related to this area on [Robinson+Cole's Coronavirus Response Team](#) page and feel free to contact any member of our team with questions.

[Bruce B. Barth \(Chair\)](#) | [Kenneth C. Baldwin](#) | [Michael H. Bernstein](#) | [J. Tyler Butts](#) | [Dennis C. Cavanaugh](#)

[Britt-Marie K. Cole-Johnson](#) | [Candace M. Cunningham](#) | [Andrew A. DePeau](#) | [Kathleen E. Dion](#)

[Conor O. Duffy](#) | [William J. Egan](#) | [Steven L. Elbaum](#) | [Gilbert L. Lee](#) | [Virginia E. McGarrity](#)

[Matthew T. Miklave](#) | [Endicott Peabody](#) | [Kathleen M. Porter](#) | [Taylor A. Shea](#) | [Lauren M. Sigg](#)

[Brian R. Smith](#) | [Alisha N. Sullivan](#) | [Anna Jinhua Wang](#) | [Abby M. Warren](#) | [Jeffrey J. White](#)

For insights on legal issues affecting various industries, please visit our [Thought Leadership](#) page and subscribe to any of our newsletters or blogs.

Boston | Hartford | New York | Providence | Miami | Stamford | Los Angeles | Wilmington | Philadelphia | Albany | New London



© 2020 Robinson & Cole LLP. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This document should not be considered legal advice and does not create an attorney-client relationship between Robinson+Cole and you. Consult your attorney before acting on anything contained herein. The views expressed herein are those of the authors and not necessarily those of Robinson+Cole or any other individual attorney of Robinson+Cole. The contents of this communication may contain ATTORNEY ADVERTISING under the laws of various states. Prior results do not guarantee a similar outcome.