

400 CMR: EXECUTIVE OFFICE OF ECONOMIC DEVELOPMENT

400 CMR 2.00: EXPEDITED PERMITTING

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2.01: Purpose

400 CMR 2.00 *et seq.* establishes rules, standards and procedures for the Expedited Permitting Program created in M.G.L. c. 43D. The Executive Office of Economic Development (the "Office") is the regulatory agency for the program and is authorized to issue regulations to explain and to implement its operation.

2.02: Program Overview

The Expedited Permitting Program gives cities and towns the ability to promote commercial development on pre-approved parcels by offering expedited local permitting on those parcels. Such development shall be primarily commercial however mixed-use properties shall also qualify for priority designation so long as they conform to the statutory requirements for a priority development site. The program is at local option.

Cities and towns that accept the provision of M.G.L. c. 43D will be eligible for a one-time technical assistance grant to assist the municipality to improve and streamline the local permitting process for commercial development.

2.03: Definitions

All Persons Entitled to Notice of Hearing: abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the priority development site as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the planning board of the city or town, and the planning board of every abutting city or town. The assessors maintaining any applicable tax list shall certify to the issuing authority the names and addresses of persons entitled to notice of public hearing and such certification shall be conclusive for all purposes.

Appropriate Public Transit Services: an area that is located within .5 miles of any part of an existing Transit Station or Planned Transit Station, including, but not limited to, parking areas proximate to the existing Transit Station or Planned Transit Station, entrance gates, and ticket dispensers, and shall have a form of access to the existing Transit Station or Planned Transit Station, or will have access resulting from a proposed project on the priority development site.

Area of Existing Development: an area within .5 miles of parcels with existing public or private infrastructure either currently in use or recently abandoned, which is served by transportation services that include roads, highways, or other forms of public transit.

Division: the Division of Administrative Law Appeals.

2.03: continued

Governing Body: in a city having a Plan D or Plan E charter the city manager and the city council and in any other city the mayor and city council, and in towns the board of selectmen, or as otherwise provided by local chapter.

Interagency Permitting Board: the board, as described in M.G.L. c. 23A, § 62 established to review and approve or deny municipal priority development site proposals and to grant and administer technical assistance grants.

Issuing Authority: a local board, commission, department or other municipal entity that is responsible for issuing permits, granting approvals or otherwise involved in land use development including redevelopment of existing buildings and structures.

Parties to the Proceedings: any person who provided testimony or submitted written comments on record during a Public Hearing for the project.

Permit: a formal determination, order of conditions, license, certificate, authorization, registration, plan approval, zoning relief or other approval or determination with respect to the use, development or redevelopment of land, buildings, or structures required by any issuing authority including but not limited to those under statutory authorities contained in M.G.L. c. 40A, §§ 81A through 81J, M.G.L. c. 41, §§ 81X through 81GG, M.G.L. c. 131, §§ 40 and 40A, M.G.L. c. III, §§ 26 through 32, M.G.L. c. 40C, M.G.L. c. 148, §§ 13 and 14 and St. 1975, c. 772, or otherwise under state law or local by-law or ordinance, and all associated regulations, by-laws and rules, but not including building permits or approvals pursuant to M.G.L. c. 41, §§ 810 through 81 W. Permit shall not include the decision of an agency to dispose of property under its management or control; predevelopment reviews conducted by the municipality or a technical review team; or permits granted by the Massachusetts Water Resources Authority.

Permitting Ombudsman: an individual appointed by the governor that will chair the interagency permitting board and direct that board to conduct state permit evaluation and streamline and expedite state agency permitting procedures. The ombudsman shall facilitate communication between municipalities and state agencies on permitting issues.

Priority Development Site: PDS, a privately or publicly owned property that is:

- (a) commercially or industrially zoned, or zoned for mixed use developments;
- (b) eligible under applicable zoning provisions, including special permits or other discretionary permits, for development or redevelopment containing at least 50,000 square feet of gross floor area in new or existing buildings or structures; and
- (c) designated as a priority development site by the board. Several parcels or projects may be included within a single priority development site. Wherever possible, priority development sites should be located adjacent to areas of existing development or in under-utilized buildings or facilities, or close to appropriate public transit services.

Secretary: the secretary of the executive office of economic development

Technical Review Team: an informal working group consisting of representatives of the various issuing authorities designated by the head of their issuing authority to review requests submitted under 400 CMR 2.00. The technical review team shall not include members of the zoning board of appeals.

Under Utilized Building or Facility: a commercial or industrial building or collection of buildings that are currently vacant or that has 50% of its floor area unused, or a site that has previously been cleared of industrial or commercial use, or a site that has been remediated and is vacant or used sporadically.

2.04: Interagency Permitting Board

The members of the board shall be comprised of the state permit ombudsman who will serve as the chair, the secretary of economic development, the secretary of transportation, the secretary of environmental affairs, the secretary of public safety, the director of the department of housing and community development, the director of the department of business and technology, the director of the department workforce development, the director of the department of consumer affairs and business regulation, the chair of the commonwealth development coordinating council, and the executive director of the Massachusetts Development Finance Agency, or their designees. Six members shall be a quorum for the transaction of business. At the direction of the chair, the board shall meet no less than eight times a year, and review and approve or deny municipal PDS proposals and administer technical assistance grants. The board shall monitor the development of priority development sites as provided for in M.G.L. c. 43D and investigate ways in which to expedite priority development site projects. The board shall evaluate state agency permit procedures and recommend changes for improved efficiency. The board shall administer the technical assistance grants program established in M.G.L. c. 43D, § 3(b).

2.05: PDS Designation Process

(1) For each priority development site proposed, a town must vote to accept M.G.L. c. 43D by town meeting and a city must accept M.G.L. c. 43D by a majority vote of city council members. In order to qualify for PDS designation, written authorization of the property owner of each parcel included in the PDS application must be granted. Upon local acceptance of M.G.L. c. 43D, the governing body must apply to the board for PDS designation. The application shall include:

- (a) a detailed description of the property;
- (b) good faith commitment to comply with M.G.L. c. 43D;
- (c) written authorization of the property owner; and
- (d) at the discretion of the governing body, a request for technical assistance. The applications shall also identify if the site is located adjacent to areas of existing development or in under utilized buildings or facilities, or close to appropriate transit services.

(2) The board will review the application to determine whether the parcel meets all of the following requirements:

- (a) commercially or industrially zoned, or zoned for mixed use development;
- (b) eligible under applicable zoning provisions, including special permits or other discretionary permits, for development or redevelopment containing at least 50,000 square feet of gross floor area in new or existing buildings or structures; and
- (c) has met with an affirmative vote of town meeting or city council.

The board shall have 60 calendar days from receipt of the PDS application to issue a decision.

(3) Municipalities are strongly encouraged to consider sites close to areas of existing development, close to appropriate transit services, or containing under-utilized buildings or facilities when nominating potential PDS locations, however meeting one or more of these three principles is not required for the site to qualify for PDS designation.

(4) PDS designation shall apply for a term no less than five years, beginning the day after the 120 calendar day phase-in period as described in 400 CMR 2.06. The governing body may decide to terminate PDS designation on a parcel after the initial five year term by providing timely written notice to the board. Absent a termination notice from the governing body, PDS designation shall remain in effect.

2.06: Grant Application Process

(1) All requests for technical assistance grants shall include a detailed description of how the grant will be used and shall be submitted to the board with the application for PDS designation. Grants shall be used to implement the requirements of M.G.L. c. 43D, which shall include but not be limited to, professional staffing assistance, local government reorganization, and consulting services.

2.06: continued

(2) The board shall review applications for technical assistance grants, and issue a final decision within 60 calendar days of receipt in concurrence with the board's decision on the application for PDS designation. All technical assistance grants are subject to legislative appropriation.

(3) The grants are to be considered one-time grants. In special circumstances where a specific and originally unforeseen need can be demonstrated, the governing body may be eligible for an additional technical assistance grant if approved by the board and the secretary, provided the governing body has previously identified and successfully permitted at least one PDS prior to the second request for a technical assistance grant.

2.07: Local Duties Upon Municipal Acceptance

(1) A governing body shall be deemed to have accepted the provisions of M.G.L. c. 43D by endorsing the check for a technical assistance grant. In the cases where no technical assistance has been granted, the governing body may accept the provisions of M.G.L. c. 43D by completing a form provided to them by the board.

(2) Beginning on the day after a governing body accepts the provisions of M.G.L. c. 43D, the governing body will have 120 calendar days to conform to the requirements of this program.

(3) These requirements shall be to:

(a) appoint a single point of contact to serve as the primary municipal liaison for all issues relating to M.G.L. c. 43D;

(b) amend rules and regulations on permit issuance to conform to M.G.L. c. 43D;

(c) along with each issuing authority, collect and ensure the availability of all governing statutes, local ordinances, by-laws, regulations, procedures and protocols pertaining to each permit;

(d) establish a procedure whereby the governing body shall determine all permits, reviews and predevelopment reviews required for a project; all required scoping sessions, public comment periods and public hearings; and all additional specific applications and supplemental information required for review, including, where applicable, the identification of potential conflicts of jurisdiction or substantive standards with abutting municipalities and a procedure for notifying the applicant of the same;

(e) establish a procedure, following the notification to the applicant of all required submissions, for determining if all the materials required for the review of the project have been completed; and

(f) establish a procedure to allow for all local permitting decisions for PDS projects to be issued within 180-calendar-days of submission of a completed application.

Nothing in M.G.L. c. 43D shall be construed to alter the jurisdiction of issuing authorities.

2.08: Applications and Completeness Review

(1) The governing body shall provide an applicant with a comprehensive packet of permit applications necessary for the PDS project. In order to identify applicable permits for any project, the municipality may conduct preliminary reviews or conferences with the applicant. Once the applicant has submitted an application packet, the governing body has 20 business days to determine completeness of the applications. The governing body shall timely notice the applicant by certified mail as to the completeness of the applications. If the governing body fails to notice the applicant within 20 business days, the application shall be deemed complete. The 180-calendar-day review period shall commence the day after notice is mailed.

(2) Should the governing body determine an application is incomplete, the governing body shall timely notify the applicant in writing by certified mail with an explanation as to why the application is incomplete, and request the information necessary to complete the application. The resubmission of an application package will begin a new 20-business-day completeness review period. Subsequent completeness decisions must be sent by certified mail and conform to the process outlined in 400 CMR 2.07.

2.09: Permitting Process and Extensions

(1) The governing body must complete the local permitting process within 180 calendar days after the certified notice of completeness is sent, or the 20-day-completeness review period has expired and the applications are deemed to be complete. This period may be waived or extended for good cause upon written request of the applicant with the consent of the governing body, or upon written request of an issuing authority with the consent of the applicant.

(2) The 180-calendar-day review period may be extended by the governing body, if a previously unidentified permit or review has been determined necessary within the first 150 calendar days of the process. When a governing body determines that a previously unidentified permit is necessary, the governing body must send immediate notice of such additional requirements to the applicant by certified mail and copy the board. The governing body may exercise the extension for a maximum of 30 calendar days. Where public notice and comment or hearing are required for the previously unidentified permit, the required action date shall not be later than 30 days from the later of the close of the hearing or comment period, which shall be scheduled to commence as quickly as publication allows.

(3) The 180-calendar-day review period may be extended when an issuing authority determines that:

- (a) action by another federal, state or municipal government agency not subject to 400 CMR 2.00 is required before the issuing authority may act;
- (b) pending judicial proceedings affect the ability of the issuing authority or applicant to proceed with the application; or
- (c) enforcement proceedings that could result in revocation of an existing permit for that facility or activity or denial of the application have been commenced. In those circumstances, the issuing authority shall provide written notification to the secretary and the board by certified mail. When the reason for the extension is no longer applicable, the issuing authority shall immediately notify the applicant, the secretary, and the board by certified mail, and shall complete its decision within the time period specified in 400 CMR 2.08(3), beginning the day after the notice to resume is issued by the governing body.

(4) If governing body, in consultation with the issuing authority, has determined that substantial modifications to the project since the application render the issuing authority incapable of making a decision on an application, an extension of the 180-calendar-day review period may be granted by the board for demonstrated good cause at the written request of the issuing authority. The issuing authority shall provide terms for the extension including the number of additional days requested. Within ten business days of receipt of the request, the board, or permitting ombudsman if designated by the board, shall respond to the issuing authority with an extension determination.

(5) If the applicant makes a substantial modification to a project for the purpose of public benefit, the issuing authority may request an extension from the board, and if granted, shall make every reasonable effort to expedite the processing of that permit application.

2.10: Permit Modifications

Issuing authorities shall make every reasonable effort to review permit modification requests within as short a period as is feasible to maintain the integrity of the expedited permitting process. An issuing authority shall inform an applicant within 20 business days of receipt of a request whether the modification is approved, denied, determined to be substantial or requires additional information for the issuing authority to issue a decision. If additional information is required, the issuing authority shall inform an applicant by certified mail within 20 business days after receipt of the required additional information whether the modification is approved or denied or that further additional information is required by the issuing authority in order to render a decision.

2.11: Automatic Grant of Approval

- (1) Failure by any issuing authority to take final action on a permit within the ISO-calendar-day review period, or properly extended review period, shall be considered a grant of the relief requested of that authority. In such case, within 14 days after the date of expiration of the time period, the applicant shall file an affidavit with the city or town clerk, attaching the application, setting forth the facts giving rise to the grant and stating that notice of the grant has been mailed, by certified mail, to all parties to the proceedings and all persons entitled to notice of hearing in connection with the application.
- (2) An issuing authority may not use lack of time for review as a basis for denial of a permit if the applicant has provided a complete application and met all other obligations in accordance with 400 CMR 2.00.
- (3) The automatic grant of approval shall not occur where the governing body has made a timely determination under 400 CMR 2.07 that the application packet is not complete and the applicant does not provide the requested information within 90 calendar days. In this case, the governing body shall notify the board of the discontinuation of the permit process.
- (4) The governing body, in consultation with the issuing authority, has determined that substantial modifications to the project since the application render the issuing authority incapable of making a decision on an application;
- (5) The governing body has determined that a final application contains false or misleading information. In such event, the governing body must submit a statement of findings to the board by certified mail and copy the applicant by certified mail. Such a finding may be appealed in Land Court on a motion of the applicant. Pending a court's ruling, the ISO-calendar-day review period shall be tolled. If a court rules in favor of the appellant, the ISO-calendar-day review period shall resume. If the court rules in favor of the governing body, the ISO-day review process shall be waived.

2.12: Cape Cod Commission & Martha's Vineyard Commission Reviews

In municipalities where the Cape Cod Commission or Martha's Vineyard Commission have the authority to review permit applications, the municipality shall consult with the Cape Cod Commission or Martha's Vineyard Commission before commencing with a project on a PDS. The Commission and the municipality shall work together to consider any areas of potential concern or conflict prior to issuing applications for that project, and make every reasonable effort to expedite the processing of such applications. In municipalities that fall within the jurisdiction of either Commission, the ISO-day review period will be tolled on the day the referral is made to the Cape Cod Commission and the Martha's Vineyard Commission and will resume when those bodies complete their review.

2.13: Appeals

- (1) Appeals of an issuing authority decision or from an automatic grant of approval shall be filed within 20 calendar days after the last individual permitting decision has been rendered or within 20 calendar days after the conclusion of the ISO-day review period, whichever is later. The ISO-day review period shall be increased by the number of days in any extension granted under 400 CMR 2.00.
- (2) The applicant or any person aggrieved by a final decision of any issuing authority, or by the failure of that authority to take final action concerning the application within the time specified, whether or not previously a party to the proceeding, or any governmental officer, board, or agency, may appeal to the Division by bringing an action within 20 calendar days after a written decision was or should have been rendered. Appeals from decisions of multiple permitting authorities shall be filed simultaneously and shall be consolidated for purposes of hearing and decision. 400 CMR 2.13 shall not apply to appeals pursuant to M.G.L. c. 131, §§ 40 and 40A, which shall continue to be appealed in accordance with M.G.L. c. 131 and c. 30A.

2.13: continued

(3) When hearing appeals under 400 CMR 2.00, the Division shall revise its rules, procedures and regulations to the extent necessary to accord with the requirements of M.G.L. c. 43D. The division shall render a final written decision within 90 days of the receipt of the appeal. Thereafter, an aggrieved party may appeal to the superior court department or to the Land Court in accordance with M.G.L. c. 185, § 3A, by bringing action within 20 days after a written decision was or should have been rendered.

2.14: Permit Transfers and Renewals

(1) Permits shall not transfer automatically to successors in title, unless the permit expressly allows the transfer without the approval of the issuing authority.

(2) Issuing authorities may develop procedures for simplified permit renewals and annual reporting requirements. If the procedures are not developed, renewals of permits shall be governed by the procedures and timelines as specified in 400 CMR 2.00.

(3) Permits issued pursuant to M.G.L. c. 43D shall expire five years from the date of the expiration of the applicable appeal period unless exercised sooner. Where permits cover multiple buildings, commencement and continuation of construction of one building shall prevent expiration of all permits on that site. No permit issued under 400 CMR 2.00 shall be affected by changes in the law subsequent to the issuance of such permits. Nothing in 400 CMR 2.14 shall limit the effectiveness of M.G.L. c. 40A, § 6.

2.15: Municipal Benefits

(1) Municipalities that adopt the provisions of M.G.L. c. 43D are eligible for priority consideration for state grants, including but not limited to, community development action grants, public works economic development grants, brownfields remediation grants, and other state resources such as quasi-public financing and training programs.

(2) The Commonwealth, through the Massachusetts Office of Business Development and a contract with the Massachusetts Alliance for Economic Development, shall promote PDS locations to the real estate and business community nationwide. The contract with the Massachusetts Alliance for Economic Development shall be contingent upon legislative appropriation.

2.16: State Permitting

Reviews required under the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61 through 62H, or the Massachusetts Historical Commission, M.G.L. c. 9, §§ 26 through 27C shall conclude within 120 calendar days of a state determination of completeness of required review materials, as established by the executive office of environmental affairs in consultation with the state secretary. The aforementioned reviews shall take place concurrently with the 180-calendar-day municipal permitting review process. The secretary of environmental affairs and the state secretary shall establish time frames for all required filings and additional filings by the applicant in order to comply with 400 CMR 2.16. In the event an applicant fails to comply with all relevant time frames, the time shall be tolled until the applicant files the required documents.

REGULATORY AUTHORITY

400 CMR 2.00: M.G.L. c. 43D.

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