



OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE • BOSTON, MA 02133
(617) 725-4000

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

**ORDER RESUMING STATE PERMITTING DEADLINES AND
CONTINUING TO EXTEND THE VALIDITY OF CERTAIN STATE PERMITS**

COVID-19 Order No. 42

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus ("COVID-19");

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, on March 26, I issued COVID-19 Order No. 17, which, for permits issued by agencies within the Executive Office of Housing and Economic Development and the Executive Office of Energy and Environmental Affairs, tolled the expiration dates of such permits during the state of emergency, suspended constructive approvals of permits and hearing and decision deadlines, and extended appeal deadlines;

WHEREAS, such suspensions were required because, with the closure of non-essential businesses, many Commonwealth administrative offices were not open to the public and, as a result, were unable to timely process requests for licenses, permits, approvals, and certificates of registration;

WHEREAS, the current, sustained trend of improvement in public health data has allowed the resumption of state services and permitting, with the consequence that the suspension of deadlines for state permitting agencies that was authorized by COVID-19 Order No. 17 is no longer necessary;

WHEREAS, the disruptions caused by the public health emergency and the resulting economic dislocations continue to prevent people and businesses from acting within the

deadlines required by permits, licenses, and other approvals issued or granted by the Commonwealth and its agencies and complying with conditions thereof, such that continued relief is necessary; and

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting a state of emergency, including but not limited to the authority to modify of the terms and conditions of licenses, permits, or certificates of registration issued by the Commonwealth or any of its agencies or political subdivisions and authority over assemblages in order to protect the safety of persons;

NOW, THEREFORE, I hereby Order the following:

1. The Order Suspending State Permitting Deadlines and Extending the Validity of State Permits (COVID-19 Order No. 17) is hereby rescinded in its entirety.
2. The following requirements hereby replace and supersede the suspensions and deferrals set forth in COVID-19 Order No. 17:
 - (a) **Constructive Approvals:** Constructive approvals or denials that would have issued between March 10, 2020 and July 1, 2020, but for the suspension provided in section (a) of COVID-19 Order No. 17, shall issue on August 17, 2020 if the state permitting agency fails to act by August 17, 2020. Constructive approvals or denials that would issue after July 1, 2020 shall issue according to the regular, applicable statutory or regulatory deadline or on August 17, 2020, whichever date is later.
 - (b) **Hearings:** All hearings that a state permitting agency would have been required to commence between March 10, 2020 and July 1, 2020, but for the suspension provided in section (b) of COVID-19 Order No. 17, shall commence on or before August 10, 2020. All hearings required to commence after July 1, 2020 shall be commenced according to the regular, applicable statutory or regulatory deadline or by August 10, 2020, whichever date is later.
 - (c) **Decisions:** All decisions and requests that a state permitting agency would have been required to issue or make between March 10, 2020 and July 1, 2020, but for the suspension provided in section (c) of COVID-19 Order No. 17, shall be issued on or before August 10, 2020. This includes any requirement that a state permitting agency (i) issue a decision on an application, order, notice of intent, petition, or request for approval, (ii) issue a decision on an appeal of an application, order, notice of intent, petition, or request for approval, or (iii) request a superseding order or determination, within a specific period of time. All decisions and requests that a state permitting agency is required to issue or make by a date certain after July 1,

2020 shall be issued or made by the regular, applicable statutory or regulatory deadline or August 10, 2020, whichever date is later.

(d) **Appeal Rights:** Any person aggrieved by a decision or final decision of a state permitting agency on an approval or denial thereof whose right to appeal such decision would have expired or will expire between March 10, 2020 and July 1, 2020, but for the tolling of such rights provided in section (d) of COVID-19 Order No. 17, shall have until and including August 10, 2020 to appeal. Any person whose right to appeal a decision or final decision of a state permitting agency on an approval or denial thereof expires after July 1, 2020 shall make such appeal by the regular, applicable statutory or regulatory deadline or by August 10, 2020, whichever date is later.

3. **Permit Tolling:** An approval issued by a state permitting agency valid as of March 10, 2020 and any deadline to record said approval to establish its validity shall not lapse or otherwise expire during the state of emergency and the expiration date of the approval and the deadline to record said approval shall toll during the state of emergency. The new date for the expiration of an approval or the deadline to record said approval is calculated as follows: determine how many days remained as of March 10, 2020 until the approval or the deadline to record would have expired, and that same number of days will remain as of the date that the state of emergency is terminated. To the extent that any such approval contains or is subject to other deadlines or conditions, the state permitting agency may extend such deadlines or waive such conditions if an approval holder is not able to abide by the deadlines or conditions due to the state of emergency. This section shall not apply to a holder of an approval who was in violation of the terms and conditions of the approval as of March 10, 2020.

4. **Definitions**

For the purposes of this Order, the following words shall have the following meanings:

“Approval”, any permit, including an environmental permit, certificate, license, certification, determination, exemption, variance, waiver, state building permit, or other determination of rights issued by a state permitting agency, including any order but excluding any enforcement order, concerning the use, development, or rehabilitation of real property or improvements located thereon, the allocation or use of water and other natural resources, or the discharge, emission, abatement, or management of waste or pollutants, including but not limited to approvals issued pursuant to chapter 21, section 18 of chapter 21A, chapter 21D, section 3B of chapter 21E, section 61 to 62I, inclusive, of chapter 30, section 20 to 23, inclusive, of chapter 40B, chapter 91, chapter 92A½, chapter 112, chapter 131, chapter 131A, chapter 132, chapter

142, chapter 143, and chapter 253 of the General Laws, but excluding approvals issued pursuant to chapters 92 or 132A of the General Laws.

“Constructive Approval or Denial”, an approval that would be considered granted, approved, or denied due to a failure of a state permitting agency to act within the time required by statute, rule, or regulation.

“Enforcement Order”, an order from an inspector or other authorized official of a state permitting agency compelling the property owner, holder, or intended user of an approval to take or not take an action deemed by the official to be necessary to protect health, safety, or the environment.

“State permitting agency”, any agency, board, bureau, department, office, committee, division, or official of the Commonwealth, which issues approvals and is within or reports to the Executive Office of Energy and Environmental Affairs or the Executive Office of Housing and Economic Development.

This Order is effective immediately and shall remain in effect until rescinded or until the state of emergency is terminated, whichever happens first.

Given in Boston at 11:25 AM/PM this 2nd
day of July, two thousand and twenty



CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts