

March 23, 2020

Executive Order 7I – Part 19: Municipal Land Use Agency Time Deadlines and Notice Requirements

Executive order 7I was issued on Saturday evening by Gov. Lamont and includes important relief from certain deadlines and notice requirements related to municipal agencies handling land use applications. This message is intended to summarize its provisions and to highlight some matters that are not addressed by the order; particularly, necessary hearing procedures to afford parties due process in the event that a hearing must go forward during the declared state of emergency. The Governor's executive order 7B discusses virtual meetings in Section 1 and those topics are not covered here. Please call if you have questions regarding what is covered, or not covered, in any of the executive orders pertaining to municipal matters.

I. WHAT IS COVERED BY THE EXECUTIVE ORDER REGARDING MUNICIPAL LAND USE APPLICATIONS AND CERTAIN APPEALS

Laws covered by Section 19 of Executive Order 7I:

The Executive Order applies only to municipal proceedings and not to any state agency action that might be required by the statutes referenced in the order. The order applies to any municipal decision or action regarding any petition, application or other proposal, or in the adoption or amendment of any municipal plans, regulations or ordinances, under specific Sections of Connecticut General Statutes Chapters 14 (Freedom of Information Act) , 97a (Historic Districts and Historic Properties), 98 (Municipal Powers), 103 (Municipal Sewerage Systems), 124 (Planning), 126 (Zoning), 246 (Motor Vehicles) including Section 14-55, 368k (Crematories), 440 (Wetlands and Watercourses), 444 (Coastal Management), 446i (Water Resources) and any related special act(s), and municipal charter, ordinance, resolution, or regulation. The Executive Order refers to all these State and municipal laws

collectively as the "Covered Laws." We will also use that term in the following portions of this message.

Extensions of deadlines:

The statutory or regulatory deadlines that may pass or expire during the emergency are automatically extended by an aggregate 90 days. If the municipal action involves a sequence of steps that each have their own deadline (for example, the commencement of a public hearing, the completion of that hearing, and the rendering of a decision after the hearing), the 90 days may be allocated among them; each step in a sequential decision-making process does not receive its own 90 days.

The time for any municipality to make a submission or report to any agency or quasi-public agency of the State is also extended 90 days.

Finally, if the 90-day demolition delay required by Section 7-147j would commence or end during the state of emergency, the period is extended by an additional 90 days.

The 90-day extension and existing extensions authorized by a covered law:

As noted above, the order provides a single 90-day extension period in total for any single application or decision. That period may be allocated among the various deadlines related to the application; it does not allow multiple 90-day extensions for each time deadline related to the application. For example, a decision for which the statute already allows up to a total of 65 days of extension (such as site plan decisions) may be further extended by no more than an additional 90 days, for a total of 155 extension days.

Electronic publication of notices as a substitute for published notice, clerk filings, and signage:

Any Covered Law requiring notice or notices to be published in a newspaper of general or substantial circulation is suspended and modified to allow a single notice to be published electronically on a municipality's or agency's website, provided (i) the earlier deadline required for publishing notice by the Covered Law is maintained for the electronic posting; and (ii) such posting must remain visible on the municipality's or agency's website until completion

of the action, meeting, or proceeding for which such notice is provided, and for any notice of decision, for the duration of the applicable appeal period provided by the Covered Laws.

Any Covered Law requiring that a notice be filed in the office of any municipal clerk, including any town, city, borough, or district clerk, may be posted electronically on a municipality's website, provided (i) the deadline required for posting remains unchanged, and (ii) such posting must remain visible on the municipality's or agency's web site until the completion of the action, meeting, or proceeding for which such notice is provided, and for any notice of decision, for the duration of the applicable appeal period provided by the Covered Laws.

Any Covered Law requiring a physical sign to be posted in relation to any zoning, inland wetlands, planning, or historic district petition, application or proposal, may be satisfied by electronic posting on a municipality's website as described above.

Personal notice:

Any Covered Law requiring direct or personal notice by mail from a municipality, agency or applicant to any other person, agency, municipal clerk (including any town, city, borough, or district clerk), municipality, utility company or water company regarding the filing or pendency of any petition, application, or other proposal may be satisfied by electronic mail notification, if electronic mailing addresses are known or reasonably available for the party to be noticed, provided the same deadline for publication of the electronic notice is met.

If electronic mailing addresses are not known or reasonably available, the notice requirement may also be satisfied by either: (i) the posting of a physical, weatherproof sign of at least two feet by three feet in area, in a prominent location on the parcel of land that is the subject of any petition, application, or proposal, for the duration of the period for which notice is otherwise required, stating that such petition, application, or proposal has been filed or is pending, and providing information regarding the date, time, and location of any hearings (including remote access details) related thereto; or (ii) the mailing of

letters (via regular U.S. mail) to a list of addressees that are provided by a municipality or agency, or agent thereof, so long as the noticing party has relied in good faith on the accuracy and completion of that list of addressees.

Petitions to municipal agencies and officials:

Petitions that would ordinarily be filed in paper form may be submitted electronically in the form of pdf files or other electronic imaging of the physical signed petition, or in the form of a compilation of emails or other electronic communications. The time period to commence and submit the petition remains unchanged.

Service of process on municipal clerks to commence Superior Court appeals:

In order to commence an appeal of a decision to the Superior Court, service of process by a proper officer upon the municipal clerk (including borough or district clerks) may be accomplished by electronic mail on the municipal clerk. The time period to commence the appeal remains unchanged. Municipalities must clearly post the email address to be used for the electronic service on their websites.

Deadlines for appeals of ZEO and Wetlands Agent decisions:

An appeal of a decision issued by a zoning enforcement officer or an agent for an inland wetlands agency may be commenced by regular mail or by electronic mail notice to the zoning commission, zoning enforcement officer, zoning board of appeals or inland wetlands agency, as appropriate. The time period to commence the appeal remains unchanged.

Filing after reopening of relevant offices:

Within a reasonable time after the reopening of the relevant office, the municipality must file printed or electronic confirmations of all modifications, extensions, notices, and decisions in the permanent office records. Also, any document required by the Covered Laws to be recorded or filed in the town, borough, district or city clerk must be filed or recorded, as the case may be, within a reasonable time after the reopening.

Electronic application filing:

By declaration of the head of an agency accepting or administering

applications, any requirement that applications to such municipal agency be submitted in paper copy or in duplicate may be waived.

II. WHAT THE EXECUTIVE ORDER DOES NOT CHANGE REGARDING MUNICIPAL LAND USE HEARINGS

The Executive Order does not affect due process rights of applicants and members of the public associated with public hearings. Based on rights that are afforded by federal or state law, we recommend that, if a hearing must take place during this emergency, a physical location for the meeting should be provided, regardless of whether members attend in person. The purpose of this recommendation is to enable persons who are unable to participate by electronic means to review any application materials or exhibits and to present evidence at the public hearing. The meeting room should contain a speakerphone if the meeting is telephonic or a video monitor if it is being streamed so that an attendee can see exactly what members of the agency will see. Video equipment is certainly preferable to telephonic meetings or hearings. We recommend that members of the public be encouraged to use electronic means to participate in a public hearing to avoid unnecessary social contact, but care must be taken to provide due process by reasonably enabling electronic participants to see and hear all aspects of the hearing and to have a means to submit or question testimony and documentary evidence. Any documents transmitted electronically regarding an application should be printed in hard copy and placed in the meeting room for viewing for those unable or unwilling to use electronic media. Electronic documents must be made available to those using electronic media.

If possible, you should arrange for a large room to enable social distancing or, if using a smaller room, seating arrangements to do the same.

We also note that there are many land use applications that are not subject to statutory penalties in the event that deadlines are not met, such as applications for wetland permits or certain applications to zoning commissions such as zone change requests. We do not recommend that any agency should choose to ignore a deadline, even if there is no specific penalty for doing so. As a matter of fairness to all whose lives and livelihoods are caught in the current crisis, every effort should be made to move business along as usual, to

the extent practical, with the help of the relief provided by EO 71. However, if you find that you may miss a deadline despite that relief, you should confer with your town attorney to confirm whether there would be adverse consequences such as an automatic approval which could occur in the context of applications such as site plans, subdivisions and resubdivisions.

For more information or if you have any specific questions, please contact us.

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