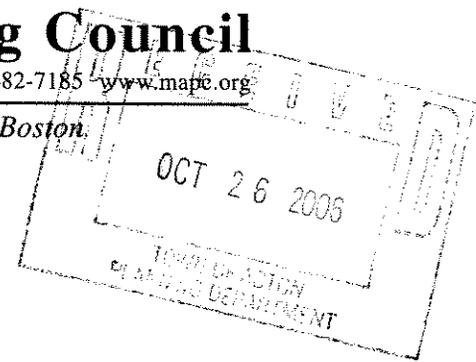




# Metropolitan Area Planning Council

60 Temple Place, Boston, Massachusetts 02111 617-451-2770 fax 617-482-7185 [www.mapc.org](http://www.mapc.org)

*Serving 101 cities and towns in metropolitan Boston.*



October 16, 2006

Dear Municipal Official:

On August 2, 2006, Governor Romney signed a new law designed to expedite permitting of commercial and industrial developments. Chapter 205 of the Acts of 2006 includes several provisions to streamline permitting and to promote development through an update of Chapter 43D of the General Laws and through several statewide reforms. While not all of the reforms enhance the ability of communities to manage development, there are several tools that MAPC looks forward to working with municipalities to utilize.

Chapter 43D provides an opportunity for a community to promote targeted economic development. The Act provides for *local option site specific* expedited permitting for commercial and industrial development. If Chapter 43D is adopted locally, a community has 180 days to decide on any permits for development within the defined "priority development site." As an incentive, communities are eligible to receive technical assistance grants up to \$150,000 to hire extra staff or consultants, including regional planning agency staff, to help streamline procedures.

While Chapter 43D expedited permitting may not be a favorable option for all municipalities, MAPC feels there are distinct opportunities for communities that desire new commercial or industrial development to proactively target sites and recruit developers with a predictable and short permitting deadline. The legislation gives each municipality adopting Chapter 43D flexibility in managing the expedited permitting process, but it does require that municipalities must make a decision, affirmative or negative, within 180 days of the filing of a complete application. MAPC looks forward to working with communities to select sites in advantageous locations and to streamline permitting for development in those specific areas.

Chapter 205 of the Acts of 2006 also includes positive statewide provisions. Section 13 allows the holder of a restriction (conservation, preservation, affordable housing, etc.), including a municipality, the ability to collect reasonable attorney's fees and costs incurred in enforcing the restriction. Section 4 creates a new State Permitting Ombudsman to coordinate state permitting, and Section 17 increases funding for the Division of Administrative Law Appeals, which has a significant backlog of appeals. Sections 6 and 10 of the Act establish local technical assistance centers at each Regional Planning Agency, funded at \$1.85 million statewide, allowing RPAs to provide municipalities (or groups of municipalities) with technical support not only for expedited permitting, but also for a wide array of land use and municipal management issues. In

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Richard A. Dimino, *President*    Gordon Feltman, *Vice President*    Grace S. Shepard, *Treasurer*    Jeanne E. Richardson, *Secretary*

Marc D. Draisen, *Executive Director*

addition, the law instructs the Massachusetts Association of Regional Planning Agencies to evaluate local permitting procedures, to create a statewide model that municipalities may adopt to streamline permitting, and to recommend further reforms to the Legislature by November 2007.

However, the bill also contains more controversial changes in state law. Municipalities should be aware that Section 9 allows developers to proceed with development while a special permit is pending appeal, at the developer's risk that a judge may rule against the developer and order the site returned to the *status quo ante*. Section 7 mandates that at least 5 of the 10 citizens required to file a Chapter 91 10-citizen suit reside in the municipality in which the licensed or permitted activity is located. In addition, the Land Court's jurisdiction is expanded to cover any case involving permitting if the underlying project contains 25 or more dwelling units, or 25,000 square feet of gross floor area is constructed or altered. This could encourage plaintiffs to "shop" for the court most likely to rule in their favor, and it could burden the Land Court with an additional workload if funding for the Court is not increased.

Despite these controversial provisions, MAPC believes that many aspects of the Act provide good opportunities for communities interested in sensibly targeted economic development. MAPC would like to offer our assistance in implementing the new law in a manner that preserves local control, promotes smart growth, and maintains opportunities for appropriate mitigation of development impacts. For your reference, a summary of the entire Act provided by the Massachusetts Municipal Association and an in-depth summary of Chapter 43D are enclosed. If you have any questions regarding Chapter 43D or Chapter 205 of the Acts of 2006 in general, please contact Policy and Planning Counsel Sean Caron at (617) 451-2770 ext. 2021. Please contact Government Services Manager Mark Racicot at ext. 2063 if your community is interested in promoting economic development, adopting Chapter 43D, or planning for a regional or smart growth project, and you require technical assistance.

Sincerely,



Marc Draisen  
Executive Director

[Enclosures]

# CHAPTER 205 OF THE ACTS OF 2006 THE "EXPEDITED PERMITTING" LAW

## Summary of the Law

Prepared by the Massachusetts Municipal Association and the City Solicitors and Town Counsel Association

August 2006

On August 2, 2006, the governor signed Chapter 205 of the Acts of 2006, known as the Expedited Permitting Law. The legislation was declared to be an emergency law, and is, therefore, effective immediately.

Section 11 of the law, which amends Chapter 43D, is a local option statute and establishes an expedited permitting procedure in those municipalities which accept its provisions. The remaining sections of the law are not a local option, and are effective immediately statewide.

The sections of Chapter 205 of the Acts of 2006 are summarized as follows:

### Section 1

Provides for appropriating authority for fiscal 2007 for purposes described in the statute.

### Section 2

Makes appropriations to the Executive Office of Economic Development for fiscal 2007 for the purposes of the statute.

### Section 3

Amends G.L. Chapter 7, Section 4H to require the division of administrative law appeals to prepare an annual report of all appeals filed in the preceding calendar year containing the information specified in the law and requires the chief administrative magistrate to verify that written recommended final decisions are issued within 90 days after the record is closed.

### Section 4

Replaces Section 3H of Chapter 23A of the General Laws to provide the following:

Appointment by the Governor of a Director of the Massachusetts Permit Regulatory Office within the Executive Office of Economic Development to serve as the state permit ombudsman, with the following duties:

- provide "one-stop" licensing
- expedite the process of obtaining state licenses, permits

and approvals

- facilitate communication between municipal and state agencies

### Section 5

Adds Section 62 to Chapter 23A to create an interagency permitting board within the department of economic development. Its functions include monitoring the development of priority development sites under Chapter 43D, investigating ways to expedite such developments, and administering the technical assistance grant program established by Chapter 43D.

### Section 6

Establishes the district local technical assistance fund to be administered by the bureau of municipal assistance within the department of revenue. Funds are to be used by the department of housing and community development to provide grants to regional-planning agencies for technical assistance to municipalities and to develop a statewide permitting model.

### Section 7

Amends Section 10A of Chapter 30A to require that at least 5 of the 10 persons filing an appeal in a Chapter 91 waterway licensing or municipal harbor permit matter reside in the municipality where the activity is located, and requires each intervening person to file an affidavit stating the intent to be part of the group and to be represented by its authorized representative.

### Section 8

Provides that zoning ordinances or by laws may provide that research and development uses and related limited manufacturing may be allowed by special permit in any district that is not residential, agricultural, or open space, unless that use is permitted as of right.

### Section 9

Amends Section 11 of Chapter 40A to allow special permits to take effect whether or not they are appealed and eliminates the automatic stay upon the filing of an appeal of a special permit. This will allow applicants to proceed with construction at their own risk, notwithstanding the filing of an appeal. This provision applies to all special permits, not just those granted under Chapter 43D.

### Section 10

Amends Chapter 40B by adding Section 30 to create a technical assistance center within each regional planning district for the delivering of technical services to local governments for

the purpose of expedited permitting. Each regional planning agency is directed to conduct an evaluation of its member cities' and towns' permitting processes, and to assist in the development of a statewide permitting model.

### Section 11 – Local Option

Replaces Chapter 43D with a new Chapter 43D, with the following key provisions:

- Cities and towns that accept Chapter 43D would be able to designate locations in the community as “priority development sites.” Currently, Chapter 43D requires the city or town to designate the entire municipality as such. Further, the parcels are to be located in “smart growth” locales wherever possible.
- Participating cities and towns would have 180 days to complete the local permitting process, doubling the current 90 day timeframe under Chapter 43D.
- The state would provide direct technical assistance to cities and towns for the implementation of Chapter 43D, with grants of up to \$150,000.00.
- Permits issued pursuant to Chapter 43D shall expire 5 years from the date of expiration of the applicable appeal period. Where permits cover multiple buildings, commencement and continuation of construction of 1 building preserves the validity of the permit.
- Within 120 days of acceptance of this chapter the governing body (city council and mayor or city manager, or board of selectmen) shall implement the following:
  - (a) appoint a primary municipal liaison for all expedited permitting issues.
  - (b) amend rules and regulations on permitting issuance to conform to this chapter.
  - (c) collect and ensure the availability of all governing statutes, ordinances, by-laws, regulations, procedures and protocols.
  - (d) establish a procedure where the governing body (city council and mayor or manager, or board of selectmen) shall determine all permits, reviews and approvals required for a project.
  - (e) establish a procedure for reviewing whether all of the materials required for review have been submitted.
- Appeals from final decisions of the issuing authority may be taken to the division of administration law appeals. The division shall

render a final written decision within 90 days of the receipt of the appeal. Thereafter, the statute provides that an aggrieved party may appeal to the superior court department within 20 days after the division has rendered a final decision.

### Section 12

Provides that the Commissioner of Highways shall adopt regulations regarding curb cuts that effectuate the purposes of the statute.

### Section 13

Amends Section 32 of Chapter 184 to address the acquisition and enforcement of conservation, preservation, agricultural preservation, watershed preservation and affordable housing restrictions by governmental bodies and charitable corporations or trusts.

### Section 14

Amends Section 1 of Chapter 185 to provide that the land court shall hold sittings in Boston, Fall River and Worcester.

### Section 15

Amends Chapter 185 by establishing a separate session of the land court department, to be known as the permit session of the land court department, which shall hold sessions in Suffolk, Middleton, Essex, Norfolk, Plymouth, Worcester and Hampden Counties.

The permit session shall have original jurisdiction concurrently with the superior court, over the following civil actions, but only if the underlying project or development involves either 25 or more dwelling units or the construction or alteration of 25,000 square feet or more of gross floor area or both:

- a) actions based on or arising out of the appeal of any municipal, regional or state permit, order, certificate or approval, or in the denial thereof, concerning the use or development of real property, including those brought under Chapter 21, Section 61 to 62H of Chapter 30, Chapter 30A, 40A to 40C, 40R, 41, 43D, 91, 131, 131A or Sections 4 and 5 of Chapter 249, or Chapter 664 of the Acts of 1956, or any local bylaw or ordinance;
- b) actions seeking equitable or declaratory relief;
- c) claims under section 6F of Chapter 231, or for malicious prosecution, abuse of process, intentional or negligent interference with contractual relations;
- d) any other claims between persons holding any right, title or interest in land and any municipal, regional or state board, authority, commission or public official.

Actions not commenced in the permit session may be transferred there, but if a party claims a valid right to a jury trial, the action shall be transferred to the superior court.

The chief justice of the land court shall establish a procedure for the assignment of cases to mediation. The mediators shall be persons with past experience in private practice, practice with public agencies or as jurists related to environmental and land use planning.

To the extent that public agencies are participants in the mediations, their deliberations shall not be subject to Section 23B of Chapter 39 (the Open Meeting Law).

#### **Section 16**

Increases the number of land court judges from 6 to 7.

#### **Section 17**

Appropriates funds to the division of administrative law appeals.

#### **Section 18**

Appropriates funds for economic development grants to be administered by the department of business and technology.

#### **Section 19**

Appropriates funds to the district local technical assistance fund to be administered by the division of local services within the department of revenue.

#### **Section 20**

Provides for an annual report from the secretary of environmental affairs to the house and senate clerk with respect to the state-wide environmental justice program adopted by the secretary of environmental affairs.

#### **Section 21**

Provides that Section 9 (the removal of the automatic stay on the issuance of a permit notwithstanding an appeal) applies to all special permits issued after the effective date of this action.

#### **Section 22**

Provides that Section 13, dealing with conservation, preservation, agricultural preservation, watershed preservation and affordable housing restrictions, shall apply to all

enforcement actions commenced after the effective date of the statute relative to applicable restrictions granted before, on, and after that date.

**Section 23**

Requires the department of environmental protection to adopt rules and regulations as necessary to be consistent with Section 10A of Chapter 30A of the General Laws (intervention in adjudicatory proceedings affecting the environment) on or before January 1, 2007.

**Section 24**

Requires the Commissioner of Highways to adopt regulations regarding curb cuts required by Section 12 of the Act on or before July 1, 2007.



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## Section 11 of Chapter 205 of the Acts of 2006

### MGL Chapter 43D Summary

#### Section 1. Local opt-in provision

#### Section 2. Definitions

- Priority development sites must be:
  - Commercially or industrially zoned (including mixed use);
  - Eligible for the construction of a structure of 50,000 sq ft or more
  - Designated by the Interagency Permitting Board (comprising the Secretaries of -Economic Development, Business & Technology, Transportation, Environmental Affairs, and Public Safety, the Chair of the Commonwealth Development Coordinating Council, and the Executive Director of MassDevelopment, or designees).
  - Wherever possible, priority development sites should be located adjacent to areas of existing development or in underutilized buildings or facilities, or close to appropriate transit services.

#### Section 3. Eligibility & Technical Assistance Grants

- To designate a priority development site, the local governing body must file an application with the Interagency Permitting Board including:
  - a detailed description of the property;
  - written good faith commitment to comply with 43D;
  - written permission of the owner; and
  - a request for a technical assistance grant, if necessary.
- Requests for technical assistance must include a detailed description of how the grant will be used to implement the requirements of MGL Ch. 43D. It may be used for such things as professional staffing assistance, local government reorganization, and consulting services (including regional planning agency staff). The grant shall not exceed \$150,000. The Interagency Permitting Board shall review and determine eligibility for technical assistance monies within 60 days. In special circumstances, communities may be eligible for additional technical assistance if a specific need can be demonstrated and if approved by the board and the Secretary of Economic Development.
- In the case of a town, town meeting must approve the priority development site proposal.

#### Section 4. Municipal Responsibilities

- Once approved by the Interagency Permitting Board and awarded a technical assistance grant (if necessary), municipalities must fulfill the following within 120 days:

- appoint a single municipal point of contact for streamlined permitting;
- amend local rules, regulations, bylaws, etc. to comply with 180 day permit timeline (see Section 5 below);
- determine and make available the requirements for each permit;
- establish a procedure for identifying necessary permits for a project; and
- establish a procedure for determining completeness of the required submissions.

### **Section 5. Review Periods**

- Priority Development Site reviews must take place within 180 days beginning the day after notification of completeness. If submissions are not complete, the governing body has 20 days to inform the applicant.
- Resubmission of an application and/or materials shall commence a new 30 day review period to determine application completeness;
- If an issuing authority determines that additional materials are required, it shall notify the applicant immediately and shall complete action on the previously unidentified permit within 30 days if no hearing or public notice is required, or by the latest required decision date for a pending permit, whichever is later. If public notice or hearing is required, the issuing authority shall complete action on the permit 30 days from the close of the hearing or comment period, or by the latest required decision date for a pending permit, whichever is later.

### **Section 6. Advisory Reviews & Fees**

The governing body (i.e., board of selectmen in towns, city manager and city council in Plan D or Plan E cities, mayor and city council in all other cities) :

(a) may establish an informal procedure to allow permit applicants to obtain advisory reviews by a technical team. The procedure for obtaining advisory reviews may not exceed 30 days and shall not constitute final action on the permit review. Invocation of the advisory review process shall halt the 180 review period for priority development sites until the advisory review period is complete.

(b) may establish additional fees to be assessed on priority development site permit applications to be used by the municipality for implementing chapter 43D.

### **Section 7. Automatic Grant of Approval**

Failure of an issuing authority to take action within 180 days shall be deemed approval. If a permit is deemed approved under this section, the applicant has 14 days to file an affidavit setting forth the facts and stating notice of the grant of approval with the city or town clerk.

### **Section 8. Exceptions to Automatic Grant of Approval**

- An automatic grant of approval may not apply if:
  - Governing authority determines that an application is not complete in accordance with this chapter;

- The governing body determines that an application contains false or misleading information; or
- The governing body determines that substantial changes to the project affect the information required to process the application since the original submission.

### **Section 9. 180 Day Period Extensions**

- The 180 day time period may be waived or extended for good cause upon mutual agreement between the governing body and the applicant. The 180 day review period may be extended for up to 30 days if an additional permit is required in accordance with section 5 or if the previously unidentified permit is discovered within 150 days after notice of completeness. The 180 day time period may also be extended if:
  - action by another federal, state or municipal government agency is required before the issuing authority may act;
  - judicial proceedings affect the ability of the issuing authority to proceed; or
  - enforcement proceedings that could result in revocation of an existing permit have commenced;
  - When the reason for extension is no longer applicable, the issuing authority shall immediately notify the applicant and shall complete its decision with 180 days beginning the day after the notice is issued. Lack of time is not an adequate basis for a municipality to deny a permit.
  - This section also provides extension for referral of permits to the Cape Cod Commission and Martha's Vineyard Commission in compliance with Chapter 716 of the Acts of 1989 and Chapter 831 of the Acts of 1977 respectively.

### **Section 10. Consolidated and Streamlined Appeals**

- Appeals of issuing authority decisions or automatic grants of approval must be filed within 20 days of the last permit issued or within 20 days of the 180 day expiration, whichever is later.
- All appeals must be consolidated and filed within the Division of Administrative Law Appeals (DALA) within 20 days. The consolidated appeal does not apply to wetlands which shall continue to be governed under Chapter 131 of the General Laws.
- DALA shall amend their rules or regulations to meet the requirements of this chapter.
- DALA shall render appeal decisions within 90 days and aggrieved parties may further appeal to the Land Court within 20 days of the DALA decision.

### **Section 11. Transfers, Renewals, Permit Modification Requests, Expiration**

- Permits shall not transfer automatically to successors in title unless the permit expressly allows transfer without local approval.
- Issuing authorities may develop procedures for simplified renewals; otherwise renewals shall be governed by the time limits within this chapter.
- 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 permit process. An issuing authority shall inform the applicant within 20 business days if the request for modification is approved, denied, determined to be

substantial, or additional information is required. If the modification is determined to be substantial, the original time frames set forth in section 5 shall apply.

- Permits issued in accordance with this chapter shall expire 5 years from the date of issuance if the project has not commenced.

### **Section 12. Incentives**

- Priority development sites are eligible for:
  - priority consideration for PWED and CDAG funding;
  - priority consideration for other quasi-public financing;
  - brownfields remediation assistance;
  - enhanced online marketing;
  - technical assistance from MassDevelopment or the regional planning council.

### **Section 13. Technical Assistance Grants**

- Technical assistance grants provided pursuant to Section 3 above are intended to be a one time grant for communities adopting Chapter 43D;
- Municipalities may be eligible for a second technical assistance grant, for an amount to be less than the first grant award, if that community has successfully permitted one priority development site.

**Section 14.** MEPA and historic reviews shall take place concurrently with each other, within 120 days of the state determination of completeness of required review materials, as established by EOEPA in consultation with the State Secretary.

**Section 15.** Nothing in this chapter shall be construed to alter the jurisdictional authority of issuing authorities.

**Section 16.** The Secretary of Economic Development shall issue rules and regulations for this

### **Additional Notes:**

The legislation references a Board (Interagency Permitting Board), as established in Section 5 of Chapter 205 of the Acts of 2006. The Board consists of the Secretaries of Economic Development, Business & Technology, Transportation, Environmental Affairs, and Public Safety, the Chair of the Commonwealth Development Coordinating Council, and the Executive Director of MassDevelopment, or designees. The Board will meet no less than 8 times per year at the discretion of the Secretary of Economic Development and shall be charged with monitoring priority development sites and expediting projects on priority development sites wherever possible. The Board shall also implement the Chapter 43D municipal grant program.

For a copy of the Act, please contact Sean Caron at [scaron@mapc.org](mailto:scaron@mapc.org), or (617) 451-2770 x 2021.