



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn E. Polito, Lieutenant Governor ♦ Jennifer D. Maddox, Undersecretary

To: All Municipalities of the Commonwealth
From: Jennifer D. Maddox, Undersecretary
Subject: Public Hearings During the COVID-19 State of Emergency
Date: October 5, 2020

On March 10, 2020, Governor Baker declared a state of emergency due to the outbreak of the 2019 novel Coronavirus (“COVID-19”). Under a series of orders the Governor subsequently issued to respond to the public health emergency, all businesses except those designated as essential businesses were required to close, and all gatherings were limited in size to no more than 10 people. However, in response to gradual improvements in the public health data, the Governor has issued a series of orders by which he is implementing a progressive, phased plan for re-opening workplaces and other facilities across the Commonwealth. The Commonwealth is currently in Phase 3 of the four-stage reopening plan, and most businesses now are open and operating in compliance with workplace safety standards.

Chapter 53 of the Acts of 2020 (“the Act”) was enacted in April, 2020, at a time when only essential businesses were allowed to be open, to alleviate challenges faced by municipalities as a result of the COVID-19 public health emergency. To reduce the need for public gatherings, the Act temporarily suspended any requirement that a municipal board conduct a public hearing on a permit application within a specific period of time. However, the Act also provides that a permit granting authority may conduct meetings and public hearings *remotely*, consistent with the Governor’s March 12, 2020 order entitled, “Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, § 20”.

Given the critical need for housing production in the Commonwealth, we urge municipalities to conduct remote hearings on all applications for permits or approvals related to housing production.

Remote hearings should be implemented in a *fair manner* for both unsubsidized and subsidized housing. Municipalities are reminded that federal and state Fair Housing laws prohibit discriminatory housing practices against protected classes such as race, color, sex, national origin, religion, familial status, and disability. Discriminatory housing practices include zoning and other governmental practices that have the effect of restricting housing opportunities for protected classes or perpetuating segregation, even absent discriminatory intent.

Municipalities are also reminded that the obligation to treat permit applicants in a fair manner is particularly relevant in the context of housing projects proceeding under chapter 40B, the Comprehensive Permit Act. Chapter 40B and its implementing regulations provide that local rules and regulations are not “consistent with local needs” unless they “are applied as equally as possible to both subsidized and unsubsidized housing.” G.L. c. 40B, § 20; see also 760 C.M.R. § 56.07(2)(a)(4). If a municipality is processing applications for market-rate housing or other kinds of development, but refuses to commence a hearing under chapter 40B, the applicant could potentially assert unequal treatment as a basis for relief from the Housing Appeals Committee.