



## Executive Orders 7B and 7I: Procedures and Deadlines for Municipal Land Use During the COVID-19 Pandemic

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On March 14 and 21, Governor Lamont issued Executive Orders 7B and 7I (attached) that modify various procedures and deadlines for municipal land use applications and decisions in light of the COVID-19 pandemic. Given public health recommendations to engage in social distancing and avoid large or even modestly sized gatherings, it initially appeared impossible for land use agencies to continue holding their regularly scheduled meetings. Recognizing the rights of property owners and applicants and the need for economic development, however, the Governor's Office issued two Executive Orders to facilitate continued meetings while preserving the rights of the public to be heard.

To avoid a sudden halt in all government decision making meetings, Governor Lamont issued Executive Order 7B on March 14 ("Order 7B"). Order 7B authorizes public agencies, such as planning and zoning commissions and zoning boards of appeal, to meet remotely via telephone or video conference rather than in-person. While 7B provides a blanket authority for remote meetings and hearings, each municipality has or will need to develop its own specific process and technology to effectuate that authority, and applicants will need to understand each municipality's individual nuances. The suspension of the in-person meeting requirement was the prerequisite to the procedural changes adopted in Executive Order 7I ("Order 7I"). Taken together, Orders 7B & 7I ensure that the real estate development community can move forward with its work despite the closure of many town and city halls across the state and the mandate to engage in social distancing.

### Goals and Overview

Order 7I has three overarching goals. The first is to minimize or eliminate the often extensive in-person contact typical to the land use process. The second goal is to ensure that the public policies behind many land use requirements – specifically public notice and due process – continue to be met under the revised procedures. Finally, Order 7I recognizes that municipalities will likely function with staff working remotely, rather than on-site in a town building, and without the ease of access that might occur in normal circumstances.

Order 7I achieves these goals by modifying various chapters of the Connecticut statutes rather than superseding individual statutes or local regulations, a virtually impossible task given the number of statutes and regulations broadly dealing with land use in 169 towns. As such, Order 7I uses the term "the Covered Laws" to encompass these provisions. The "Covered Laws" include zoning, planning, inland wetlands, historic districts, motor vehicle dealers/repairers, coastal resources and others.

### Provisions of Order 7I

At the outset, it is important to note that Order 7I is intended to act prospectively. If certain deadlines have passed, it does not modify or extend those timelines. Additionally, Order 7I does not alter substantive law, but rather focuses on procedure. In other words, the same number of signatures are needed for a zoning protest petition or failure to provide any notice of a public hearing still results in the same jurisdictional defect. With that in mind, the changes created by Order 7I are set forth below.

- Subsections a & b add 90 days to the existing laws that allow for extensions of time associated with the processing of a land use application or for demolition delays. The current statutes provide for a 65-35-65 day schedule (open a hearing – conduct a hearing – render a decision), plus a 65 day total extension that can be used anywhere in that process. Order 71 lengthens that extension to 155 days in total (65 + 90). As with the current extension period, the additional extension days can be utilized at any point in the process and incrementally over the course of the application process. Note, however, that the agency itself *may utilize the extension without the applicant's consent*, an option that many towns may utilize as they navigate the technology available to hold electronic meetings and hearings. As a practical matter, this means an agency can choose not to meet and extend the application process at its discretion.
- Subsection c allows required newspaper notices to be posted on the municipality's website instead of the newspaper. The notice must be posted by the date of the earliest publication deadline and remain on the website until the action mentioned in the notice has been completed. For example, notice of a public hearing on an application will need to be posted on the municipal website at least ten days prior to the opening of hearing. As with newspaper notice, applicants should seek confirmation that such posting was made in a timely fashion to avoid jurisdictional defects in an approval.
- Subsection d permits any document that must be filed with a town/city clerk to be posted on the town's website. As with newspaper notice, the document must remain online throughout the process and meet any existing deadline. By way of example, this provision allows a proposed text amendment to the zoning regulations to be posted on the municipal website at least ten days before the public hearing opens.
- Subsections e & f relate to "neighbor" notice provisions regarding signs and mailed notice. In those circumstances where local regulations require a sign posted on the property, Order 71 authorizes posting on a municipal website in lieu of that requirement. When the local regulations require mail notice to nearby property owners, Order 71 allows this to occur by email if "reasonably available." If they are not available, notice can be accomplished by posting a sign on the property or by "regular U.S. mail." Because applicants and municipalities generally do not have e-mail addresses of surrounding property owners, it appears likely mailed notice, perhaps supplement by a sign out of caution, will remain the preferable method of compliance.
- Subsection g authorizes the submission of electronic petitions. In certain circumstances where a petition may be involved, such as a protest petition on a zone change, electronic signatures or emails will be permitted in lieu of handwritten signatures.
- Subsection h addresses appeals from agency decisions to Superior Court. Existing law requires that a state marshal serve the appeal paperwork upon a municipal clerk in person. Given the closure of most or all municipal clerks' offices, Order 71 authorizes electronic service of those appeals on the town/city clerk rather than in person. A town must post on its website the email to be used for that service. Notably, the limited window for filing appeals remains unchanged.
- Subsection i covers appeals from zoning enforcement officer or wetlands agent actions. As with appeals to Superior Court, this section allows appeals to be served electronically rather than with a paper filing in the applicable land use office.

- Subsection j addresses “hard copy” documents. Once the municipal clerks are open to the public and commissions resume their normal processes, all electronically filed documents allowed by Order 71 must be submitted in hard copy and made part of the municipality’s permanent records. Additionally, this provision permits a commission chair to waive any town rules about filing of paper copies during an application process, thus opening the door to electronic filing of applications as many towns and cities have already begun to implement.

### **Client Considerations**

Orders 7B and 71 were drafted to tackle the time sensitivities presented by the COVID-19 pandemic in the context of land use proceedings. A cross-section of government and private sector attorneys, representing the interests of applicants, neighbors, and municipalities, sought to address all of the possible scenarios, but as with any emergency order, some issues were likely overlooked or resolved without uniformity. As an example, while newspaper publication is not required, an applicant or agency may choose to publish notice to avoid any potential claims of failed or insufficient notice. Similarly, while an applicant is relieved of posting a public hearing sign under Subsection e, it may still need to do so as a method of satisfying the adjacent owner notice requirement pursuant to Subsection f. Hopefully, these concerns or conflicts are minimal.

As with many other issues, towns and cities throughout Connecticut vary widely in their ability to handle meetings and submissions electronically. The Town of Trumbull has already implemented a procedure for electronic filing of applications and the City of Stamford is scheduled to conduct its next Zoning Board meeting via Zoom video conferencing. In contrast, the Town of Wallingford lacks e-mail in some town departments and numerous small towns may be hampered if the only town staff member becomes ill.

In sum, applicants should be prepared for an evolving process. Because of rapidly changing affairs (such as the impending closure of all non-essential businesses) and the novel procedures in Order 71, it is essential for applicants to evaluate the context in which an application is being filed or heard: How tech-savvy is the municipality? What about the commission members? What is the nature of the application? Is there known opposition? Some towns may choose to proceed with electronic filing of application materials while others may still insist on paper copies. Other agencies may simply decide all risks are too great and delay any land use applications until May or later. Given this flux, every applicant should pay close attention to the process even in the most modest application.

Should you have questions or concerns on how your business might be impacted by recent changes in the law or developments in municipal regulations, please don’t hesitate to give us a call. John Knuff can be reached at [jknuff@hssklaw.com](mailto:jknuff@hssklaw.com) or 203.877.8000. Amy E. Souchuns can be reached at [asouchuns@hssklaw.com](mailto:asouchuns@hssklaw.com) or 203.877.8000.

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