

MEMORANDUM

To: Thomas Galligani, Executive Director of OSPCD and Catherine A. Lester Salchert, Esq., Special Counsel. **From:** Nixon Peabody LLP

RE: 3 Year Extension Request for 56 Webster Special Permit **Date:** April 16, 2025

This memorandum explains why, as a matter of law, the 2024 Permit Extension Act automatically extends the term of the IP-SPSR, which applies to the property at 56 Webster Avenue, to July 22, 2029. It then addresses the need for a further extension through at least July 22, 2030, in order to provide sufficient time for an appropriate site to be located and developed as a replacement facility for the Royal Hospitality commercial laundry business located at this property.

The 2024 Permit Extension Act

On November 20, 2024, Governor Healy signed into law, as part of An Act to Strengthen Massachusetts' Economic Leadership (also known as the Mass Leads Act), a permit extension act ("2024 Permit Extension Act" and "Act"). 2024 Mass. Acts c. 238, § 280. The Act took effect on the day it was signed. Similar to Massachusetts permit extension acts adopted in 2010 and 2012, the 2024 Act, subject to limited exceptions that do not apply to the IP-SPSR, **automatically** extends, by two years, **any** "approval," which is broadly defined to include, among other things, any permit, certificate determination, license, variance, waiver, or order (except for enforcement orders) from **any** Massachusetts state, regional, or municipal government entity (thus, the Act does not extend federal permits) that (i) concerns the use or development of real property (which use or development is broadly defined to include the division of any parcel of land into 2 or more parcels; the reconstruction, conversion, structural alteration, relocation or enlargement of a building, structure or facility; any grading, soil removal or relocation, excavation, or landfill; and any use or change in use of any building or other structure or land or extension of the use of land) and (ii) was "in effect or existence" during the "tolling period," which is January 1, 2023-January 1, 2025, inclusive. 2024 Mass. Acts c. 238, § 280(a)-(b).

By means of example, the 2024 Permit Extension Act retroactively revives, for an additional two years, qualifying approvals that expired between January 1, 2023, and January 1, 2025 (inclusive), and extends, by two years, qualifying approvals that remained in effect as of January 1, 2025. The following FAQs provided by the Massachusetts Executive Office of Energy and Environmental Affairs in connection with the 2010 Permit Extension Act – which is substantially similar to the 2024 Permit Extension Act and that extended permits that had been in effect between August 15, 2028 and August 15, 2010 – makes this abundantly clear:

DOES THE ACT APPLY TO A PERMIT THAT EXPIRED DURING THE QUALIFYING PERIOD?
Yes, the Act revives and extends any permit or approval that was valid during the qualifying period of August 15, 2008 through August 15, 2010. For instance, a permit that expired on July 1, 2009 is now revived and set to expire on July 1, 2011.

DOES THE ACT APPLY TO A PERMIT OR APPROVAL THAT WAS NOT DUE TO EXPIRE UNTIL AFTER THE QUALIFYING PERIOD? Yes. The Act provides an additional two years to the original “lawful term of the permit” or approval. If a permit or approval was due to expire on September 1, 2011, it will now automatically expire on September 1, 2013.

DOES THE ACT APPLY TO A PERMIT THAT HAD AN EXPIRATION DATE THAT FELL WITHIN THE QUALIFYING PERIOD BUT HAS BEEN ADMINISTRATIVELY CONTINUED PAST AUGUST 15, 2010, PURSUANT TO A TIMELY APPLICATION FOR RENEWAL? Yes. The Act applies to any permit or approval valid during the qualifying period and extends the permit or approval two years in addition to the “lawful term of the approval”.

DOES THE ACT APPLY TO A PERMIT THAT EXPIRED PRIOR TO THE QUALIFYING PERIOD, BUT WHICH HAD BEEN EXTENDED BY THE ISSUING AGENCY? Yes, provided the extension resulted in the permit being “in effect” during the qualifying period; if the permit application was pending but not granted during the qualifying period it was not “in effect or existence” for purposes of the Act. For example, a permit that was set to expire on January 31, 2007, but which was lawfully extended for three years by the issuing authority (until January 31, 2010), would now be set to expire on January 31, 2012.

The guidance appears at the following website:

<https://eeaonline.eea.state.ma.us/eea/emepa/downloads/PermitExtensionActFAQ.pdf>

Application of the 2024 Permit Extension Act to the IP-SPSR

Condition #2 of the IP-SPSR provides that “[t]his SPSR shall expire ten (10) years after the date of issuance of a permanent certificate of occupancy for the expanded laundry processing center use....” The expiration date is further extended by the *force majeure* provision set forth in Paragraph 7 of the Development Covenant:

Notwithstanding any other provision of this Covenant to the contrary, the parties agree that a delay in the anticipated opening of the new Massachusetts Bay Transportation Authority Green Line Station at Union Square beyond December 31, 2018, shall constitute a *force majeure*, which shall toll for a corresponding and equal time (i) the expiration date of the IP-SPSR for the Expansion Project and the commencement dates of the First Extension and Second Extension; (ii) the expiration dates of Royal’s lease(s)...; and (iii) Royal’s obligations under Paragraph 5(b)(1) and (2) [with respect to the Conceptual Site Plan and filing for zoning relief required for the First Extension, and the Option Agreement required for the Second Extension]. Subject to the approval of the SPGA, the IP-SPSR for the Expansion Project shall include the substance of this *force majeure* provision....

Condition #2 of the IP-SPSR specifically incorporates the *force majeure* provision by referencing it and acknowledging that, if triggered, such provision will extend the operative dates.

Accordingly, applied to the special permit at issue here, the 2024 Permit Extension Act has the following effect:

1. Permanent C/O of the Laundry Expansion: May 5, 2014
2. Original Expiration of IP-SPSR (10 years from Permanent certificate of occupancy): May 4, 2024

3. Force Majeure Expiration of IP-SPSR (1,176 days of delay from stated opening of Union Square station of December 31, 2018, until actual opening of March 21, 2022):
(Special Counsel Salchert's email dated April 15, 2025 notes that this is the correct expiration date before the 2024 Permit Extension Act is applied). July 22, 2027
4. Automatic extension of two years to the expiration set forth in the IP-SPSR via the 2024 Permit Extension Act: July 22, 2029

The Case Cited by Special Counsel Is Inapposite

By email dated April 15, 2025, Special Counsel Salchert invoked *Palmer Renewable Energy LLC v. Zoning Board of Appeals of Springfield*, Massachusetts, 2023 WL 8271944 (Land Ct. Nov. 30, 2023) (Piper, C.J.), for the proposition that the 2024 Permit Extension Act does not extend the special permit at issue here. The *Palmer* case, however, clearly does not apply. It holds that the special permit extension act of 2010, as modified in 2012, could not be used to add a two year extension on top of the “**equitable tolling**” that applies while an approval is tied-up in litigation¹; it also makes clear that the 2010 Act **did** extend the expiration date set forth in the building permits that were at issue. 2023 WL 8271944, at * 6. Here, we are not claiming that the 2024 Permit Extension Act should be tacked onto a period of equitable tolling (i.e., we are not claiming tolling based on the pendency of litigation); we are instead claiming only that the 2024 Permit Extension Act automatically extends the expiration date set forth in the special permit, which date, by operation of the plain language of the special permit's Condition # 2, is extended by the force majeure. Because we are claiming an extension by straight application of the Act to the express terms of the special permit, and we make no additional (or any) claim for equitable tolling, *Palmer* does not apply.

In short, there is no principled basis for contending that *Palmer v. Renewable Energy*, or any other authority, prevents the 2024 Permit Extension Act from extending the express terms of the IP-SPSR to July 22, 2029.

Why Royal Hospitality Requires the First Extension to the IP-SPSR Now

The following, which is set forth in the updated narrative for our request to modify the conditions of the IP-SPSR (the “Pending Modification Request”) filed on the CitizenServe portal, explains the process in which Triad Alpha Partners, LLC, an owner of the property, and Royal Hospitality, as lessee and operator of the laundry facility, have been engaged to locate a site for a replacement facility and develop the same, and the factors that make that process a lengthy one. It also explains the need for a definitive extension in

¹ “Equitable tolling” – namely, the type of tolling that occurs under G.L. c. 40A, § 9, due to the pendency of litigation and for reasons having nothing to do with the language of the approval itself – is an entirely different concept from (i) the automatic “tolling” that applies under the 2024 Act and the 2010 Act, as amended; and (ii) an extension to the term of an approval that is specifically contemplated in and authorized by the approval.

order to allow for a necessary extension of Royal's lease to assure Royal—and the union—that this process can proceed to a successful conclusion.

The IP-SPSR included an expiration – and related limited extension – provision, primarily to ensure that the Property be slated, ultimately, for wholesale transformative redevelopment as ultimately set forth in the City's comprehensive and urban revitalization planning documents. Consistent with this desire for redevelopment, Triad has initiated the redevelopment process for the Property entirely consistent with the City's plans – for construction of two lab/tech buildings, one residential tower, and a large civic space – and is in the preliminary pre-file stages of working with the City departments and community to vet and establish a Master Plan for the Property. At the same time, Triad and Royal have been conducting searches throughout Greater Boston – including Somerville – to look for a replacement property for Royal that can be redevelopment in continued partnership with Triad. As you know, the last two plus years have been embroiled in a severe capital market disruption due, in large part, to the COVID-19 pandemic, and changed market conditions thereafter. As a result of these conditions, plus Royal's unique and challenging needs for its facility and its unionized workforce, Triad and Royal have not yet been able to locate a replacement property. While the parties fully expect that they will ultimately locate a replacement property, they also expect that any new property will require extensive redevelopment and fit-out causing this process to be extended by at least one to two additional years following closing.

Royal requires a lease extension to 2030 be entered into now in order to have the assurance of sufficient time for Triad and Royal to locate and develop a new facility for Royal. Accordingly, despite the parties' best efforts to satisfy the deadlines originally set forth in the IP-SPSR, we now request an amendment to the IP-SPSR to allow for the First Extension to be granted now, which would cause the Permit to expire anew on **July 22, 2030**.

Royal Hospitality has roots in Somerville dating back to 1926. Royal has been at this location in Union Square since 1990. Royal's documentation of low/moderate income employees at 520 Columbia Street was instrumental to the City's meeting its federal requirements in connection with HUD 108 loans and EDI grants for the development of the Boynton Yards Urban Renewal Area. Royal currently counts approximately 220 Somerville residents among the 350 union associates working at the Facility. Royal Hospitality has been a major employer in the City of Somerville for many years.

In addition, Royal is a laundry business that services the greater Boston hotel/hospitality industry and currently has an approximate 88% market share within the greater Boston hotel market. This is a capital intense business that has high water, power and gas needs in order to maintain its operation. Finding a relocation site that meets these requirements and the needs of Royal's employees is not easy, and will be extremely costly and time consuming. The Royal employees are centrally based and the vast majority live in Somerville, Chelsea, and Everett areas. The existing employees are a crucial component of Royal's business plan and relocation of the operations within a specific geographic area – guided by the union – is imperative.

All the stakeholders in the above process are very important, as is consideration of the numerous complicated factors involved with the redevelopment of this Site:

1. The Royal employees are a very important part of Royal's success, and if the new plant was relocated to outside the greater Boston area many would not be able to continue their employment at the plant.
2. Royal plays a vital role in the success of our local hotels and is a critical part of the greater Boston economy, especially as the local economy recovers from the effects of COVID-19.

3. The current real estate market and finance conditions do not support development in the near term.

It must be a priority to avoid disruption to Royal's business; this requires a systematic approach and coordination between all of the parties involved, including the City.

For these reasons we believe it is to everyone's benefit to extend the IP-SPSR until July 22, 2030.

The Mechanism for this Extension is Straightforward

In order to accomplish the requested extension of an additional year beyond the extension provided by the Permit Extension Act, we have requested in the Pending Modification Request that the ZBA (i) grant the First Extension, acknowledging the resulting extension to July 22, 2030, and (ii) modify IP-SPSR Conditions #2 and #3 to modify the time frame for filing for zoning relief for the future development of the Property and adjacent Property as a precondition for granting the First Extension. The other precondition, development of a Conceptual Site Plan, has been satisfied; that plan has been provided as part of the Pending modification request and it would be a simple matter for the BZA to make a finding that the precondition is satisfied albeit earlier than the time frame for doing so contemplated in Condition #3 as affected by the extensions of the term of the IP-SPSR.

Relatedly, we also request that the City acknowledge that the existing July 16, 2009 Development Covenant is automatically modified to reflect the BZA's decision on our extension and modification request.

We respectfully suggest that the foregoing approach presents a straightforward way to present, and for the City and the BZA to determine, the appropriateness of the requested extension in order to provide the timing assurances that the owner, Royal and the union legitimately need.