



A Robinson+Cole Legal Update

Coronavirus (COVID-19)

May 14, 2020

Executive Order to Address Zoning Barriers to Re-opening Restaurants and Retail

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Just as quickly as we wrote [COVID-19 Pandemic Impacts on Land Use and Zoning](#), Connecticut Governor Ned Lamont issued [Executive Order No. 7MM \(the Order\)](#) to provide municipalities and land users some clarity regarding outdoor operations (dining and retail, specifically) under Phase I of the re-opening of business on May 20, 2020. As discussed below, the Order provides expedited review processes for zoning code amendments and permitting of outdoor activities, as well as some flexibility as to where and how outdoor activities may occur, to help promote the implementation of the [Phase I Sector Rules](#). Among other things, the Order directs the following:

1. [Expedited Public Hearing Process for Zoning Code Amendments](#): Permits a proposal to be placed on a public hearing agenda without notice to a regional council of governments, thereby suspending and modifying Connecticut General Statutes 8-3b, provided that a local zoning official, zoning commission chair, planning and zoning commission, or chief elected official has deemed the proposal necessary to respond to the COVID-19 pandemic. This applies to zoning amendments that would permit Outdoor Activities in zoning districts where they are not currently permitted. The expedited process is intended to provide municipalities with greater flexibility to change their respective zoning codes to help businesses reopen quickly and in accordance with the Phase I Sector Rules.
2. [Administrative Review for Outdoor Activities](#): Allows administrative review by local enforcement officials to review and approve permits for outdoor food and beverage service, outdoor displays of goods, or COVID-19 signage, which activities (other than COVID-19 signage) end at 11 p.m. or earlier on Friday and Saturday nights, and which must end at 9 p.m. or earlier on all other days of the week (collectively, "Outdoor Activities"). Review by a multi-member municipal agency is no longer required.
3. [Fast-Tracking the Approval Process](#): Fast-tracks the local approval process by requiring local enforcement officials to decide applications for Outdoor Activities within 10 days once all materials are submitted. The application is deemed approved if not decided within this period. Application requirements include only the submission of a "drawing or illustration" that depicts the outdoor area that is proposed to be used, along with what is proposed to be built and a narrative explaining any noise, waste management, odor, light pollution, and environmental impacts that could result and how they will be mitigated. No longer needed are: plans stamped by a licensed engineer landscape architect, site survey, traffic study, photometric lighting plan, or stormwater management plan, among others, that could otherwise apply under the local zoning code. Local enforcement officials maintain the discretion to require more detailed information to protect the public health and safety.
4. [Outdoor Dining and Retail Permitted as Accessory Uses](#): Expands permitted uses in any zoning district that does not expressly allow, or prohibits, Outdoor Activities by automatically permitting Outdoor Activities as an accessory use to any location where food or beverages are served or goods are currently sold. Local enforcement officials can place reasonable conditions on such operations.
5. [Suspension of Minimum Parking Requirements](#): Suspends zoning code requirements governing the minimum number of parking spaces or prohibiting Outdoor Activities from taking place in parking lots, in on-street parking spaces, sidewalks, and non-vehicular rights-of-way. The Order also lifts

the requirement found in many zoning codes that accessory activities must occur on the same lot as the principal use. Now, Outdoor Activities can occur on any nearby lot (contiguous or not) with permission from the owner, so long as the other lot contains a commercial use or is located in a commercial zoning district.

6. Liquor Service with Outdoor Dining: Modifies Title 30 of the Connecticut General Statutes, including Sections 30-22(a) and 30-22a(a), and any corresponding regulations or practices to the extent they limit a restaurant with a liquor license to sell alcohol for off-site consumption. Subject to certain pre-conditions, it allows restaurants and other businesses that already have liquor permits to serve alcohol outside without obtaining a patio or extension-of-use permit.

Many municipalities and business owners initially left scratching their respective heads as to the feasibility of the reopening of business due to regulatory barriers now have much-needed direction. The Order may provide municipalities and business owners with ample flexibility to develop creative solutions when it comes to outdoor business activities. And as this plays out, there may be other issues that emerge that were not initially contemplated. If you have any questions, Robinson+Cole is here to help.

Read more legal updates, blog posts, and speaking engagements related to this area on [Robinson+Cole's Coronavirus Response Team](#) page and feel free to contact any member of our team with questions.

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