

EXECUTIVE ORDER NO. 7MM
Re-Opening Restaurants and Retail Stores

On May 12, 2020, Governor Lamont signed Executive Order No. 7MM. The following is a brief summary of such Executive Order, but it can be read in its entirety [here](#).

1. Expedited Municipal Zoning Amendments.

Section 1 of Executive Order 7MM suspends and modifies **Section 8-3b** of the Connecticut General Statutes (which section requires a 35 day notice to regional councils of governments) to allow the applicable zoning authority in a given municipality to place a proposed **zone or zone use change** on the public hearing agenda and act on such proposal without being required to adhere to the 35 day notice requirements of Section 8-3b, so long as such zoning authority has made a finding that the proposal is **necessary** to respond to the COVID-19 pandemic.

2. Suspension and Modification of Certain Permitting and Approval Processes for Outdoor Activities.

Section 2 of the Executive Order 7MM discusses various allowances for commercial establishments to operate in a manner that promotes social distancing and complies with executive orders pursuant to the COVID-19 pandemic. **Provisions of the Enumerated Chapters** of the Connecticut General Statutes¹, any special act, municipal charter, ordinance resolution or regulation (“Covered Law”), as they may apply and that conflict with Executive Order 7MM are **suspended and modified** as follows:

Expedited Municipal Review of Outdoor Dining and Retail: Approval by Local ZEO.

Any Covered Law that requires an applicant to receive an approval or permit for outdoor food and beverage service, outdoor displays of retail goods for sale, or COVID-19 signage, which activities (other than COVID-19 Signage) end at 11 p.m. or earlier on Friday and Saturday nights and end at 9 p.m. or earlier all other days of the week (such activities being, the “Outdoor Activities”) **is suspended** to the extent that the Covered Law requires review and determination of any application for Outdoor Activities by a **multi-member municipal agency or any by any entity other than an individual municipal official generally responsible for administrative enforcement** of the relevant Covered Law, such as a zoning administrator or a building code official (such official is referred to as the “Local Enforcement Official”), and modified to require all such reviews and determinations to be conducted **only by the Local Enforcement Official**.

Outdoor Dining and Retail Allowed During Emergency.

Any Covered Law that does not explicitly allow Outdoor Activities or that prohibits Outdoor Activities **shall be deemed to allow such activities as an accessory use** to any location where food or beverages are served or goods are sold, as applicable, subject to review and approval by the Local Enforcement Official and reasonable conditions imposed through Local Enforcement Official review.

- a. The municipality **(i)** shall not permit the sale or service of alcoholic beverage as a principal or accessory use anywhere that the sale of alcoholic beverages are not permitted, **(ii)** shall not permit the sale of alcoholic beverages for on-premise consumption independent of the sale of food, or **(iii)** shall not permit outdoor bars to operate.
- b. **No Minimum Parking for Outdoor Facilities.** The Order suspends any Covered Law requiring minimum parking spaces or prohibiting Outdoor Activities taking place in parking lots. Any Covered Law prohibiting Outdoor Activities from taking place in on-street parking spaces is modified to allow the Local Enforcement Official to permit such activity.
- c. **Application Process.** Applicants for Outdoor Activities are not required to provide any of the following: **(i)** plans stamped by a licensed engineer or architect, **(ii)** site survey, **(iii)** parking plan, **(iv)** traffic study, **(v)** sign plan, **(vi)** soil erosion or sediment plan, **(vii)** lightning plan, or **(viii)** storm water management plan. The applicant is required, at a minimum, to provide a drawing or illustration roughly to scale depicting the outdoor area proposed to be used and a narrative that explains any impact the use will have and how it will be managed. The Local Zoning Enforcement Official may require additional information in order to complete the application, taking into account public health and safety while considering the need for expedited review.
- d. **Approval and Conditions.** The Local Zoning Enforcement Official shall review and issue his or her decision on the application for Outdoor Activities and notify the applicant of such decision by the later of **(i)** ten days after actual receipt of the complete application, or **(ii)** ten calendar days after receipt of any additional materials required. If the Local Zoning Enforcement Official fails to meet the aforementioned deadlines, the application is deemed approved.
- e. **Appeals.** Within seven days of receipt of the notice of decision, the applicant can appeal the Local Zoning Enforcement Official's decision to the planning and zoning commission or zoning commission as applicable.
- f. **Shared Lots and Expanded Spaces.** Outdoor Activities shall be allowed to take place on any nearby lot, street front or yard within a commercial zoning district or that has a commercial use, provided that written permission is received from the owner and provided to the Local Zoning Enforcement Official.
- g. **Sidewalks and Non-Vehicular Rights of Way.** Covered Laws prohibiting Outdoor Activities from taking place on public sidewalks or non-vehicular rights of way are suspended. Outdoor Activities taking place on state highway right of way are modified to allow the State Department of Transportation ("DOT") to issue a permit for such activity to take place.

- h. Vehicular Rights of Way.** The municipal official with jurisdiction over local roads is authorized to permit Outdoor Activities to take place on a local public road or vehicular right of way after consulting with the Local Traffic Authority and DOT.
- i. No Nonconformity Rights Bestowed.** Approval of a permit by the Local Enforcement Official under this Executive Order does not confer any non-conforming rights to the applicant.
- j. No Application, Building or Related Fees.** There shall be no fees for application filed for Outdoor Activities pursuant to the Order.

3. Liquor Service in Connection with Outdoor Dining.

Section 3 of Executive Order 7MM modifies General Statutes **Title 30, Liquor Control**, and any corresponding regulations or practices, to the extent they conflict with, or create additional requirements on, the sale of alcoholic liquor by a liquor licensee so long as such licensee is: **(i)** in compliance with Section 2 of this Order and any other executive order permitting outdoor dining; **(ii)** any rules for outdoor dining, including DECD's social distance requirements; and **(iii)** any town or municipal requirements related to outdoor dining and liquor sales, as amended by Section 2 of this Order.

A liquor licensee who serves alcoholic liquor is **not required** to obtain a **patio or extension of use permit** provided that the licensee **(i)** serves only the types of alcoholic liquor allowed by its permit type and **(ii)** abides by the following conditions:

- a.** The licensee must comply with all other laws and regulations under Title 30.
- b.** Alcoholic liquor may only be served in connection with outdoor dining, which means food prepared on premises or at a food truck adjacent to such premises.
- c.** There shall be no consumer bars, and all alcoholic beverages shall be served tableside.
- d.** There shall be **no live entertainment**, unless **(i)** it was previously permitted in the outdoor space or the licensee obtains permission pursuant to this Order or underlying rules, and **(ii)** such entertainment complies with all social distancing rules.
- e.** For **Caterer licensees**, outdoor service is permitted only at locations with on-premise permits for which the licensee is hired as a bona fide caterer.
- f.** For **Clubs**, outdoor dining is permitted only for members and their families and guests.
- g.** If a licensee is permitted by local authorities to provide outdoor dining in space outside their permitted premises (i.e. public sidewalks, parking lots, space owned by an adjacent business, etc.) such space shall be deemed part of the permitted premises for the duration of this Order. The licensee shall be responsible for any liquor violations in such area.

4. Further Clarification of Limits on Private Clubs.

Section 4 of Executive Order 7MM modifies **Executive Order Nos. 7G and 7T** to permit holders of **club, nonprofit club and golf country club permits** to deliver food prepared on premises and sealed containers of alcoholic liquor directly to their members and offer such food and alcohol for pick-up and off-premise consumption by such members, under the same conditions as those prior executive orders permitted for restaurants.

5. Further Information

If you have any questions or need assistance with regard to Municipal Law matters, please contact Robert M. DeCrescenzo, Esq., at 860.548.2625 or rdecrescenzo@uks.com or Richard D. Carella, Esq., at 860.548.2681 or rcarella@uks.com.

Updike, Kelly & Spellacy, PC would like to thank associates C. Zack Hyde and Robert G. Pethick, Jr. for their contributions to this article.

Disclaimer: The information continued in this material is not intended to be considered legal advice and should not be acted upon as such. Because of the generality of this material, the information provided may not be applicable in all situations and should not be acted upon without legal advice based on the specific factual circumstances.

¹ The Enumerated Chapters of the General Statutes cited in Executive Order 7-MM are the following: Chapters 14, FOIA; 97a, Historic Districts; 98, Municipal Powers; 124, Zoning; 126, Planning; 242, State DOT; 541, State Building and Fire Safety Code; and Section 22a-27, State funded open space.