



A Robinson+Cole Legal Update

Coronavirus (COVID-19)

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COVID-19 Pandemic Impacts on Land Use and Zoning

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As we are all too aware, on March 10, 2020, Governor Ned Lamont issued declarations of public health and civil preparedness emergencies, proclaiming a state of emergency throughout the State of Connecticut as a result of the coronavirus (COVID-19) outbreak. On March 12, the Governor issued [Executive Order No. 7](#) that, among other things, prohibited gatherings of 250 people or more for social and recreational activities including, but not limited to, community, civic, leisure, or sporting events, and similar activities. This Order was replaced by [Executive Order No. 7N](#), which limits social and recreational gatherings to no more than five people.

These safety and social-distancing requirements have already impacted businesses and may effectively transform business as we know it. As the reopening of some businesses in Connecticut on May 20 nears, developers, business owners, and landlords may need to quickly adapt. Municipalities across the State also may need to consider new ways to adapt to the fluid landscape when it comes to land use permitting. Last week, Governor Lamont issued [Executive Order 7JJ](#), which provides some clarity with respect to land use and building permits that have been issued but not yet acted upon (e.g., construction has not yet commenced or was halted prior to completion). The Governor also issued Sector Rules for businesses that are eligible for Phase 1 of the State's plans to reopen business in the ongoing pandemic. Separate rule documents were issued for different business opening in Phase 1, including restaurants, retail and malls, and offices. The rules require certain public health and safety measures, but fail to account for existing and varying zoning requirements among municipalities.

Executive Order No. 7JJ – Tolling of Land Use and Building Permits

Generally, once municipal land use and building permits are issued, they must be acted upon within a certain amount of time or they will expire. Executive Order No. 7JJ, issued on May 6, 2020, tolls the time limit for permit holders to act during the state of emergency. Paragraph 3 of the Order states that all approvals or permits that were issued by a municipal land use agency or official pursuant to certain laws, including those that govern subdivision, zoning, inland wetlands, and coastal management, will not lapse or otherwise expire during the state of emergency. Permits that were still valid as of March 10, 2020 (when the state of emergency was declared) will remain valid through September 9, 2020 (the current date that the state of emergency is to end) unless terminated earlier by the Governor. The tolling provision only applies if the permit holder was not in violation of its permit as of March 10, 2020, and does not violate it during the state of emergency. The Order provides much-needed relief to land use and building permit holders, who will not have to fear having to rush to complete construction projects in potentially unsafe conditions during the pandemic. Nor will they have to go through the land use or building permit process again, so long as they had valid permits as of March 10.

Sector Rules for May 20 Reopening and Potential Zoning Hurdles

Governor Lamont's [Sector Rules](#) (the Rules) strive to promote economic activity while ensuring public health and safety. Among other things, the Rules limit business capacity to 50 percent for businesses that choose to reopen, and require strict cleaning and disinfection protocols, along with social distancing. Most

significant with respect to restaurants, during Phase 1, restaurants may reopen but can only do so outdoors, with use of indoor dining and bars areas remaining prohibited. However, the Rules fail to account for the possibility of existing regulatory barriers in zoning codes among the State's municipalities. Existing zoning requirements may seriously hinder, if not prevent altogether, some businesses from reopening on May 20. Zoning codes might not permit outdoor dining, or might impose size constraints or require different review processes. For restaurants that wish to either establish outdoor dining or expand existing outdoor dining areas, the process could be accomplished through either administrative review by planning staff or discretionary review by local land use agencies in the context of a (now) virtual public hearing, depending on the municipality. Discretionary review processes may take months to complete, leaving some restaurants having to determine whether an extended review period would be worth the trouble to reopen for outdoor dining only at 50 percent capacity.

While municipalities could amend zoning codes to try to accommodate reopening businesses, they cannot do so overnight. The amendment process is a legislative function and requires a public hearing. Though municipalities have already started to host public hearings virtually (by conference call, videoconference or other technology) in response to [Executive Order No. 7B](#) issued on March 14, which suspended open meeting requirements under the Connecticut General Statutes and any municipal charter, ordinance, or regulation, the time and resources necessary to undertake a public hearing process - virtually or otherwise - could hamper a restaurant's ability to reopen in accordance with the Rules. An Executive Order may be needed to provide municipalities with needed flexibility to either temporarily waive existing requirements or implement new allowances. An Executive Order to temporarily lift maximum size limits for outdoor dining areas or allow expansion into parking areas, sidewalks, or even green areas, without the need for a public hearing or legislative amendment process, may be a creative solution to assist restaurants that reopen.

In conjunction with this move to outdoor restaurant service, on May 1, 2020, the Connecticut Department of Consumer Protection issued a [guidance statement](#) for outdoor service of alcoholic beverages, which outlined the process for obtaining the State-level approval required to provide such service. Before submitting an application to the Liquor Control Division, the application must be reviewed and approved by the local zoning, fire, and health officials. All rules associated with service of alcohol inside a restaurant also will apply to the outdoor service area. Restaurant owners and landlords that have already applied for and received patio approval do not need to reapply.

If you have any questions, Robinson+Cole is here to help. There are many unknowns as businesses prepare to reopen. Municipalities might have to modify existing zoning codes to help guide us along the path of "business as usual," in whatever form that may take.

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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