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All in on Al Fresco? What Municipalities Need to Consider as Connecticut Moves to Expand Outside Dining Under COVID-19 Executive Order 7MM

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by Michael A. Ceccorulli and Steven J. Stafstrom Jr.

COVID-19 related shutdowns have hit the restaurant industry particularly hard. Even as the government allows more businesses to re-open, questions remain as to whether customers will flock back to their favorite bistro or tavern.

With summer weather (eventually) coming, one strategy being considered to make dining and other commercial activities safer is to move outdoors, but many local regulations restrict or outright prohibit outdoor activities. Such prohibited activities include the use of sidewalks, streets and other common spaces for commercial activities, the service of food or alcohol, activities that will cause additional noise, as well as limitations on hours of operation and signage.

On May 12, 2020, Governor Lamont issued Executive Order 7MM (the “EO”) in an attempt to cut through some of these regulations and allow for fast-tracked approval of certain outdoor activities, including serving food and beverages and selling goods. This EO substantially modifies zoning requirements and various other state laws that indirectly impact the ability of restaurants and retailers to offer outdoor service.

To highlight some key points, the EO:

- Allows municipalities to expedite changes to their zoning rules or other ordinances to permit “Outdoor Activities,” which include outdoor dining, merchandise displays and associated signage

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- Creates an expedited administrative approval process for restaurants and other establishments that serve food to get fast-tracked permission to create or expand outdoor dining areas
- Allows other businesses such as retail stores to get fast-tracked administrative approval to sell goods in outdoor areas, including sidewalks, parking lots, shared spaces or spaces provided by municipalities
- Allows restaurants and other businesses who already have liquor permits to serve alcohol only with food without applying for a separate patio or extension of use permit
- Allows private clubs to sell alcohol only to their members for delivery or pickup
- Creates standard operating hours for administratively approved Outdoor Activities
- Allows municipalities to close public streets to establish areas for Outdoor Activities
- Suspends minimum parking requirements to the extent required to permit Outdoor Activities and other authorized activities

In order to implement the EO, municipalities have a host of issues to consider, including:

- How to most efficiently review applications for Outdoor Activities in the strict time limitations set forth in the EO;
- How to effectively establish application requirements for Outdoor Activities;
- How to facilitate outdoor restaurant and retail activity where available outdoor space is limited;
- How to deal with any appeals of denied applications;
- How to manage parking regulations in light of the suspension of minimum parking requirements;
- What signage is authorized;
- Coordinating with local fire and health districts to ensure the EO is implemented while assuring other safety concerns;
- How to handle requests to conduct outdoor activities in adjoining lots, shared spaces, on public sidewalks or local roads; and
- Whether to allow ancillary live entertainment.

Implementation likely will require municipalities to issue their own orders or guidance. Every town and city will face unique challenges in accommodating this EO and new problems and concerns will arise. The Land Use attorneys at Pullman & Comley stand ready to assist in this effort and to help clients adapt to the changing regulatory landscape.

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