



Town of Westport
Planning and Zoning Commission
Town Hall, 110 Myrtle Avenue
Westport, CT 06880
Tel: 203-341-1030 Fax: 203-454-6145
www.westportct.gov

Hearing: July 23, 2020
Decision: July 23, 2020

July 24, 2020

**RE: Text Amendment #783/Appl. #PZ-20-00462, (NEW), §32-20A,
Continuation of Temporary Outdoor Dining in Response to COVID-19**

To Whom It May Concern

This is to certify that at a meeting of the Westport Planning and Zoning Commission held on July 23, 2020 it was moved by Mr. Lebowitz and seconded by Ms. Dobin to adopt the following resolution.

RESOLUTION #PZ-20-00462

WHEREAS, THE PLANNING AND ZONING COMMISSION met on July 23, 2020 and made the following findings:

Background

1. State and local civil preparedness emergencies were declared in mid-March 2020 due to the Coronavirus Pandemic (COVID-19). Local restaurants were restricted to offering take-out and curbside pick-up. On May 20, 2020 Phase 1 of the State of Connecticut's Business Re-Opening program began and municipalities were authorized to approve "Outdoor Activities" pursuant to Executive Order No. 7MM enabling local restaurants to offer outdoor patron dining provided each establishment demonstrates compliance with COVID-19 public health and safety guidelines issued by the State of CT.
2. On June 17, 2020 the State of CT began Phase 2 of the Business Re-Opening program enabling resumption of indoor dining limited to 50% of the original occupancy. The State's Business Re-Opening program combined with residents' efforts to support local businesses have helped many restaurants. Sadly some restaurants have permanently closed due to the financial hardships associated with COVID-19. This has additionally resulted in employment losses.

3. For those restaurants who continue to endure, it remains a struggle to make a profit even with the combined offering of outdoor patron dining and limited indoor patron dining. Some restaurateurs have shared they are expending significant resources to provide outdoor dining options to their patrons who perceive they are safer when dining outside, and have suggested adoption of a local zoning regulation to offer assurance through the holiday season their resources may continue to be utilized whether or not Governor Lamont rescinds Executive Order No. 7MM should the State of CT continue a positive trend and restaurants are allowed to resume 100% occupancy for indoor patron dining.
4. The Planning and Zoning Commission in response held a Work Session on July 9, 2020 and directed staff to prepare a Text Amendment for review at a public hearing.

Proposal

5. Text Amendment #783, dated July 10, 2020 proposes temporary zoning regulations to allow continued outdoor patron dining consistent with Executive Order No. 7MM that if adopted will extend the "Outdoor Activity" provisions to March 31, 2021 with the ability to grant further extensions if warranted.
6. Use of the regulation may not be necessary so long as EO No. 7MM remains in effect; however it is intended to give assurance to those restaurants who are struggling during the pandemic that their financial investments in support of providing outdoor dining options will remain viable through the holiday season whether or not Governor Lamont rescinds EO No. 7MM should the State of CT continue to successfully contain the spread of COVID-19, and restaurants are allowed to resume 100% occupancy for indoor patron dining in some later phase of the State's Business Recovery Program.
7. The Declaration of Public Health and Civil Preparedness Emergency issued on March 10, 2020 by Governor Lamont contains an expiration date of September 9, 2020. The Planning and Zoning Commission acting in their planning capacity proposed this text amendment so that it could be adopted and go into effect before September 9, 2020.

Department Comments

8. Text Amendment #783 was referred to Town Officials for comments in anticipation of a public hearing.
9. Referrals to regional council of governments are not required for Text Amendments related to COVID-19 pursuant to Executive Order No. 7M, Section 1 and were therefore not sent.
10. The Town Attorney's Office in comments dated July 16, 2020 recommended language be added as a modification in response to a what-if scenario involving the State slipping backwards in the containment of COVID-19 and the Governor needing to temporarily close restaurants due to public health and safety concerns.

11. The Town Attorney's Office recommended the language underlined below be added as a modification to Text Amendment #783:

Continuation of Temporary Outdoor Dining in Response to COVID-19 - Any restaurant operating with an approved temporary outdoor dining permit issued pursuant to CT Governor Lamont's Executive Order 7MM as of the date of this amendment may continue to operate and use the area approved and as shown in that permit, until March 31, 2021 or until Executive Order No. 7 MM is repealed to contain the spread of COVID-19.

12. The Fire Marshal in comments dated July 15, 2020 offered the following to which the Building Official concurred:

"This office supports Text Amendment #783. It cautions the Commission and the present/future users of Outdoor Dining Activity permits that inclement winter weather typical of Westport may pose significant logistical and permitting challenges. These may come at additional cost."

13. Users of Outdoor Dining Activity Permits may need to resubmit applications (at no charge) to the Planning and Zoning Department to retrofit existing/approved Outdoor Dining Activities should physical modifications be needed to address inclement winter weather.
14. Such resubmissions will need to be reviewed by the Fire Marshal's Office and Westport Weston Health District to confirm all COVID-19 public health and safety guidelines are met.
15. Planning and Zoning staff prepared comments dated July 20, 2020 that cited since Phase 1 of the State's Business Re-Opening program began over 60 applications for Outdoor Activities were received by the Planning and Zoning Department from local businesses, and 97% of these applications were approved, none were denied, and the remainder remain pending review.
16. The P&Z staff comments described most establishments have operated successfully without incident. Others had received warnings for failure to seek an Outdoor Activity approval, or for unauthorized additions of more tables than originally approved, or failure to maintain requisite distancing between tables. P&Z staff also identified noise complaints have been registered by some residents who occupy homes located in close proximity to restaurants.
17. The P&Z staff comments reference the 2017 *Plan of Conservation and Development* that contains what may be perceived herein as competing goals to support economic vitality without adversely impacting nearby residential neighborhoods:
 - *"Support Appropriate Economic Development." Pg. 74; and*
 - *"Protect residential neighborhoods from encroachment by inappropriate uses." Pg. 80*

Public Participation

18. A hearing was held on July 23, 2020 to receive testimony from members of the public as required pursuant to State Statutes and to get input on how best to reconcile the competing economic demands of local restaurants with the desires of some residents who live in close proximity to restaurants who have expressed a desire to have the peaceful enjoyment of their homes restored.
19. The public hearing was held remotely using electronic means due to the COVID-19, as Town Hall remains closed. The public hearing was broadcast live on public access television, live on-line on the Town's website, and interested parties were provided the opportunity to join the meeting and offer "live" testimony.
20. All application materials, and public comments received prior to the public hearing were posted on the Town's website consistent with the Governor's Executive Order to maintain transparency while conducting remote meetings.

NOW THEREFORE, BE IT RESOLVED Text Amendment #783: Appl: PZ-20-00462 submitted by the Planning and Zoning Commission, **IS ADOPTED AS MODIFIED** to add a new Section 32-20A, Continuation of Temporary Outdoor Dining in Response to COVID-19, that extends until March 31, 2021 all the same provisions currently enabling Outdoor Activities for Restaurants pursuant to Executive Order No. 7MM issued by Governor Lamont. The amendment was modified to add language identifying the regulation will remain in effect until March 31, 2021 unless Executive Order No. 7 MM is repealed should it be necessary to contain the spread of COVID-19 and was amended to add language emphasizing that all Temporary Outdoor Dining shall be in strict compliance with all Federal, State, and Local COVID-19 guidelines and requirements. A copy of the adopted text amendment is available on-line at www.westportct.gov is on file in the Town Clerk's Office, is on file in the Planning and Zoning Office, and is attached herein.

REASONS

1. Adopting local regulations to continue outdoor dining through the holiday season should provide the security desired by many restauranteurs during these uncertain times and allow them to plan ahead.
2. Adopting local regulations and putting them into effect on September 8, 2020 is appropriate as it precedes the expiration of the Governor's Public Health and Civil Preparedness Emergency on September 9, 2020.
3. Adopting a modification to the text amendment to clarify that the Governor or his designee's decision will override any adopted local zoning regulation is also appropriate in these uncertain times, should the State of Connecticut slip backwards in the containment of COVID-19 and the Governor needs to temporarily close restaurants due to public health and safety concerns.

4. The Planning and Zoning Commission finds this amendment is consistent with the Comprehensive Plan (Zoning Regulations and Zoning Map), and the 2017 *Plan of Conservation and Development* that recommends supporting appropriate economic development.

VOTE:

AYES	-6-	{Dobin, Stephens, Rutstein, Lebowitz, Cammeyer, Gratrix}
NAYS	-0-	
ABSTENTIONS	-0-	

The effective date of this amendment is: September 8, 2020.

Very truly yours,



Danielle Dobin, Chairman
Planning & Zoning Commission

Attached

Adopted Text Amendment #783, as modified

cc: First Selectman
Conservation Director
DPW Director
Fire Marshal
Police Chief
RTM P&Z Committee Chairman
Tax Assessor
Town Attorney
Town Engineer
Westport Weston Health District Director

Text Amendment #783

Submitted: 7/13/20

Received: 7/16/20

Public Hearing: Scheduled for: 7/23/20

Adopted as Modified: 7/23/20

Effective date: 9/8/20

Deleted language is [~~struck out and in brackets~~]; New language is underlined.

FROM §32, SUPPLEMENTARY USE REGULATIONS

**32-20A, CONTINUATION OF TEMPORARY OUTDOOR DINING
IN RESPONSE TO COVID-19**

Continuation of Temporary Outdoor Dining in Response to COVID-19 - Any restaurant operating with an approved temporary outdoor dining permit issued pursuant to CT Governor Lamont's Executive Order 7MM as of the effective date of this amendment may continue to operate and use the area approved and as shown in that permit, until March 31, 2021, or until Executive Order No. 7MM is repealed to contain the spread of COVID-19. The use shall at all times continue to be used in accordance with all Executive Orders currently in place or as revised in the future. Notwithstanding anything to the contrary contained herein, any and all Outdoor Activities shall be in strict conformance with all federal, stated, and local COVID-19 guidelines and requirements.

Such extension shall not be interpreted to create any nonconforming right and further provided that the operation of the Temporary Outdoor dining between the suspension of the State's declared state of emergency and March 31, 2021 shall be deemed to be a complete and total waiver of nonconforming rights under any local, state or federal authority.