



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: March 11, 2021

Decision: March 11, 2021

March 12, 2021

**RE: Text Amendment #788/Apl. #PZ-21-00104, Modification to §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 March 11, 2021 it was moved by Mr. Lebowitz and seconded by Ms. Dobin to adopt the following resolution.

RESOLUTION #PZ-21-00104

WHEREAS, THE PLANNING AND ZONING COMMISSION met on March 11, 2021 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 #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. Since Phase 1 of the State's Business Re-Opening program began in May 2020, close to 80 applications for Outdoor Activities for local restaurants were approved by the Planning and Zoning Department. Most establishments have operated successfully without incident. Others have received warnings for failure to seek an Outdoor Activity approval, unauthorized additions of more tables than originally approved, failure to maintain requisite distancing between tables, and a noise complaint was registered by one resident who occupies an apartment above an existing restaurant.

3. 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% occupancy. The State's Business Re-Opening program combined with residents' efforts to support local businesses helped many restaurants. Sadly, some restaurants closed due to financial hardships associated with COVID-19. This also resulted in employment losses.
4. On July 23, 2020, the Planning and Zoning Commission adopted §32-20A, Continuation of Temporary Outdoor Dining in Response to COVID-19, pursuant to Text Amendment #783, effective Sept. 8, 2020, and scheduled to expire on March 31, 2021. This regulation provides the same flexible standards in support of restaurants provided by Governor Lamont's Executive Order #7MM. At that time, it was unknown if/when EO #7MM would be extended and the Commission wanted to enable restaurants to plan for the holiday season with the knowledge their timeline provided. EO #7MM was subsequently extended. Currently EO #7MM and many other executive orders were extended until April 19, 2021 pursuant to EO #10A.
5. The Explanatory Statement for Text Amendment #788 dated Feb. 22, 2021 describes the Planning and Zoning Commission at the Feb. 11, 2021 Work Session directed staff to prepare a Text Amendment to the local zoning regulations to continue temporary allowing Outdoor Activities consistent with EO #7MM "until further notice."
6. On March 4, 2021 Governor Lamont issued a press release describing restaurants may resume indoor dining at 100% capacity effective March 19, 2021, provided all COVID protocols remain in place (6-foot separation, wearing of face masks, etc.). For many local restaurants this change will have no appreciable positive impact due to constraints associated with maintaining the required 6-foot separation. Therefore; the need remains to provide an outdoor dining option consistent with EO #7MM.

Proposal

7. Text Amendment #788 authored by the Planning and Zoning Commission dated Feb. 22, 2021 proposes continuation of temporary zoning regulations in §32-20A, "until further notice" enabling outdoor patron dining consistent with Executive Order #7MM, and clarifying these same regulations also apply to retail establishments consistent with EO #7MM. The text amendment further clarifies Outdoor Activities will be permitted to any new restaurant or retail establishment that has not yet applied for an Outdoor Activities approval.
8. Use of the regulation may not be necessary so long as EO #7MM remains in effect; however it is intended to give assurance to those restaurants who are struggling during the pandemic their financial investments to provide outdoor dining options will remain viable through the warm weather season whether or not Governor Lamont rescinds EO #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 without the COVID safety protocols in some later phase of the State's Business Recovery Program.

Department Comments

9. Text Amendment #788 was referred to Town Officials for comments in anticipation of a public hearing with no objections received.
10. The Fire Marshal confirmed to P&Z Staff his office will continue to serve as the Authority Having Jurisdiction to confirm applicants have complied with all sector rules for COVID-19 compliance, established by the State of CT. The Town Attorney's Office reviewed the draft language before being finalized as a formal text amendment, so additional comments were not requested.
11. P&Z staff comments dated 3/3/21 identified the Planning and Zoning Commission will revisit in the future whether to modify the regulations to potentially make some regulations permanent or extinguish the regulations following an evaluation of both positive and negative effects resulting from use of the temporary zoning regulations.

Public Participation

12. A hearing was held on March 11, 2021 to receive testimony from members of the public as required pursuant to State Statutes.
13. 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.
14. Over a dozen emails were sent from residents offering support for Text Amendment #788.
15. Some correspondence received suggested the amendment should be modified before adoption to include an expiration date rather than leaving it open-ended.
16. 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 #788: Appl. #PZ-21-00104 submitted by the Planning and Zoning Commission is **ADOPTED** to modify Section 32-20A, Continuation of Temporary Outdoor Dining in Response to COVID-19, that if adopted as submitted will extend "Until Further Notice," current temporary zoning standards for Outdoor Activities for restaurants and will include Retail Establishments. A copy of the adopted text amendment is on file in the Westport Town Clerk's Office, is on file in the Westport Planning and Zoning Office and is attached to this notice.

REASONS

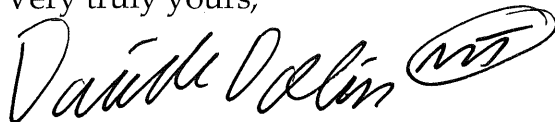
1. Adopting local regulations to continue temporary provisions for outdoor dining should provide the security desired by many restauranteurs during these uncertain times and allow them to plan ahead.
2. Expanding the regulations to include Retail Establishments is consistent with the intent of EO #7MM which permits, "*Expedited Municipal Review of Outdoor Dining and Retail*," [emphasis added] to promote social distancing in order to prevent the potential transmission of COVID-19 in commercial establishments.
3. Adopting local regulations and making them effective by April 1, 2021 is appropriate as it immediately subsequent to the expiration of the existing temporary zoning regulations scheduled to expire on March 31, 2021; therefore there will be no interruption in authorization to continue Outdoor Activities.
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	-5-	{Dobin, Lebowitz, Olefson, Stephens, Walsh}
NAYS	-0-	
ABSTENTIONS	-0-	

The effective date of this amendment is: April 1, 2021.

Very truly yours,



Danielle Dobin, Chairman
 Planning & Zoning Commission

Attached
 Adopted Text Amendment #788

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

Text Amendment #788

Submitted: 2/22/21

Received: 3/11/21

Public Hearing: 3/11/21

Adopted: 3/11/21

Effective date: 4/1/21

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

FROM §32, SUPPLEMENTARY USE REGULATIONS

§32-20A, CONTINUATION OF TEMPORARY OUTDOOR DINING, AND RETAIL OUTDOOR ACTIVITIES 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 or retail establishment operating with an Outdoor Activities Approval issued pursuant to CT Governor Lamont's Executive Order 7MM as of the effective date of this ~~[amendment]~~ regulation or issued after the effective date but before the expiration of this regulation, may continue to operate and use the area approved and as shown in that permit, until ~~[March 31, 2021]~~ further notice, 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, state, and local COVID-19 guidelines and requirements.

Such extension shall not be interpreted to create any nonconforming rights. ~~[and]~~ It is further provided that the operation of the Temporary Outdoor ~~[d]~~Dining or retail Outdoor Activities Approval between ~~[the suspension]~~ any expiration of the State's declared state of emergency and ~~[March 31, 2021]~~ the expiration of this regulation shall not be deemed to be a waiver of any obligations by any applicant pursuant to ~~[complete and total waiver of nonconforming rights under]~~ any local, state or federal ~~[authority]~~ law.