



Land Use Brief

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AS OF RIGHT OUTDOOR FOOD & BEVERAGE SERVICES

Background

Governor Lamont enacted [Executive Order No. 7MM](#) to facilitate limited economic activity during the COVID-19 pandemic. Executive Order No. 7MM established expedited municipal review processes to permit for new outdoor dining services. Certain considerations from Executive Order No. 7MM were codified during the 2022 Legislative Session within [Public Act No. 22-1](#) and [CGS Sec. 8-1cc](#).

The review processes established in Executive Order No. 7MM and codified in Public Act No. 22-1 are set to expire on April 30, 2023.



Figure 1.

La Casita Mexican Restaurant & Cantina, Naugatuck

Photo Credit: Lori Rotella

The Naugatuck Valley Council of Governments' Land Use Brief is as a resource for land use staff to support local land use decision making.

The information provided within this brief is for informational purposes only.

NVCOG recommends reaching out to your municipal attorney prior to action.

Questions? Comments?
Suggestions for future
Land Use Briefs?

Contact SN Villalba,
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AS OF RIGHT ACCESSORY OUTDOOR FOOD AND BEVERAGE SERVICES

As of Right Outdoor Food & Beverage Service Review Begins May 1, 2023

Effective May 1, 2023, the zoning commission of each municipality shall allow any licensee or permittee of a food establishment operating in such municipality to engage in outdoor food and beverage services as an accessory use of such food establishment's permitted use.



Figure 2. Kitchen Bar and Grill, Prospect

Photo Credit: Desira Blanchard

A permitted food establishment shall be allowed outdoor food and beverage service as an accessory use as of right. An accessory outdoor food and beverage service use review is subject only to any required administrative site plan review to determine conformance with zoning requirements not contemplated by CGS Sec. 8-1cc and the specific considerations enumerated in subsection (c) of CGS Sec. 8-1cc, provided such accessory use would not result in the expansion of a nonconforming use.

Key Terms

- ◆ **Beverage** includes alcoholic liquor or an alcoholic beverage, as defined in section 30-1 of the general statutes.
- ◆ **Food Establishment** means a food establishment that is licensed or permitted to operate pursuant to section 19a-36i of the general statutes.
- ◆ **Municipality** has the same meaning as provided in section 8-1a of the general statutes.

¹ Federal American with Disabilities Act, 42 USC 12101, et.seq., as amended from time to time, and the State Building Code.



CGS SECTION 8-1CC SUBSECTION (C) CONSIDERATIONS

An applicant may engage in outdoor food and beverage service:

- ◆ On public sidewalks and other pedestrian pathways abutting the area permitted for principle use and on which vehicular access is not allowed, provided:
 - ◆ Such pathway is constructed and maintained in compliance with physical accessibility guidelines¹ and extends for the length of the lot upon which the area permitted for principle use is located, and not less than four (4) feet in width, not including any area on a street or a highway, shall remain unobstructed for pedestrian use.
 - ◆ The area is subject to any reasonable considerations imposed by the municipal agency or official that issues right-of-way or obstruction permits.
- ◆ On off-street parking spaces associated with the permitted use, notwithstanding any municipal ordinance or zoning regulation establishing minimum requirements for off-street parking.
- ◆ On any lot, yard, court, or open space abutting the area permitted for principle use, provided:
 - ◆ Such lot, yard, court, or open space is located in a zoning district where the operation of food establishments is permitted.
 - ◆ Such use is in compliance with any applicable requirements for access or pathways pursuant to physical accessibility guidelines.¹
 - ◆ The licensee or permittee obtains written authorization to engage in such service from the owner of such lot, yard, court or open space and provides a copy of such authorization to the zoning commission.
- ◆ Until 9 o'clock p.m., or a time established by the zoning commission of the municipality, whichever is later.



POTENTIAL NEXT STEPS

Encourage your Planning and Zoning Commission or Zoning Commission to amend or adopt accessory outdoor food and beverage service zoning regulations by:



Figure 3. D'Amelios Italian Eatery, Waterbury

Photo Credit: Desira Blanchard

- Updating your use table to allow for accessory outdoor food and beverage service for permitted food establishments by a Zoning Permit or Site Plan Review.
- Amending or establishing a sub-section in your zoning regulations for the considerations outlined on page 3 and CGS Section 8-1cc(c).

- Prompting your Planning and Zoning Commission or Zoning Commission to consider if the 9 o'clock p.m is the appropriate closing time for your municipality.

ADDITIONAL CONSIDERATIONS

Food establishments on state-owned roadways that want to utilize the right-of-way will need to obtain proper permitting from the Connecticut Department of Transportation.

Food establishments on local roadways that want to utilize the right-of-way will need to obtain proper permitting from the local permitting official or employee.



LAND USE SURVEY RESULTS

Land use staff in the Naugatuck Valley Region were surveyed in January of 2023.

We received responses from Ansonia, Beacon Falls, Middlebury, the Borough of Naugatuck, Prospect, and Waterbury.



Figure 4. Brewbury, Middlebury

Photo Credit: Desira Blanchard

The results showed that of those who responded:

- ◆ All of the respondents reviewed outdoor dining permits.
- ◆ 51 permits were granted since Executive Order No. 7MM.
- ◆ Zoning Enforcement Officers, Building Officials, and Fire Marshalls were identified as the municipal staff most involved with the outdoor dining permit processes.
- ◆ Considerations for permitting were ranked in the following order of concern:



1. ADA Accessibility



2. Fire Safety



3. Pedestrian Safety



4. Parking



5. Nuisances



EXAMPLES OF OUTDOOR DINING



Figure 5 (Top) and Figure 6 (Right).

Uptown Bar and Eatery, Ansonia

Photo Credit: Desira Blanchard

“I am a strong proponent of outdoor dining and urge business owners to consider the option whenever practical. It’s an opportunity to provide connectivity between patrons and the outside world and tap into the human senses (sight, smell, hearing, taste and touch). Doing so can create a wonderful experience for not only the patron; but passersby as well. It can be an effective tool in bringing life and vibrancy along with economic benefits to a downtown area; particularly if done properly and tastefully so as to appeal to a wide range of individuals.”

- Robert Nerney, City Planner, City of Waterbury