



House of Representatives

General Assembly

File No. 8

February Session, 2022

Substitute House Bill No. 5271

House of Representatives, March 14, 2022

The Committee on Planning and Development reported through REP. MCCARTHY VAHEY of the 133rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE PROVISION OF OUTDOOR FOOD AND BEVERAGE SERVICES AND OUTDOOR DISPLAYS OF GOODS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 1 of special act 21-3 is amended to read as follows
2 (*Effective from passage*):

3 (a) As used in this section:

4 (1) "Applicable laws of the state" means chapters 14, 97a, 98, 124, 126,
5 242 and 541 of the general statutes, section 22a-27j of the general statutes
6 and any special act, municipal charter, ordinance, resolution or
7 regulation;

8 (2) "COVID-19" means the respiratory disease designated by the
9 World Health Organization on February 11, 2020, as coronavirus 2019,
10 and any related mutation thereof recognized by the World Health
11 Organization as a communicable respiratory disease;

12 (3) "Food establishment" means a food establishment that is licensed
13 or permitted to operate pursuant to section 19a-36i of the general
14 statutes;

15 (4) "Local enforcement official" means a zoning enforcement officer,
16 or such officer's designee, or building official, or such official's designee;

17 (5) "Municipality" has the same meaning as provided in section 8-1a
18 of the general statutes; and

19 (6) "Outdoor activities" means outdoor food and beverage service or
20 outdoor displays of goods for sale. "Outdoor activities" shall not include
21 live entertainment.

22 (b) Notwithstanding the provisions of section 8-3b of the general
23 statutes, for the period commencing on [the effective date of this section]
24 March 31, 2021, and ending [March 31, 2022] April 30, 2023, if a zoning
25 administrator, chairperson of a zoning commission or planning and
26 zoning commission or chief elected official of a municipality finds that
27 a proposal to establish or change a zone or regulation to expand or
28 permit outdoor activities is necessary to respond to or provide economic
29 recovery from the COVID-19 pandemic, such zoning administrator,
30 chairperson or chief elected official may place such proposal on the
31 public hearing agenda of the zoning commission or planning and
32 zoning commission, as applicable, and such commission shall conduct
33 a public hearing and act on such proposal without the need to comply
34 with the requirements of said section of the general statutes.

35 (c) (1) Notwithstanding any provision of the applicable laws of the
36 state, for the period commencing on [the effective date of this section]
37 March 31, 2021, and ending [March 31, 2022] April 30, 2023, any person
38 making a permit application to engage in outdoor activities shall make
39 such application to a local enforcement official, who shall review and
40 make a determination on each such application. If such outdoor
41 activities will occur on a state highway right-of-way, an additional
42 permit application shall be made by such person to the Department of
43 Transportation pursuant to chapter 242 of the general statutes. No local

44 enforcement official shall impose a fee for a permit application under
45 this subsection.

46 (2) Notwithstanding any provision of the applicable laws of the state,
47 for the period commencing on [the effective date of this section] March
48 31, 2021, and ending [March 31, 2022] April 30, 2023, any person who
49 makes a permit application to a local enforcement official to engage in
50 outdoor activities shall not be required to submit (A) plans stamped by
51 a licensed engineer, landscape architect or architect, (B) a site survey,
52 (C) a parking plan, (D) a traffic study or plan, (E) a sign plan, (F) a soil
53 erosion and sediment control plan, (G) a photometric lighting plan, or
54 (H) a stormwater management plan, provided such person submits, at
55 a minimum, a (i) drawing or illustration, roughly to scale or
56 dimensioned and depicting with reasonable accuracy the outdoor area
57 proposed to be used and what is proposed to be placed, built or erected
58 in the outdoor area, and (ii) written narrative describing any noise,
59 waste management, odor, light pollution or environmental impacts
60 expected in such outdoor area as a result of such outdoor activities and
61 an explanation of how such impacts will be mitigated. The local
62 enforcement official reviewing such application may require an
63 applicant to submit additional information that such officer deems
64 necessary to protect public health, safety or the environment, provided
65 such officer shall consider the need for expedited review of such
66 applications.

67 (3) Notwithstanding any provision of the applicable laws of the state,
68 for the period commencing on [the effective date of this section] March
69 31, 2021, and ending [March 31, 2022] April 30, 2023, each local
70 enforcement official shall approve, approve with conditions or reject
71 any application for outdoor activities and notify each applicant of such
72 decision in a manner prescribed by the local enforcement official not
73 later than (A) ten days after the receipt of such application, or (B) ten
74 days after the receipt of any additional information requested by the
75 local enforcement official pursuant to subdivision (1) of this subsection.
76 The failure of any local enforcement official to provide such notice shall
77 be deemed to be an approval of such application.

78 (4) Notwithstanding any provision of the applicable laws of the state,
79 for the period commencing on [the effective date of this section] March
80 31, 2021, and ending [March 31, 2022] April 30, 2023, if a local
81 enforcement official approves with conditions or rejects an application
82 pursuant to subdivision (3) of this subsection, the applicant may appeal
83 such decision, not later than seven days after the receipt of notice of such
84 decision, to the zoning commission, planning and zoning commission
85 or chief elected official of the municipality, as applicable. A public
86 hearing shall not be required for any such appeal.

87 (5) Notwithstanding any provision of the applicable laws of the state,
88 for the period commencing on [the effective date of this section] March
89 31, 2021, and ending [March 31, 2022] April 30, 2023, nothing in this
90 subsection shall affect an individual's right to submit a complaint to any
91 relevant municipal authority or the right of any such municipal
92 authority to enforce conditions or requirements associated with
93 permitted outdoor activities, impose fines or issue notices of violations
94 or cease and desist orders.

95 (d) Notwithstanding any provision of the applicable laws of the state,
96 for the period commencing on [the effective date of this section] March
97 31, 2021, and ending [March 31, 2022] April 30, 2023, any person
98 permitted to engage in outdoor activities may engage in such activities
99 (1) on public sidewalks and other pedestrian pathways abutting the area
100 permitted for principal use and on which vehicular access is not
101 allowed, (A) provided a pathway (i) is constructed and maintained in
102 compliance with physical accessibility guidelines, as applicable, under
103 the federal Americans with Disabilities Act, 42 USC 12101, et seq., as
104 amended from time to time, and the State Building Code, and (ii) such
105 pathway extends for the length of the lot upon which the area permitted
106 for principal use is located, is not less than four feet in width, not
107 including any area on a street or highway, and remains unobstructed
108 for pedestrian use, and (B) subject to reasonable conditions imposed by
109 the municipal official or agency that issues right-of-way or obstruction
110 permits, (2) on off-street parking spaces or parking lots associated with
111 the permitted use, notwithstanding any municipal ordinance

112 establishing minimum requirements for off-street parking, (3) on any
113 lot, streetface, yard, court or open space abutting, or noncontiguous lot
114 that is not more than one lot, streetface, yard, court or open space
115 removed from, the area permitted for the principal use, provided (A)
116 such lot, streetface, yard, court or open space is located in a zoning
117 district where outdoor activities are permitted, (B) such use is in
118 compliance with any applicable requirements for access or pathways
119 pursuant to physical accessibility guidelines under the federal
120 Americans with Disabilities Act, 42 USC 12101, et seq., as amended from
121 time to time, and the State Building Code, and (C) such person obtains
122 written authorization to engage in such outdoor activities from the
123 owner of such lot, streetface, yard, court or open space and provides a
124 copy of such authorization to the zoning commission, and (4) until
125 eleven o'clock p.m. on Friday and Saturday and nine o'clock p.m. on all
126 other days of the week, or until times established by the zoning
127 commission, planning and zoning commission or chief elected official
128 of the municipality, as applicable, whichever is later.

129 (e) (1) Notwithstanding any provision of the applicable laws of the
130 state, for the period commencing on [the effective date of this section]
131 March 31, 2021, and ending [March 31, 2022] April 30, 2023, the
132 Department of Transportation may allow any person to engage in
133 outdoor activities on a nonvehicular portion of a state highway right-of-
134 way, provided the department establishes any conditions on such use,
135 as deemed necessary by the Commissioner of Transportation.

136 (2) For the period commencing on [the effective date of this section]
137 March 31, 2021, and ending [March 31, 2022] April 30, 2023, outdoor
138 activities shall be considered a special event for the purposes of section
139 14-298-262 of the regulations of Connecticut state agencies.

140 (3) Notwithstanding any provision of the applicable laws of the state,
141 for the period commencing on [the effective date of this section] March
142 31, 2021, and ending [March 31, 2022] April 30, 2023, any municipality
143 shall request a special event permit from the Department of
144 Transportation before closing any part of a vehicular portion of a state

145 highway right-of-way for outdoor activities, in accordance with the
146 provisions of section 14-298-262 of the regulations of Connecticut state
147 agencies. The Department of Transportation shall expedite its review of
148 any such request.

149 (4) Notwithstanding any provision of the applicable laws of the state,
150 for the period commencing on [the effective date of this section] March
151 31, 2021, and ending [March 31, 2022] April 30, 2023, any municipal
152 official having jurisdiction over local roads, in consultation with the
153 municipality's local traffic authority, may close a local road to permit
154 outdoor activities without conducting a public hearing, except that if
155 such local road is utilized as part of a public transportation route, such
156 official shall consult with the Department of Transportation.

157 (f) Notwithstanding any provision of title 30 of the general statutes
158 or any provision of the regulations of Connecticut state agencies, for the
159 period commencing on [the effective date of this section] March 31, 2021,
160 and ending [March 31, 2022] April 30, 2023, no entity that is licensed to
161 serve alcoholic beverages shall be required to obtain a patio or extension
162 of use permit to engage in outdoor activities, provided such entity: (1)
163 Complies with the provisions of this section, (2) complies with any rules
164 for outdoor dining, including, but not limited to, safety or social
165 distancing requirements issued by the Governor, the Department of
166 Economic and Community Development or other agency or entity
167 authorized by law or pursuant to an executive order, to issue such
168 requirements in response to the COVID-19 pandemic, (3) complies with
169 any municipal requirements related to outdoor dining or the sale of
170 alcoholic beverages that are consistent with the provisions of this
171 section, (4) complies with any provision of title 30 of the general statutes
172 or regulations of Connecticut state agencies regarding the prohibition of
173 the sale of alcohol to minors or intoxicated persons or regarding
174 restrictions on the times such entity may serve alcoholic beverages, (5)
175 complies with any rules in effect limiting or restricting the sale or
176 consumption of alcoholic beverages only to customers who consume
177 food on such entity's premises, (6) does not maintain an outdoor
178 consumer bar, as defined in section 30-62a of the general statutes, and

179 (7) does not provide live entertainment, unless such entertainment was
180 previously permitted in such entity's outdoor space or such entity
181 obtains permission from the applicable municipal official to provide live
182 entertainment, and the provision of such entertainment complies with
183 any relevant safety or social distancing requirements issued by the
184 Governor, the Department of Economic and Community Development
185 or other agency or entity authorized by law or pursuant to an executive
186 order, to issue such requirements in response to the COVID-19
187 pandemic.

188 (g) Any outdoor activity allowed pursuant to Executive Order No.
189 7MM of Governor Ned Lamont prior to [the effective date of this
190 section] March 31, 2021, shall be deemed approved and permitted in
191 accordance with the requirements of this section until [March 31, 2022]
192 April 30, 2023, without need for reapplication, (1) provided an
193 additional application shall be made for any expansion of a previously
194 approved outdoor activity, except if such expansion is solely related to
195 alterations to reduce the width of a pathway required pursuant to
196 subdivision (1) of subsection (d) of this section, provided such pathway
197 is not reduced to less than four feet in width, and (2) except that any
198 person engaging in a previously approved outdoor activity on a state
199 highway right-of-way who seeks to continue such outdoor activity after
200 April 19, 2021, shall make an application to the Department of
201 Transportation pursuant to chapter 242 of the general statutes to ensure
202 compliance with relevant federal requirements.

203 (h) Notwithstanding any provision of the applicable laws of the state,
204 nothing in this section shall alter or affect a nonconforming use or
205 structure or prohibit any person from seeking or obtaining approval for
206 engaging in outdoor activities pursuant to existing municipal zoning
207 regulations.

208 (i) For the period commencing on [the effective date of this section]
209 March 31, 2021, and ending [March 31, 2022] April 30, 2023, any
210 minimum requirement for off-street parking or requirement prohibiting
211 outdoor activities from taking place on parking lots shall not apply to

212 the extent required to allow outdoor activities alone or in conjunction
213 with any other activity authorized by law, executive order or municipal
214 regulations, including any activity required to enable the response to the
215 COVID-19 pandemic.

216 (j) The provisions of this section shall be liberally construed to
217 promote the continuation of outdoor activities, as permitted by
218 Executive Order No. 7MM of Governor Ned Lamont.

219 Sec. 2. (NEW) (*Effective May 1, 2023*) (a) For the purposes of this
220 section, "beverage" includes alcoholic liquor or an alcoholic beverage, as
221 defined in section 30-1 of the general statutes, "food establishment"
222 means a food establishment that is licensed or permitted to operate
223 pursuant to section 19a-36i of the general statutes and "municipality"
224 has the same meaning as provided in section 8-1a of the general statutes.

225 (b) Notwithstanding any provision of the general statutes, special act,
226 municipal charter or ordinance, the zoning commission of each
227 municipality shall allow any licensee or permittee of a food
228 establishment operating in such municipality to engage in outdoor food
229 and beverage service as an accessory use of such food establishment's
230 permitted use. Such accessory use shall be allowed as of right, subject
231 only to any required administrative site plan review to determine
232 conformance with zoning requirements not contemplated by this
233 section, provided such accessory use would not result in the expansion
234 of a nonconforming use.

235 (c) Any such licensee or permittee may engage in outdoor food and
236 beverage service (1) on public sidewalks and other pedestrian pathways
237 abutting the area permitted for principal use and on which vehicular
238 access is not allowed, (A) provided such pathway (i) is constructed and
239 maintained in compliance with physical accessibility guidelines, as
240 applicable, under the federal Americans with Disabilities Act, 42 USC
241 12101, et seq., as amended from time to time, and the State Building
242 Code, and (ii) extends for the length of the lot upon which the area
243 permitted for principal use is located, and not less than four feet in
244 width, not including any area on a street or highway, shall remain

245 unobstructed for pedestrian use, and (B) subject to reasonable
 246 conditions imposed by the municipal official or agency that issues right-
 247 of-way or obstruction permits; (2) on off-street parking spaces
 248 associated with the permitted use, notwithstanding any municipal
 249 ordinance or zoning regulation establishing minimum requirements for
 250 off-street parking; (3) on any lot, yard, court or open space abutting the
 251 area permitted for principal use, provided (A) such lot, yard, court or
 252 open space is located in a zoning district where the operation of food
 253 establishments is permitted, (B) such use is in compliance with any
 254 applicable requirements for access or pathways pursuant to physical
 255 accessibility guidelines under the federal Americans with Disabilities
 256 Act, 42 USC 12101, et seq., as amended from time to time, and the State
 257 Building Code, and (C) the licensee or permittee obtains written
 258 authorization to engage in such service from the owner of such lot, yard,
 259 court or open space and provides a copy of such authorization to the
 260 zoning commission; and (4) until 9 o'clock p.m., or a time established by
 261 the zoning commission of the municipality, whichever is later.

262 Sec. 3. Section 8-1cc of the general statutes is repealed. (*Effective from*
 263 *passage*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	SA 21-3, Sec. 1
Sec. 2	<i>May 1, 2023</i>	New section
Sec. 3	<i>from passage</i>	Repealer section

PD Joint Favorable Subst.

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill extends, until April 30, 2023, the expedited system for approval of permits for outdoor food and beverage service by local zoning officers, as established by Governor's Executive Order 7MM. The bill also requires municipalities to allow outdoor dining and beverage services beginning May 1, 2023.

These changes have no fiscal impact, as it is anticipated that municipalities can comply with these provisions with existing resources.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis

sHB 5271

AN ACT CONCERNING THE PROVISION OF OUTDOOR FOOD AND BEVERAGE SERVICES AND OUTDOOR DISPLAYS OF GOODS.

SUMMARY

This bill:

1. extends by 13 months, until April 30, 2023, the law that broadly permits the continuation of as-of-right outdoor dining and retail activities authorized by the governor’s executive orders during the pandemic (§ 1); and
2. correspondingly delays, from April 1, 2022, to May 1, 2023, the effective date of provisions requiring municipalities to allow, in perpetuity, outdoor dining as an as-of-right accessory use to a food establishment (§ 2).

The bill requires outdoor activities to be operated so that pedestrian pathways and means of access comply with the physical accessibility guidelines in the State Building Code. The laws already require pathways to be constructed, and access to be provided, that comply with the Americans with Disabilities Act’s (ADA) physical accessibility guidelines.

By broadly authorizing the continuation of outdoor dining and retail activities through April 30, 2023, the bill also extends the sunset of, among other things: (1) the process for zoning officials to expedite a public hearing on outdoor activity-related zone changes or zoning regulation changes and (2) a requirement that the Department of Transportation expedite reviewing requests to close any part of the vehicular portion of a state highway right-of-way for outdoor activities (§ 1).

The bill also makes technical and conforming changes, including repealing a law currently set to take effect on April 1, 2022 (§ 3) and replacing it with substantially similar provisions taking effect on May 1, 2023 (§ 2).

EFFECTIVE DATE: Upon passage, except the permanent outdoor dining accessory use authorization is effective May 1, 2023.

EXTENSION OF CURRENT OUTDOOR ACTIVITIES LAW

SA 21-3 authorized the continuation of outdoor retail and dining activities, as permitted by the governor's executive orders. SA 21-3 took effect on March 31, 2021, and is currently set to sunset on March 31, 2022. The bill delays this sunset by 13 months, until April 30, 2023. Under this law, if a business that is not already engaged in outdoor dining or retail activities pursuant to an executive order wants to start engaging in them, it must apply to the local zoning or building official, who will conduct an administrative review of the application (§ 1).

In conformity with the delayed sunset, the bill also delays provisions enacted as part of PA 21-2, June Special Session, § 182, which take effect after that sunset and generally require municipalities to allow, in perpetuity, outdoor dining as an accessory use to a food establishment. The bill does this by repealing the law (CGS § 8-1cc) that currently takes effect on April 1, 2022, and replacing it with substantially similar provisions taking effect May 1, 2023. Under both the repealed and replacement provisions, unless the standard zoning approval process was followed, to continue outdoor dining operations after April 30, 2023, businesses will have to seek local approval under the bill's terms (§§ 2 & 3).

EXPANDED ACCESSIBILITY REQUIREMENTS

Both laws specifically allow outdoor activities on public sidewalks and abutting pedestrian pathways where vehicles are not allowed, if a pathway is provided that:

1. is constructed in compliance with the federal ADA's physical accessibility guidelines,

2. extends for the length of the lot (parcel),
3. is at least four feet wide (excluding any portion that is on a street or highway), and
4. remains unobstructed for pedestrian use.

The bill also requires the pathway to be (1) constructed and maintained in compliance with the State Building Code’s physical accessibility guidelines and (2) maintained in compliance with the ADA’s physical accessibility guidelines.

Both laws also allow outdoor activities on certain nearby lots, yards, courts, or other open spaces if the use complies with any applicable requirements for access or pathways under the ADA’s physical accessibility guidelines. The bill expands this requirement by requiring that the use also comply with access- or pathway-related physical accessibility guidelines in the State Building Code.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Substitute

Yea 26 Nay 0 (03/11/2022)