

Summary of sHB 6610, as Amended by House Amendment “A” (LCO #6080)

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Issue

Summarize sHB 6610, as amended by House Amendment “A,” *An Act Concerning the Provision of Outdoor Food and Beverage Service by Restaurants* (LCO #6080).

Summary

This bill generally incorporates the outdoor dining and retail provisions contained in Executive Order (EO) 7MM, as amended by subsequent EOs, and extends them until March 31, 2022. In doing so, it generally:

1. allows outdoor food and beverage service and retail displays (“outdoor activities”) that were authorized under EO 7MM and previously locally approved to continue without seeking further approvals;
2. makes new requests to conduct outdoor activities (defined to exclude live entertainment) subject to a no-fee expedited review process by local enforcement officials (i.e., zoning administrator or a building official, or their designees);
3. broadly authorizes these approved outdoor activities to operate until 11:00 p.m. on Fridays and Saturdays and 9:00 p.m. on other days (unless later hours of operation are set locally);
4. allows the zoning administrator, chairperson of the zoning commission or planning and zoning commission (PZC), or chief elected official to expedite a public hearing on certain zone changes or zoning regulation changes;
5. removes minimum off-street parking space requirements for outdoor activities and, subject to certain conditions, allows these activities in parking lots, off-street parking spaces, and

state highway rights-of-way (with Department of Transportation (DOT) approval for the latter); and

6. allows alcohol permittees to serve alcohol as part of outdoor activities without obtaining a patio or extension of use permit.

The bill specifies that its provisions must be liberally construed to promote the continuation of outdoor activities, as permitted by EO 7MM. Presumably, as is the case under EO 7MM, the bill does not permit an applicant to request approval to conduct outdoor activities unless the applicant is already allowed to provide food and beverage service or retail displays, as applicable, as a principal or accessory property use under local land use regulations. Similarly, it appears that the bill only extends the expedited approval process to alcohol permittees that serve alcohol in connection with outdoor dining (i.e., “food and beverage service”).

The bill generally applies regardless of conflicting state or local laws or resolutions, including the Freedom of Information Act (FOIA), local historic property and district restrictions, and state laws on municipal powers, planning and zoning, DOT’s authority, and building safety codes. The bill does not supersede requirements related to permitting food establishments (e.g., restaurants); thus, to use the bill’s expedited land use approval process for outdoor activities, an applicant must first obtain any required authorization to operate the principal business (e.g., health department permit).

The bill specifies that it does not (1) alter or modify a nonconforming use or structure or (2) prohibit anyone from seeking or obtaining approval for outdoor activities under existing municipal zoning regulations. The bill does not (1) prohibit an individual from submitting a complaint to a municipal authority, as applicable, or (2) curtail a municipality’s right to enforce conditions or requirements for outdoor activities, including issuing violation notices and fines and cease and desist orders.

EFFECTIVE DATE: Upon passage

Existing Outdoor Dining and Retail Operations

The bill specifies that any outdoor activity that was approved under EO 7MM’s authorization, prior to the bill’s passage, may continue without further approvals unless it is:

1. expanded (except if expanding solely to reduce a pathway’s width to the allowable minimum of four feet or more) or
2. conducted in a state highway right-of-way after April 19, 2021, in which case the operator must apply to DOT to ensure compliance with relevant federal requirements.

As with the bill's other authorizations, the bill allows these outdoor activity operations to continue through March 31, 2022.

Expedited Permitting and Approval Process

Under the bill, if a business wants to engage in outdoor activities, it must apply to the local enforcement official, who will conduct an administrative review of the application. The bill prohibits the officials from charging a fee for these applications.

If outdoor activities will occur on a state highway right-of-way, the business must additionally apply to DOT for an encroachment permit (see below).

Application Contents

The bill prohibits local enforcement officials from requiring applicants to submit certain studies and reports to support their initial application, and instead requires each applicant to provide a general site plan and impact statement. The bill authorizes the official, considering the need to expedite applications, to require applicants to supply additional information, as necessary to protect public health, safety, or the environment.

Specifically, under the bill, officials cannot universally require applicants to submit:

1. plans stamped by a licensed engineer, landscape architect, or architect;
2. a site survey;
3. a parking plan or a traffic study or plan;
4. a sign plan or a photometric lighting plan;
5. a soil erosion and sediment control plan; or
6. a stormwater management plan.

Under the bill, each applicant must provide the local official with a drawing or illustration (roughly to scale or dimensioned) depicting with reasonable accuracy the proposed plans for the outdoor area. Applicants must also (1) provide a written narrative describing any noise, waste management, odor, light pollution, or environmental impacts expected from the proposed outdoor activities and (2) explain impact mitigation plans.

Administrative Review and Appeals

The bill requires local enforcement officials to decide on each application within 10 days after receipt, or within 10 days after receiving any additional requested information. Failure to decide and inform the applicant within 10 days is deemed an approval.

As is generally the case for land use approvals, officials may approve, approve with conditions, or reject an application. An aggrieved applicant may appeal the decision to the zoning commission, PZC, or municipal chief elected official, as applicable, within seven days after receiving the decision notice. The bill specifies that there is no public hearing requirement for these appeals.

Operations in Nearby Open Areas

For purposes of expanding areas available for outdoor activities, the bill eliminates municipally imposed minimum off-street parking space requirements and allows outdoor activities on sidewalks and in parking spaces and lots, nearby open areas, and state highway rights-of-way (with DOT approval, see below).

Operations in Pedestrian Pathways

The bill allows outdoor activities on public sidewalks and other pedestrian pathways where vehicles are not allowed, if the area used abuts the business and a pathway is provided that:

1. complies with federal Americans with Disabilities Act (ADA) accessibility guidelines;
2. extends for the length of the lot (parcel) and is at least four feet wide (excluding any portion that is on a street or highway); and
3. remains unobstructed for pedestrian use.

The municipal official or agency that issues right-of-way or obstruction permits may impose reasonable conditions on using a pedestrian pathway for outdoor activities.

Operations in Parking Areas and Other Open Areas

The bill also allows outdoor activities to be conducted (1) in off-street parking spaces or parking lots associated with the business and (2) on any lot, streetface, yard, court, or open space abutting the business. It also allows outdoor activities on a noncontiguous lot that is not more than one lot, streetface, yard, court, or open space away from the business. The bill specifies that these non-parking areas can be used for outdoor activities if they are:

1. in a zoning district allowing outdoor food and beverage service or outdoor retail displays and

2. used in a way that preserves access or pathways meeting ADA accessibility standards.

Additionally, under the bill, the owner of these non-parking areas must give written permission, a copy of which must be provided to the zoning commission (or presumably PZC, if it is a combined commission).

Activities in a State Highway Right-of-Way or on a Closed Road

Under the bill, DOT may allow a business to engage in outdoor activities in the nonvehicular portion of a state highway right-of-way, as long as the operation complies with any conditions the DOT commissioner sets. A municipality must request a special event permit from DOT before closing any part of the vehicular portion of a state highway right-of-way for outdoor activities and DOT must expedite reviewing these requests.

The bill also specifies that outdoor activities are considered a special event for purposes of state regulations concerning the Office of the State Traffic Administration's role in regulating road use. (Among other things, these regulations generally require the office, in cooperation with the local traffic authority or state police, to determine the necessity for an alternate route for through traffic.)

Under the bill, municipal officials, in consultation with the local traffic authority, may close a local road to allow outdoor activities without holding a public hearing. But they must consult DOT if the road is part of a public transportation route.

Alcohol Service

Regardless of the Liquor Control Act or any state regulations, the bill allows alcohol permittees to serve alcohol as part of outdoor activities without obtaining a patio or extension of use permit.

Under the bill, permittees may engage in outdoor activities if they comply with:

1. other provisions in the bill applicable to outdoor activities and any other rules for outdoor dining, including safety or social distancing rules issued by the governor, Department of Economic and Community Development (DECD), and other authorized agencies and entities;
2. any municipal requirements for outdoor dining and liquor sales;
3. existing liquor laws and regulations concerning sales to minors, serving intoxicated people, and hours of liquor sales; and
4. any rules limiting liquor sales to customers who consume food on-premises.

The bill prohibits outdoor consumer bars and limits live entertainment. Under the bill, outdoor live entertainment is prohibited unless it was previously allowed or the permittee obtains permission

from the municipality and the activity complies with any relevant safety or social distancing requirements, including those issued by the governor, DECD, and other authorized agencies and entities.

Expedited Zone and Regulation Changes

The bill allows, through March 31, 2022, the zoning administrator, chairperson of the zoning commission or PZC, or chief elected official to expedite a public hearing related to certain zone changes or zoning regulation changes. If the individual determines that, to respond to or provide economic recovery from the pandemic, a zone or regulation change is necessary to expand or permit outdoor activities, he or she may place the proposal on the zoning commission or PZC's public hearing agenda. The bill requires the commission to hold a hearing and act on the proposal.

The bill permits the commission to forgo notifying the regional council of government and seeking an advisory opinion from it, if this consultation is normally required (i.e., if it concerns an area within 500 feet of another municipality). Other provisions of existing law, for example FOIA and laws concerning a zoning commission or PZC's procedures, still apply to these zone or regulation changes.

Background

The authorization to operate outdoor dining and retail as an as-of-right accessory use to an existing business was originally granted by EO 7MM (§§ 1-3, May 12, 2020) and extended and modified by:

1. [EO 7WW](#) (§ 3, Jun. 4, 2020);
2. [EO 7ZZ](#) (§ 11, Jun. 16, 2020);
3. [EO 7000](#) (§ 1, Aug. 21, 2020);
4. [EO 9A](#) (Sep. 8, 2020 (generally extended EOs through Nov. 9, 2020));
5. [EO 9K](#) (§ 6, Nov. 5, 2020);
6. [EO 9L](#) (Nov. 9, 2020 (generally extended EOs through Feb. 9, 2021)); and
7. [EO 10A](#) (§ 1, Feb. 8, 2021 (generally extended EOs through Apr. 19, 2021)).

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