

From: [Williams, Joseph](#)
To: [Richard Johnson](#); [rebecca.augur](#)
Cc: [Chudwick, Bruce](#)
Subject: RE: Town Attorney Review - Regs
Date: Monday, February 14, 2022 2:17:05 PM
Attachments: [image004.png](#)
[image001.png](#)

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Richard and Rebecca,

Here are my opinions on the questions posed by Rebecca:

1. Pursuant to Section 182 of Public Act 21-2, can a local regulation place a limit on the number of outdoor dining seats allowed before additional parking is required when the outdoor seating is located on a sidewalk/ pedestrian pathway or in a court, yard open space abutting the restaurant?

In my opinion, yes. I do not read Section 182 of Public Act 21-2 to exempt outdoor dining from any municipal zoning requirements unless explicitly stated in the Public Act. The Public Act is principally concerned with mandating that food and beverage service be permitted to take place outdoors, within the limits set forth therein. Subsection (b) in the Public Act states that outdoor food and beverage service is an accessory use; it is subject to site plan review “to determine conformance with zoning requirements not contemplated by this section”; and the accessory use may not result in the expansion of a nonconforming use.

It is a rule of statutory construction that all parts of a legislative act must be read so as to give effect to them and harmonize them with each other. Applying that rule here, and given the limits established in subsection (b) summarized above, it is clear that the legislature did not intend to override other, generally applicable zoning requirements such as parking unless it did so explicitly in the Public Act. That being the case, the town may continue to apply its parking requirements to the total number of seats that are in service at a restaurant, even if some of them are indoor and some are outdoor. If the town wishes to provide flexibility in the number of outdoor dining seats allowed before additional parking is required, it may do so. Once the threshold number is reached, a restaurant can either add parking or reduce its number of indoor seats commensurate with the increase in outdoor seats in order to comply.

2. Can a local regulation place a limit on the number of outdoor dining seats allowed before additional parking is required when the outdoor seating is located in a parking area?

In my opinion, yes, for the reasons stated above. It is admittedly a closer question when the outdoor seating is located in a parking area. The Public Act provides that outdoor dining shall be permitted on off-street parking spaces “notwithstanding any municipal ordinance or zoning regulation establishing minimum requirements for off-street parking.” Read in context, I view this provision as intending to make it clear that outdoor dining on parking spaces is permitted even if it makes the restaurant nonconforming as to the parking required *for the permitted number of seats*, but not for an expansion thereof. The Public Act makes an exemption for off-street parking only as to this location for outdoor dining, not as to the other two locations. If one were to read the Public Act as waiving all parking requirements for outdoor dining in a parking area, we could not reconcile it with the provisions of subsection (b), summarized above. Otherwise, an extreme situation could occur in which a restaurant

occupies its entire parking area with seating, doubling its number of seats, but contends that there is no minimum parking requirement. I do not read the Public Act as allowing that type of situation.

3. Can a local regulation limit the use of indoor seating areas when the outdoor dining area is open so that only the restaurant's originally permitted number of seats can be in operation at one time, whether indoors or out?

In my opinion, yes, for the reasons stated above. As I noted, this is one of two ways for a restaurant to comply. The other is to add parking.

I have given you my opinions in summary fashion, but I would be happy to discuss them further with Rebecca and the TPZC.

Joe



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From: Richard Johnson <richard.johnson@glastonbury-ct.gov>
Sent: Thursday, February 10, 2022 3:21 PM
To: Chudwick, Bruce <BChudwick@goodwin.com>
Cc: Williams, Joseph <JWilliams@goodwin.com>
Subject: RE: Town Attorney Review - Regs

EXTERNAL EMAIL

Bruce , TP&Z considering at public hearing next Tuesday the 15th.

Richard

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From: Chudwick, Bruce <BChudwick@goodwin.com>
Sent: Thursday, February 10, 2022 3:19 PM
To: Richard Johnson <richard.johnson@glastonbury-ct.gov>
Cc: Williams, Joseph <JWilliams@goodwin.com>
Subject: FW: Town Attorney Review - Regs

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Richard – Joe Williams will review, but checking on the timing for when you need this. Let us know. Thanks.



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From: Richard Johnson <richard.johnson@glastonbury-ct.gov>
Sent: Thursday, February 3, 2022 8:13 AM
To: Chudwick, Bruce <BChudwick@goodwin.com>
Cc: rebecca augur <rebecca.augur@glastonbury-ct.gov>
Subject: FW: Town Attorney Review - Regs

EXTERNAL EMAIL

Bruce, attached is request to review draft zoning reg amendments now under review with TP&Z. Can matt or Joe work with rebecca on this . Thanks

Richard

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From: rebecca augur
Sent: Wednesday, February 2, 2022 2:37 PM
To: Richard Johnson <richard.johnson@glastonbury-ct.gov>
Cc: susan lauzier <susan.lauzier@glastonbury-ct.gov>
Subject: Town Attorney Review - Regs

Please see attached request for review and advice regarding draft zoning reg amendments.

Rebecca Augur, AICP

Director of Planning and Land Use Services
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