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Municipal Support for Local Economies in a Public Health Crisis May Include Regulatory Flexibility.

As businesses scramble to survive in the spring of 2020, trends have emerged locally and across the country. Despite widespread economic pain, many bedrock business categories have responded with new and creative ways to meet consumer and community needs and keep businesses open. Examples include:

- grocery stores that must enforce limits on customer density to allow for social distancing are also working to meet amped up delivery and curb-side pick-up requests;
- restaurants limited to take-out or delivery of prepared meals are looking to sell groceries to consumers and planning to add outdoor seating in the upcoming summer months;
- breweries and other manufacturers are shifting some operations to produce new products such as hand sanitizers, PPE, or products for hospitals; and
- closed retail shops and big box stores are planning for eventual re-openings with enhanced Buy On-Line, Pick-Up in Store ("BOPIS"), or curb-side or near curb-side programs for contactless shopping.

While some of these use changes may occur without change to existing municipal approvals and licenses, others may require additional licenses, use approvals, site plan changes for parking lot and drive aisle redesign, approval for use of sidewalks for operations, and health department or other reviews or approvals.

Examples of business transformations already in place range from the smallest mom and pop store to the largest national chain. The fast food giant Denny's now operates its "Denny's Market" in many areas of the country with "on the spot" drive-thru shopping and free delivery for grocery staples like bread, meats cheese, eggs, and toilet paper. Walgreens is rolling out expanded drive-up options for essential household and wellness items, ordered and paid for online in advance and picked up at participating pharmacy drive-thrus. Michaels arts and crafts stores are combining contactless curbside pickups with returns via UPS Access Point locations. CVS is piloting drone delivery to a large retirement community in Florida.

Locally, with its Beer Hall closed for on-premises consumption, Jack's Abbey in Framingham added take out service, partnering with GrubHub to offer local food delivery, and expanded its retail beer sales operations as a to-go business. Framingham's DeltraPlus switched from manufacturing non-toxic fabric protectors to producing hospital-grade disinfectant. Chelsea based restaurant supply company J.W. Lopes developed a highly subscribed home delivery service to new home-based customers in Eastern Massachusetts called New England Country Mart, providing "curated" weekly produce and provision boxes, with add-ons based on availability and arrangements with local vendors.

Business pivots may require changes in technology, physical space, or licensing. Smaller businesses are challenged to compete with national services that offer premium delivery services, and large box stores with ample adjacent pickup areas as online and curbside demands surge. Businesses need

digital channels for sales and payments, and training of staff on contactless processes.

Some new services have quickly formed to help serve transformed uses, such as Paerpay, developed by Worcester entrepreneur Derek Canton, who worked with the Massachusetts Restaurant Association to introduce a smartphone app for contactless payment platform for restaurants. New activities and ways of doing business may lead to new obligations to obtain approvals and regulatory compliance, and businesses are wise to review carefully and understand up front required licenses, permits, or waivers.

Examples of essential emerging business operations which need clarification from municipalities follow, with notes on how some communities in Massachusetts and elsewhere have begun to address these issues:

Restricted uses, and "change in use restrictions" due to zoning or prior permitting

Zoning bylaws and ordinances, or conditions to permits, may control whether a business may adopt the new use, serve customers, and survive during the COVID-19 crisis. Municipalities should examine what may be done temporarily to allow certain uses without causing businesses to go through drawn out public hearing processes, delays, and expenses, and ask whether there are some uses that merit temporary approval, within some parameters, whether or not conflicting with existing permitting and codes, such as:

- Curbside delivery zones
- Drive up or drive thru aisles
- Changes in use category

Mixed commercial use in certain categories (for example, restaurant and retail, retail and industrial) Zoning typically prohibits uses such as industrial or warehouse within areas zoned for retail, and may limit or have additional regulations for a mix of use classifications. Many localities require special approvals or different licenses for "change in use", even from one "as of right use" to another. For some examples, an increase in big box retail conversions into uses closer to distribution centers could stretch the retail use classification, or a restaurant operating as a grocery store or commercial kitchen might no longer be deemed "restaurant".

In some areas of the country, local governments have enacted emergency zoning changes, such as Little Rock, Arkansas which temporarily changed its zoning ordinances to allow restaurants to serve as grocery stores and food markets. Alexandria, Virginia has suspended enforcement of special use permit conditions that limit hours of operation, deliveries, off-premises alcohol sales, and outdoor sales or dining. The city has also begun to work on temporary and permanent changes to its municipal code related to these activities.

Local governments may consider whether applying a strict requirement to temporary changes needed in response to the current reality, which may result in a public hearing process, and additional delays and expenses to businesses, as indicated, or whether certain changes may be handled in a more expeditious way where appropriate.

One specific example, drive-thru lanes, have long been unpopular in municipal planning and the public. Even where not expressly prohibited, modifications to approved site plans require extensive time and public hearings in many cities and towns. A curb-side pick-up aisle, whether deemed a "drive-thru" or not, may conflict with previously approved site plans, or dedicated fire lanes. In response, the Town of Swampscott is allowing all restaurants to offer curbside pick-up and delivery on a temporary basis. The City of Raleigh, North Carolina has created Temporary Curbside Pickup

Zones, which zones are demarked in about 100 locations in the City for takeout services and other small deliveries. In the current climate, Municipalities should consider whether relaxing these restrictions is appropriate to meet residents' needs and help ensure the businesses survive.

Municipalities may want to examine whether temporary changes could be implemented on an emergency basis by executive order of a mayor, action of the select board, city council order, or by building or health department policy, so that changes can be effected quickly and inexpensively to provide relief to struggling businesses, while also providing the public the peace of mind that the changes are temporary. It should be noted that most town meetings in Massachusetts have been postponed indefinitely. Where zoning bylaws for towns must be approved by town meeting, the Commonwealth may also want to consider whether legislation or an Executive Order by the Governor may assist towns in enacting temporary measures by action of the select board or town manager in lieu of a Town Meeting vote.

Outdoor uses

Zoning may prohibit commercial uses, equipment, and signage on sidewalks or external to a business. Based on its understanding that the outside of structures may afford better social distancing, Alexandria, Virginia is allowing restaurants and retail establishments to conduct business on adjacent sidewalks and parking lots on a temporary basis. Localities should consider implementing streamlined temporary processes to allow for outside seating and parking plan changes to accommodate current realities, such as:

- Sidewalk use for commercial sales
- Outdoor seating for restaurant
- Parking area change to allow ancillary use, and use of unused parking area for operations
- Portable signs (especially for outdoor uses) if otherwise prohibited by the local sign by-law

On a temporary basis, municipalities may consider not just allowing these outside uses, but also whether temporary site plan changes for any of the above items may be accomplished without requiring a public hearing, with or without some level of administrative approval.

Licensing

Existing licensing of a business may not fit a new use. Early on, Boston inspectors blocked grocery sales by some restaurants. Following an initial outcry and assistance by the Massachusetts Restaurant Association, Mayor Marty Walsh recognized the unprecedented time in the community and recently announced Boston's new temporary policy waiving the required Retail Food Permit for the sale of uncooked foods by restaurants. Boston restaurants may now sell grocery items subject to an administratively approved operational plan. Somerville and Arlington also allow restaurants to sell groceries, within certain protocols and parameters. In addition to these sort of policies, cities and towns may also consider:

- Waiving of fees and providing expedited approvals for remodeling or amendments to existing health department licensing to allow additional grocery sales use
- Waiving of fees and providing expedited approvals for any category change for existing licenses such as restaurant, catering, retail/convenience, and take out

Other supports

Cities and towns in conversation with local businesses and municipal professional staff may consider a variety of other creative ideas to buffer against the economic down turn due to the health crisis.

Ideas include creation of delivery/pick-up zones for businesses that do not have their own space to accommodate such areas, waiving of parking fees, changing limits on hours of operation if existing permitting is too restrictive, and opposing gouging by delivery services that hurt restaurants and staff.

As economic pressure mounts, municipalities should consider allowing businesses in their community the needed flexibility to address abrupt changes to traditional operations and needs as a result of social distancing requirements. Such efforts will help businesses have a fair shot to survive, maintain jobs, preserve the economic and tax base to the extent possible, and to help residents access the goods and services they need in a safe manner.

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