

Land Use Planning and Zoning Update:

Arizona Businesses: Know Your (Regulatory) Rights

By Scott D. McDonald, Michael J. Phalen and Scott H. Thomas

Tired of applying for a permit to a city or county and not knowing how long the review will take? Fed up with cities and counties citing additional requirements that cannot be found in the code or statutes, or demanding additional information weeks after an application was submitted? With the passage of Senate Bill 1598 (“SB 1598”), there may be help.

On July 20, 2011, a “Regulatory Bill of Rights” for cities, counties, and county flood control districts (collectively, “municipalities”) went into effect in Arizona.^[i] This “Regulatory Bill of Rights” grants to regulated private parties a series of rights in their dealings with cities, counties, and flood control districts, and will notably change municipal procedures regarding applications for permits and licenses, as well as the conduct of compliance inspections.^[ii] The rights granted by SB 1598 to regulated private parties are very similar to rights already granted such entities in their dealings with most state agencies. Ultimately, SB 1598 will likely impact many businesses in Arizona that are required to obtain any type of license or inspection from municipalities, and will hopefully create a faster, more uniform, and more transparent regulatory process.

This summary will highlight and summarize select provisions of SB 1598 that will likely affect Arizona businesses the most.

Prohibited Acts

Effective immediately, municipalities “shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule, ordinance or code.”^[iii] Additionally, municipalities may not rely on a general grant of authority to impose a licensing requirement or condition unless the authority *specifically authorizes* the requirement or condition. Put simply, municipalities must be able to cite to a specific statute, rule, ordinance or code as the basis for any decision to grant or deny a license, or to impose a condition in a license.

SB 1598 broadly defines ‘licenses’ and ‘licensing decisions’ to include “any municipal permit, certificate, approval, registration, charter or similar form of permission required by law.”^[iv] Although there are some narrow exceptions, SB 1598 will likely impact all applications to municipalities for licenses, permits, development plans, and floodplain use permits.

Licensing Time Frames

For any new ordinance or code requiring a license, a municipality must establish a time frame to either grant or deny the license.^[v] For all existing ordinances requiring a license, municipalities have until December 1, 2012 to establish similar time frames.

Municipalities must also establish a time frame to determine whether an application is “administratively complete” (i.e. the application contains all necessary information). If the

application is not complete, municipalities must give notice within the prescribed time, and specifically identify any deficiencies. If the municipality does not request additional information within the proscribed time, the application will be deemed “administratively complete.” After the application is deemed “administratively complete,” municipalities are allowed *one* request for additional information, unless otherwise agreed upon. The proscribed deadlines are tolled until the municipality receives the requested additional information.

The proscribed deadlines may be extended by mutual agreement. If the municipality fails to approve or deny the licensing application within the established time, the municipality must refund all fees charged.

Denials of Licenses

Effective immediately, if a municipality denies an application for a license, the municipality must (1) identify justification for the denial, referencing the applicable statutes, ordinances, or codes, and (2) explain the applicant’s right to appeal the denial.[\[vi\]](#)

Licensing Process

Effective immediately, upon receiving an application for a license, municipalities must provide to the applicant: (1) a list of all of steps the applicant is required to perform; (2) the applicable licensing time frames; (3) contact information for an individual who can answer questions or provide assistance throughout the application process; (4) the website address that would allow the applicant to electronically communicate with the municipality; and (5) notice that an applicant may receive clarification from the municipality of its interpretation or application of a statute, ordinance, code.[\[vii\]](#)

Complaints and Requests for Clarification

Effective immediately, applicants may make formal complaints that any ordinance, code, or municipality practice does not comply with the requirements imposed by SB 1598.[\[viii\]](#) The municipality *may* review the ordinance, code, or municipal practice, *may* hold hearings regarding the allegations, and *may* make recommendations for changes.

Additionally, persons may request that the municipality clarify its interpretation or application of a statute, ordinance, or code affecting a licensing decision.[\[ix\]](#) The request for clarification must be in writing, identify the applicable statute, code, or ordinance, and state whether the interpretation would affect a specific licensing application.

Municipalities must issue a written clarification within thirty days of receiving the request. If requested by the person requesting clarification, municipalities must also “meet and discuss the municipality’s written explanation.”

Inspections

Beginning July 1, 2012, municipal inspectors or regulators will be required to present photo identification upon entry, “state the purpose of the inspection and the legal authority for conducting the inspection,” disclose any inspection fees, and allow an authorized on-site representative to accompany the inspection.[\[x\]](#) Additionally, municipal inspectors or regulators will be required to provide notice of additional rights, and disclose whether the inspector intends to record any statements, or use statements in the report. Additionally, inspectors will be

required to provide electronically or in writing the rights described above, the applicable contact information, and any rights to appeal.

Conclusion

SB 1598 imposes significant obligations on municipalities, which will need to develop the required notices, timelines, and procedures for licenses and inspections, and train employees accordingly. SB 1598 should also provide Arizona businesses with a more transparent and uniform set of rules concerning applications for licenses, and allow affected individuals the opportunity to seek review of, or request additional clarification regarding, municipal ordinances or practices.

[i] Laws 2011, 1st Reg. Sess., Ch. 312, § 5. [ii] See A.R.S. §§ 9-831 – 9-840, 11-1601 – 11-1610, and 48-3641-3650. [iii] See A.R.S. §§ 9-834, 11-1604, and 48-3644. [iv] A.R.S. §§ 9-831, 11-1601, and 48-3641. [v] A.R.S. §§ 9-835, 11-1605, and 48-3645. [vi] See A.R.S. §§ 9-835(l), 11-1605, and 48-3645. [vii] See A.R.S. §§ 9-836, 11-1606, and 48-3646. [viii] See A.R.S. §§ 9-838, 11-1608, and 48-3648. [ix] See A.R.S. §§ 9-839, 11-1609, and 48-3649. [x] See A.R.S. §§ 9-833, 11-1603, and 48-3643. These rights will not apply to inspections “requested by the regulated person.”



Scott D. McDonald

Associate

sdmcdona@fclaw.com

Tucson

Phone: (520) 879-6827

Fax: (520) 879-6896



Michael J. Phalen

Director

mphalen@fclaw.com

Phoenix

Phone: (602) 916-5415

Fax: (602) 916-5615



Scott H. Thomas

Of Counsel

sthomas@fclaw.com

Phoenix

Phone: (602) 916-5427

Fax: (602) 916-5627

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