

## Practice Tips

### “You Need a Permit for That?” Some Practical Tips for Local Permitting

By Andrew Upton

Local permitting is not for the faint of heart. There are no law school classes on the subject, few relevant continuing legal education courses, and there is little professional literature on the subject. There is often considerable variation in rules and enforcement from agency to agency and from municipality to municipality. Local permitting has few clear guidelines and is fraught with uncertainty, a problem that can be compounded by the fact that the client rarely enters the process with a realistic expectation of the time and costs involved.

This article sets forth a few practice tips, as well as some warnings for the unwary, that may help guide the permit-seeker. Patience and flexibility are key assets as you proceed through the process.

#### **Give the Project Extra Lead Time**

When a government regulator estimates that a permit can issue in a month, add at least three more weeks to your total project timeline. Most government offices are subject to delays due to



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budget-related understaffing, unexpected retirements, occasional inefficiency, and sometimes even holidays that those in the private sector have never heard of. Even more frequently, delays will be attributable to your client's failure to produce the necessary documentation required for the application. Financial information, personal information for corporate officers, and original signatures needed on multiple forms, are frequent causes of delay. Manage the expectations of your client by making him or her aware that the speed, and the cost, of the project depends on his or her ability to timely produce documents needed for the application filing.

### **Work with Your Government Official**

Many government employees work at olive drab metal desks in drafty old buildings, for relatively low pay. Their work environment is not exactly like what you might see in the break room at Google. Therefore, your attitude matters. Be courteous and polite. Work with them to get results. Don't send incomplete forms and expect someone else to proofread your work. Don't call at 4:45 on Friday afternoon and expect someone to spend 30 minutes on the phone with you explaining their process. Be clear and firm in your requests, but if you are overly aggressive, you risk losing the important goodwill of the person in charge of your application.

### **Know What You Need**

A client will often say "I didn't know you needed a permit for that." It is your job to scope out the total range and type of permits your project will need. Restaurants and service stations need numerous permits. Convenience stores and specialty retailers need fewer, but still require filings well in advance of opening. Always ask your point of contact if any additional permits are needed. Inquiring about the permits held by similarly situated businesses can also reveal additional permit needs.

## **Know Your Permits**

Certain permits, like liquor licenses, confer a limited property right and in certain circumstances can be transferred for value. Others, like most food and entertainment licenses, run with the operator and expire by their terms when a new operator takes over. Many permits need to be renewed, either annually or less frequently. Some permits run with the calendar year and expire December 31, and others run for a year from the date of issue. Knowing your permit portfolio and its value, transferability, and renewal obligations is an essential component of both business formation and transactional work.

## **Listen to Your Regulator**

Most government officials you will encounter will have processed and approved more permits and licenses than you will ever see. Listen to their advice on the process. You want to do the easy things like meet application deadlines, submit the correct payments, and submit complete documentation. It is important to have direct, personal contact with the permit-issuing agency because every agency or office handles things differently. If they say not to put your application in a binder – don't bind it no matter what your client or supervising partner says. If they suggest attaching floor plans or photographs, even when those are not required by their rules or suggested in the filing materials, do it. If it makes the application easier for a government employee to process, do it.

## **Limit Your Arguments**

Your main point of contact will likely be a clerk at an agency. His or her job is to help process the paperwork, get the application advertised, scheduled, and heard by an administrative decision maker. If you have a problem with the process, the clerk does not want to hear you quoting *International Shoe* or lecturing them on the anti-discrimination provisions of the federal housing law. This behavior is generally counterproductive. If you have a serious issue, you can always ask to speak to a supervisor or

legal counsel, and you generally have the right to appeal a denial. Patience and cooperation will help you move things along, while browbeating the clerk with your legal knowledge will probably not.

### **Don't Overplay Your Politics**

Most local government employees are aware of the elected officials who oversee them, but are not necessarily beholden to political interests. These employees tend to stay in their positions for a long time, and often enjoy union or civil service protections. Trying to intimidate them by saying you know someone on the City Council is not likely to have much effect. If your project has political support, make sure to include letters from elected officials and have them testify on your behalf. Their testimony in an official capacity will have a greater impact than a perceived political threat.

### **Show Community Support**

There is strength in numbers. Most permitting and licensing hearings are open to the public and there is often a chance for public comment on each application. It is much harder for a regulator to criticize or oppose a project when there are dozens of people in the audience to voice their support. This approach can be especially effective in a small town setting where the audience is likely to contain the friends and neighbors of the board members.

### **Conclusion**

The small business permitting process is about understanding the scope of the permits needed and the permitting process, and working cooperatively with the players involved. The permit-granting authorities, and those who work for them, have enormous discretion in the permitting process. Work with them, talk with them, and respect them, and your path to approval will be a smoother and quicker one. ■