

2018 LICENSING UPDATES – food trucks and business licensing

SB 158 – Municipal Business Licensing

BACKGROUND and INTENT: This bill further clarifies last year’s SB 81 (Local Government Licensing Amendments). SB 81 modified a city or county’s authority to license home-based businesses. Post-SB 81, the law no longer allowed cities to license a business for the purpose of revenue. Instead, cities were only permitted to impose fees on businesses to cover the cost of regulation. By doing so, SB 81 required cities to define the offsite impacts of home-based businesses in order to collect a fee for a license. SB 158 does not fundamentally change what SB 81 did last year.

WHAT IT DOES: Cities may still charge business licensing fees for a home-based business if the business creates offsite impacts that materially exceed the primary residential use. Cities may not get around this by charging other types of fees for home-based business. They may also charge an administrative fee for issuing a license to a home-based business owner who requests a license but is otherwise exempt from a fee. The bill also requires municipalities to notify home-based business owners that they may be exempt from licensing fee “in any communication with the owner.” This puts the burden on cities to communicate to home-based business owners that they are exempt from the fee.

PRACTICE TIPS: Review your home occupation ordinance and the home-based businesses licensed in your city to ensure your city is only charging home-based businesses for the cost of regulation, and that businesses that do not have offsite impacts are not charged a fee. Some cities do not require home-based businesses that do not have offsite impacts to be licensed. If your city requires every business to be licensed, be aware that you may not be able to charge a fee for each license you issue. However, if you do not require a business to be licensed but that business still requests the city to issue one, you may charge a reasonable administrative fee.

SB 167 – Food Truck Regulation Amendments

BACKGROUND and INTENT: This bill further clarifies last year’s SB 250, which implemented the Food Truck Licensing and Regulation Act. SB 250 required food truck licensing reciprocity between jurisdictions so long as the food truck met health inspection and fire safety requirements. It also prohibited a city from preventing a food truck from operating within a certain distance of a restaurant, and disallowed cities from requiring background checks on employees. SB 167 was requested by the Libertas Institute based on allegations that some cities are still out of compliance with SB 250, as well as charging astronomical fees for reciprocal licenses and placing excessive burdens on food truck operators by requiring them to submit site plans and other land use application materials before issuing a business license. SB 167 is intended to clarify that cities may not require a food truck operator to go through a land use application process to get a business license.

WHAT IT DOES: Cities and counties may (and should) still require food truck operators to comply with all local land use and zoning regulations. They may (and should) promulgate local laws and regulations that govern the what/where/when of food truck operation. Cities may also still charge a reasonable fee to cover the regulatory cost of issuing a reciprocal license. Be aware that the first version of this legislation completely removed the city’s ability to charge ANY fee for reciprocal licenses, and we fought to continue to permit cities to cover their costs. If cities charge fees that are equal to or more than original business licenses, we can expect to see this right removed by legislation next year. However, a city or county **may not**

- Require a fee for each food truck employee;
- Require the food truck to demonstrate how it will comply with land use or zoning at the time it applies for a business license;
- Prohibit food trucks in a zone where other food establishments are allowed;
- Restrict the number of days per year a truck can operate;
- Require a site plan for each location the food truck operates if they permit operation in the public ROW; or
- Require a site plan for private property where a truck operates less than 10 hours per week.

PRACTICE TIPS: If you have an ordinance governing food trucks, review it to ensure that it does not regulate in the areas listed above. If you don’t have a food truck ordinance, start working on one. ULCT is working on a “best practices” document that we hope to have ready for distribution in the next few weeks. Also, consider developing a “one-pager” on your local rules and regulations for food trucks and posting it on your website.