

Land Use And Zoning Considerations For New And Start-Up Restaurants

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If you are an entrepreneur in the process of opening a new restaurant, you know how crucial location is for your success. While choosing a location may appear to be simple, it is the unanticipated land use and zoning hurdles that can stand in your way. These land use and zoning obstacles can not only impact whether you can open a restaurant in your desired location, but may also increase several start-up costs in your business plan.

However, by conducting proper land use and zoning due diligence during the early phases of your hunt for a location, you can manage and minimize any potential surprises, increased costs or unanticipated delays toward opening your new restaurant. While some restaurant locations will be clearly permitted, for example if you are buying an existing restaurant location or opening within a regional shopping mall, more issues can arise when your intent is to open an entirely new restaurant at an entirely new location.

Municipalities: Land Use and Zoning Ordinances

As a brief primer on land use and zoning, every municipality generally has local land use and zoning Ordinances that specifically layout, identify and designate zone districts by boundary lines within the municipality. Each zone district will specify, with particularity, uses that are permitted in that zone, and each municipality's zoning will be particularly tailored and suited to the environment of each zone, taking into consideration other surrounding similar buildings and uses. A municipality will generally develop the zones as it deems appropriate in accordance with an overall master development plan. The master development plan identifies the "vision" for the municipality in terms of the types of

development uses that it desires or not, and the density or concentration of development that the municipality wants in each zone.

For example, there will typically be zones for business and retail uses, single family residential, multi-family residential, offices, industrial, commercial or some combination and mixed uses. You can anticipate that not all zones will allow restaurants and, therefore, you must be diligent in your search for a location.

'Bulk' Standards Must be Met

Even if a zone specifies that a restaurant use is a permitted use, the inquiry should not end there. Land use and zoning Ordinances also provide for what is commonly referred to as “bulk” standards, which are requirements that an intended use must be able to satisfy on the property. For example, these “bulk” standards will establish requirements for set-backs for structures, the number of required parking spaces, loading spaces, lighting, signage, and the like. These zoning standards are in addition to construction code requirements, which deal with such items as ingress, egress, seating capacity, and ADA requirements. You will need to familiarize yourself with these “bulk” zoning requirements during the planning and design of your restaurant, as these “bulk” zoning standards could also trip you up during the early planning phase of your location. If one or more of the “bulk” zoning requirements are not complied with or satisfied, you could find yourself required to apply for variance relief through the municipality’s planning and zoning board.

Protecting Yourself from Surprises

How should you protect yourself from unknown or unanticipated land use and zoning issues? If you are looking to lease premises or purchase a property, you should always consider including within the contract documents a specific land use and zoning contingency. Such a contingency will typically allow you a certain period of time to apply for and obtain confirmation from the municipality that your intended restaurant use will be allowed and will satisfy bulk standards. For any change of use or new proposed use within a municipality, land use and zoning Ordinances will contain provisions that require obtaining a zoning permit or site plan/tenancy approvals before obtaining a certificate of occupancy.

During your prospecting for a location, you may want to consider speaking with the construction and zoning department in the municipality to open a dialogue about the intended restaurant use. Most construction and zoning departments are extremely helpful in identifying potential issues as well as vital information about the municipality's zoning confirmation process. Each municipality may have its own process or procedure for confirming whether the restaurant will be allowed at the location you have identified.

Zoning Permits

Most municipalities require a form or application to be filed by a new business, including restaurants, to confirm that the intended use is permitted in the zone, generally referred to as a zoning permit or business license application. Some zoning permit forms require that a survey of the exterior of the property also be submitted for review. Once filed with the municipality, the zoning official will review the information submitted on the application and the survey, and will make an initial determination of whether the restaurant is a permitted use and whether the property satisfies “bulk” zoning standards.

If satisfied, a zoning permit will be approved, and you can be certain that the restaurant will be allowed at the location. If the use or “bulk” standards are not satisfied, then the zoning permit will be denied, and you will need to consider whether to pursue variance relief from the planning and zoning board. Variance relief will require a more formal zoning application, which may include hiring an engineer and/or architect to prepare site plan and architectural drawings, and an appearance before the planning and zoning board to obtain approval. The process for variance and site plan review can be costly and cause significant delay in the opening of the restaurant. As you plan for the location and opening of your restaurant, you need to stay aware of these issues.

New restaurant entrepreneurs are advised to seek appropriate land use and zoning counsel from a competent land use and zoning attorney. By conducting proper land use and zoning due diligence in the beginning stages of planning a location for the restaurant, you will increase the chances of not only becoming a successful restaurant but also minimizing unforeseen costs and risks.

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