

Overview of SBI 598 – Regulatory Bill of Rights – and a Framework for Implementation

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Introduction:

- Introduced by Arizona sand and gravel industry – displeasure at what they felt were unreasonable enforcement and permitting delays and irregularities with a Valley city
- Passed by the Arizona Legislature in the 2011 session – its intent is to ensure fair and open regulation by municipalities (i.e. cities and counties).
- Principally two parts:
 - Inspections (**Effective date June 30, 2012**)
 - Regulatory Bill of Rights – Licensing time frames and compliance (**Effective December 31, 2012**).
- Also, one element specific to a municipal General Plan (Regional Plan) regarding the need to map aggregates within a city or county.

Some aspects of SBI 598 are sensible:

Inspections:

- Person is entitled to receive information and notice regarding inspections
- Inspectors must have photo identification.
- Applies only to inspections necessary for the issuance of a license (i.e. not to a code compliance/enforcement visit to a property).
- New language regarding inspections has already been added to all CD permits for which inspections are required.

Regulatory Bill of Rights:

- Municipalities must only base an approval decision (license and licensing) on an existing rule, ordinance, or code.
- Municipalities must avoid duplication of codes that do not enhance regulatory clarity, and shall avoid dual permitting as much as possible.
- Licenses may be approved or denied within a predetermined period of time.
- A person is entitled to written notice of denial of a license application including a reference to the applicable code section on which the denial is based.
- A person is entitled to receive information on the license application process when making an application.
- A directory of all municipal codes must be provided on the municipal website, and all municipal codes must be available for inspection.

Summary of SBI 598 (Regulatory Bill of Rights):

Important Definitions:

- **License** – “Includes the whole or part of any municipal permit, certificate, approval, registration, charter or similar form of permission required by law”.
- **Licensing** – “Includes the municipal process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license”.

Note:

This therefore applies to all permits, approvals, certificates, etc. issued by the City in all Divisions – building permits, certificate of occupancy, zone change approvals, final plats, sign permits, solid waste permits, right-of-way permits, etc. It EXCLUDES liquor licenses and off-track betting licenses because these are not “municipal permits” – the city is only a recommending body to the state. It also **does not apply to** licenses issued within 7 working days (e.g. currently a Temporary Business Sign Permit) or that expire within 21 working days after issuance.

9-834 Prohibited Acts by Municipalities:

- A city shall base a licensing decision in whole or in part on a requirement or condition that is specifically authorized by statute, rule, ordinance or code. A general grant of authority does not constitute a basis for imposing a licensing requirement or condition unless the authority specifically authorizes it.
- The city shall avoid duplication of other laws that do not enhance regulatory clarity and shall avoid dual permitting to the maximum extent possible.

9-835 Licensing Time Frames, etc.:

- Requirement for an overall time frame for all licenses issued by the city to include:
 - Administrative completeness review
 - Substantive review time frame.
- Deadline for compliance – **December 31, 2012**
- Guidelines are provided on how to establish time frames – a city must consider, for example, available resources, complexity of the license, impact on health and safety, etc.

Administrative Completeness Review:

- The **city** shall issue a written notice of administrative completeness or deficiency within the defined administrative review time frame. Multiple departments in a city (e.g. those in the IDS process) may each provide coordinated notice of completeness or deficiency.

Notes:

(1) This requirement implies a coordinated notice of completeness in the event multiple city divisions/sections/programs are involved in the review. Either way, whether it's one program responding or a Single Point of Contact (SPOC) responding on behalf of other reviewers, a response must be submitted to the applicant within the time frame. For all development projects that are reviewed at an IDS (Inter Divisional Staff) meeting, the response to the applicant will be funneled through the project SPOC. *The longest administrative review time frame from a program may therefore, determine the final administrative time frame for a license or permit.* Each Division as needed may, therefore, need to establish a SPOC.

(2) Also be aware that when determining the length of time for administrative/ completeness review – each program reviewer should determine how long this is and what is involved – consideration needs to be given to the need for more than one resubmittal of the application in response to completeness comments.

- If an application is incomplete or deficient:
 - A comprehensive list of deficiencies must be provided to the applicant within the established administrative review time frame
 - The time clock is stopped until the missing/corrected information is resubmitted to the city.
 - A city may issue additional notice of administrative completeness or deficiency, within the total time dedicated to administrative review.
 - Multiple departments in a city (e.g. those in the IDS process) may each provide notice of completeness or deficiency – coordinated through the SPOC.
 - **Important** – if the notice of administrative deficiency is not issued within the established time frame the application is considered complete.
 - If timely notice of deficiencies is issued, the application is not deemed complete until all requested information has been submitted.

Notes:

- (1) Acceptance of completeness of a submittal is no guarantee of its approval.
- (2) An application may be denied within the time frame if it is not complete.
- (3) Issue – we will need to develop comprehensive check lists for each license (permit or process) against which the application is reviewed to determine completeness.

Substantive Review:

- During the substantive review the **city** may only make one (1) comprehensive written request for additional information.
- Multiple departments in a city (e.g. those in the IDS process) may each provide a coordinated notice of a request for additional information.

Note: Again, as referred to above, because the “city” as well as each division/section/program must respond to the applicant within the established time frame, at least for all IDS projects, these will be provided to the applicant through the project SPOC. Other city divisions may have to establish their own SPOC if multiple reviewers are involved.

- The city and the applicant may mutually agree in writing to allow the city to submit supplemental requests for information. This provision may be added to each permit/process application form.
- The time clock is stopped until the request for supplemental information is resubmitted to the city.
- By mutual agreement the city and the applicant may extend the substantive review time frame (and also therefore the overall time frame). Extension of the substantive review time frame may not exceed 25% of the overall time frame. (See below.)

Administrative Review	Substantive Review	Overall Time Frame	25% of Overall Time Frame	Extended Overall Time Frame
0 – 10 days	0 - 90 days	100 days	25 days	90 + 25 days = 115 days

- City shall issue a written notice to the applicant granting or denying the license within the overall time frame (unless an extension has been mutually agreed upon). A denied application must include:
 - Justification for the denial with references to applicable codes, regulations or standards
 - Explanation of applicant’s right to appeal (includes deadline to file, city contact person, etc.).
- **Important** – if the notice granting or denying the license is not issued within the overall time frame or the agreed time frame extension, the city shall refund all fees, and shall excuse the payment of as yet unpaid fees. The refund shall be made within 30 working days after expiration of the overall time frame or the agreed time frame extension without the applicant having to ask for a refund. Refund must come from the fund in which the application fees were originally deposited. **Note** - the city shall continue to process the application, and there is no longer any time frame within which it must be completed.

Notes: If an application is denied, a citation to the relevant City Code section must be provided that was the cause of the denial. May be difficult if an application is denied because staff has run out of time to complete it!

- Administrative review and substantive review time frame requirements **do not apply to** licenses issued within 7 working days (e.g. currently a Temporary Business Sign Permit, Minor Improvement Permit, or Parking Lot Maintenance Permit) or that expire within 21 working days after issuance.

Note: For applications that require final approval by the Planning and Zoning Commission (e.g. a CUP) or the City Council (e.g. a zone change, plan amendment), the substantive review time frame will be put on hold from the time the hearing is noticed (on site and in newspaper) until 30 days after final Council action, at which time the substantive review time frame will continue. Refer to the model used by the City of Phoenix on Page 9. [Note – we can and should refine the specifics of this idea to best suit our practice and needs.]

9-836 License Application Process:

- The following information must be provided with the application for all licenses:
 - List of steps for that license (flow diagram or narrative)
 - Licensing time frames – administrative, substantive, and overall
 - Contact information for city staff person (presumably SPOC?)
 - Website and e-mail information
 - Notice that an applicant may receive clarification from the city of how it is interpreting a code, regulation, or standard

9-837 Directory of Documents:

- City shall publish or place on website a directory summarizing the subject matter of all codes, standards, and substantive policy statements (e.g. the Regional Plan or Water Policy)
- All of these shall be open to public inspection at the city offices or city website.

Note:

For all City Code Titles a short summary of each title will need to be created and placed on the City website with the City Code.

9-838 Complaints; Governing Body Review:

- The City Council may receive complaints on, review, hold hearings, and may recommend changes to City codes, regulations, and substantive policy statements.

9-839 Clarification of Interpretation:

- A person may in writing request clarification from the city of its interpretation or application of a code, regulation, etc.
- City may meet with the person making this request for clarification, and shall respond in writing within 30 days of receipt of the request.
- City may change the interpretation in writing if there is a change in the law (e.g. changes in legislation) that was applicable at the time the interpretation or clarification was made.

9-840 Exemptions:

- Does not apply to a city code, regulation, or substantive policy statement that relates only to:
 - the internal management of the city with no affect on procedural or substantive rights or duties of the public;
 - the physical servicing, maintenance, or care of the city's owned or operated facilities or property;
 - inmates or committed youth, correctional or detention facility under the jurisdiction of the city; or
 - a city contract.

Implementation Ideas and Notes:

1. Regional Plan – be aware of the requirements for aggregates that must be included in the Regional Plan as well as the need to map the locations where aggregates are found.
2. Within the IDS framework, the SPOC has a critical role relative to the administrative and substantive review process – all comments and corrections must be funneled to and from the applicant through the SPOC.
3. Each program or sub-program/reviewing group must establish their own rules and requirements for administrative review and substantive review as they will vary from one license (permit/process type) to another, e.g. time frames and administrative requirements for a sign permit will be very different from a major site plan review.
4. Once each program or sub-program/reviewing group has established these time frames, they will be coordinated within the framework of an overall time frame for each license type.
5. Each Division will need to develop a comprehensive list of all permits and processes, who manages/is responsible for them, the proposed administrative review and substantive review time frames, and check lists to help with administrative review.
6. Each Division must check that for all license (permit/process) application forms that the requirements of Section 9-836 are included – includes list of steps, time frames, contact information, etc.
7. Each Division must create a “directory of documents” to be placed on the City’s website in the City Code section - coordinate with Liz Burke and/or Kim Ott.
8. It has been determined that SB1598 applies to each level of an approval in a complex case, i.e. if a project requires site plan review and a building permit the requirements for administrative review and substantive review will apply to each of these processes and permits.
9. Applications that require a legislative decision to be made by the Planning and Zoning Commission (such as approval of a Conditional Use Permit) and the City Council (e.g. a Zoning Map amendment (zone change) or Regional Plan amendment), compliance with the requirements of SB1598 is not required as the final decision to approve or deny is not made by staff, but by the legislative body. However, consistent with the Bill, staff will post administrative and substantive review time frames for the time that an application is under review by staff for completeness, and within which a recommendation is formulated and presented in a report to either the Planning and Zoning Commission or the City Council.
10. For major projects for which site plan review approval is needed, for example Juniper Point, the City is able to ask an applicant to waive their rights under SB1598, similar to a Prop 207 waiver, as this would be in the best interest of the applicant to do so.

Summary of Implications:

1. Compliance with SB 1598 is not optional! December 31, 2012 is the deadline for “licenses”.
2. It applies to all “licenses” – “any permit, certificate, approval, registration, charter or similar form of permission required by law”.
3. A person is entitled to receive information on the license application process when making an application.
4. If an application is not reviewed for completeness within the administrative time frame it is deemed complete.
5. If an application is not reviewed within the substantive time frame (or extended time frame), all fees are returned to the applicant, and the review continues.
6. A denial is required to be based on a specific code citation from the City Code.
7. No duplication of codes and minimize dual permitting.
8. Directory of documents on the City webpage.