

# Licensing

What Works, What Doesn't and Why

Jerry Mason, September 2017

- Little that the state licenses ...
- Alcoholic beverage sales – interface with state and county
- Businesses in general
- Certain trades/skills
- Dogs (cats?)/kennels
- Door-to-door sales
- Restaurants?, purveyors of milk and other foodstuffs
- Adult businesses

## **What Do We License?**

- Protect public from incompetence/malignance
- Provide accountability – attempt to assure honest conduct
- Protect public safety
- Limit entry to markets or professions – sometimes industry-inspired
- Limit hit-and-run marketing
- Ties to zoning compliance
- Enforcement
- Connection to water/wastewater compliance
- Keep track of finances – related to taxes or fees – short-term rentals

## **Purposes of Licensing (in General)**

- License (some degree of regulation) - distinguished from registration
- Charging a license fee (Idaho Code §63-1311)
- Not a revenue source – only recover costs of regulation
- How establish a viable fee amount?
  - Funds will usually go to the general fund
  - Consider fees in light of costs, even if funds go into general fund
  - How will the public receive it?
  - Is it proportionate to your effort?

## **Licensing – Revenue Connection**

- Normal practices
  - Pricing by gender
  - Pricing by reproductive status
  - Non-compliance with court penalties
- Success ratio – chasing or accepting non-compliance
- An alternative approach for consideration
  - Don't require license
  - Do require rabies vaccination
  - Do require collar and address tag
  - Financial penalty for non-compliance (essentially a user fee)

## Thoughts About Dog Licensing

- Purpose(s) to be achieved
  - Knowing where they are
  - Compliance with specific requirements (reporting, wastewater, fire regs)
  - Hazardous materials
- Consequences of non-compliance
- Enforcement tools employed
  - Voluntary compliance
  - Reports of non-licensure
  - Active search for non-compliance
- Is non-compliance connected to availability of utilities?
- Home occupations – active or passive enforcement
- We're licensed by the city ...
- What aspects of existence would trigger revocation?

## General Business Licensing

- Interface with state and county licensing – in that order
- Original license needs council OK, renewal can be administrative
- Premises to be licensed – not just business, physical premises
- Grounds for denial must be in local ordinance
  - Specifics strengthen position
  - Let licensee know if troubles lie ahead
- Need to provide due process if contemplate denial (more, later)
  - Must provide notice of ordinance violations
  - Must provide opportunity to be heard
  - Decision by disinterested decision-makers

## Alcohol Beverage Licensing

- Identify your purpose(s)
- Do you have effective methods to achieve?  
Will that continue?
- Resources to follow-up on violations?
- Competence in the field?
- Examine licensing that has been in place for years without change

## **Licensing Trades or Professions**



- What harm is to be prevented?
- Can you prohibit such businesses? (limits per First Amendment)
- Do you have the capabilities your regulations might imply?
- Legitimate concerns often run into 1<sup>st</sup> Amendment
- Be aware of Reed v. City of Gilbert (panhandling, sign regulations)

## Traveling Salespeople

- Restaurants
- Milk purveyors (farmer's markets?)
- Adult businesses/escort services
- Pawnbrokers/secondhand dealers
- Taxi business
- Private security business
- Obscenity activists
- Tree service working in the public right of way

## **Licensing Certain Businesses**

- Treatment by zoning ordinance?
  - Special use permit
  - Administrative permit (conditions in ordinance)
- Licensing of occupations
- Tax collection if activity is subject to local tax
- Short-term rentals
  - Can't be prohibited city-wide
  - Must be treated as residential use
  - Cannot regulate online marketplaces

## Home Occupations

- License or franchise or not at all? (I.C. §50-329)
- Who should get to use public streets for their business?
  - Public utilities – essential (small cell issues)
  - One-time users – fiber optic cable
  - Street fairs
  - Sidewalk cafes/merchandise display
  - Seasonal or perpetual?
- How is permission granted? Council or administrative
- Too much – impair r/w use?
- Balance among competitors – treating all alike?

## **Doing Business on Public Lands/R/W**

- Criteria for licensing
  - State law source
  - Local ordinance source (or combined)
- Creating a record of information to be relied upon
- Communicating with all interested parties
- Maintaining records – including verbatim recording
- Keeping written documentation
- Explaining decision – Why? Law? Facts?
- Chart roadmap with city attorney

**Approval/Denial of Any License**

- Can a license be revoked?
- What criteria or standards?
- Who makes decision? Mayor, council, staff (clerk, police chief)
- What process is invoked?
  - Identification of standards
  - Notice and an opportunity to be heard
  - Right to present and rebut evidence
  - Written decision and statements of reasons
  - Written/recorded history of all proceedings

## Revocation of License

- Money considerations
- Authority to grant licenses
- Policing license holders (licensed by the city as a “seal of approval)
- Alternatives to revocation of license
- Zoning compliance
- Meeting utility use requirements

**Licensing Aspects Not Resolved**