Zoning compliance

How to ensure compliance with local codes and regulations

INTERVIEWED BY ROGER VOZAR

When it comes to zoning and land use regulations, things are not always as they appear. You may want to move into a building that housed a similar operation and sign a lease, only to find that the prior use had been grandfathered.

"There are all kinds of things out there that are not necessarily apparent that you need to check out before you do anything," says Catherine A. Cunningham, a director at Kegler, Brown, Hill & Ritter. "One of the unique features of zoning is that it is not a state law, it's a local law under the police powers of the local government. Every local government has its own rules. They have some commonality in how they do things, but the rules and regulations that you would be subject to are unique to the jurisdiction where the property is located."

Smart Business spoke with Cunningham about the importance of reviewing local ordinances and regulations when considering a business site.

Do companies neglect to consider local ordinances and regulations when looking at potential locations?
It sometimes happens that way. Companies should consider all local ordinances and regulations to make sure that when they choose a location, they are able to do all the operations that they intend at that location.

Normally, most jurisdictions require that if you are constructing a new building, changing a use, or expanding an existing facility that you get a certificate of zoning compliance or zoning clearance from the local government to ensure that you are in compliance before you get too invested in the project.

What common mistakes do businesses make when choosing a location?
They might choose a location where the zoning doesn't permit what they do, and sometimes they move to a location and find out they can't expand or the building had a prior zoning violation that they'll inherit.

Part of the due diligence, anytime you're going to construct, lease or buy, is to check to make sure that what you want to do and the way you want to use the property are permitted under the current zoning law.

Do companies sign leases before realizing they have a zoning or regulation issue?
That happens more often than it should, in my view. Very often a business is dealing with someone it's leasing from who is assuring its that it's OK. Sometimes the company just makes a call to a government authority and talks to somebody, assuming that's an adequate approval, when really what you need to do is to file an application and be sure that the governmental authority has had adequate time to review all of your information and make an approval.

Often it appears, or it is assumed, that a project or proposed use of property is in compliance with zoning, but then, when the government understands the exact nature of the project or operation, it may find it doesn't comply with local zoning. Then companies can be prohibited from using the property or from making the expansion or adding the equipment that they think they need in their operations.

In many cases, businesses that have manufacturing facilities, hazardous materials or other special uses, such as outside storage, may trigger special permits from the local government regulator. A lot of times those businesses aren't aware those permits are required, and sometimes they don't qualify for the permits and can't use that location.

Once you identify a property you want to look into, it's critical to contact the local government or legal counsel to make a determination of how the property is zoned, whether you can use it the way you intend, and to try to get a certificate of zoning compliance or authority to use it that way so you're cleared before leasing or buying a building. ●

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