

Don't Mess With Texas ... Or At Least the Attorneys that Attended the 2017 ICSC Legal Conference

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Practice Area: Real Estate & Retail Real Estate

The 2017 ICSC Legal Conference was held in San Antonio, Texas and (as usual) both the topics addressed and accompanying discussions did not disappoint. From year to year many of the topics remain the same. However, there are always a number of hot issues that garner a significant amount of attention. The following is a summary of the hottest issues that were discussed at more than one session at the conference.

Restaurant and Entertainment Leasing Issues

The tenant mix at shopping centers has been undergoing a dramatic change and no change is more significant than the shift to restaurant and entertainment uses. Restaurant uses have changed from food court options to high end dining, brew pubs and other dining concepts such as food halls, while entertainment options range from movie theaters to bowling alleys to miniature golf and amusement parks. These "new" uses for shopping centers bring with them a unique set of legal issues.

Most restaurant concepts and many entertainment venues require the sale of alcohol to operate. The sale and consumption of alcohol in centers is a much larger issue than just licensing with the local municipality. Security is always a concern warranting careful consideration and negotiation as it must be determined who is responsible and how much landlord oversight there will be. A growing trend is the establishment of a guest code of conduct which tenants are being required to enforce. Signage is also affected as a security issue because such signage may be required to establish boundaries for alcohol consumption and other notices required by law.

Other trends in restaurant leases include attaching menus to the lease and requiring landlord consent prior to menu changes. This allows the landlord to control a diverse restaurant tenant mix. Many landlords are also requiring more frequent financial reporting in order to be proactive in addressing any restaurant financial performance issues.

Outparcel Development

With the improvement of the overall economy, development of all sorts has increased and outparcel development in particular received increased attention at the conference. A significant amount of time was focused on local government requirements for outparcel development. Growing trends with regard to municipal requirements on outparcel development include:

- Increased use of and more higher end green space and related landscaping requirements. Gone are the days of simply planting a few trees or bushes in the parking lot. Landscaping plans are now highly sophisticated and potentially very expensive in the case of hiding a drive-thru or trash collection area. Green space is also often required.
- Impact fees continue to be an important revenue generator for local municipalities.
- A drive-thru will usually require a conditional use permit which will often lead to specific aesthetic requirements.
- Signage is becoming heavily regulated and enough signage may not be available to satisfy potential operators.

Redevelopment Issues

Redevelopment projects were the subject of many sessions during the conference. Stay tuned to our next *Legal Update* which will focus on items that are often missed on the redevelopment "checklist".

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