

**Minutes of the Veneta City Council
Work Session
April 14, 2014**

Present: Sandra Larson, Thomas Cotter, Victoria Hedenstrom, and Thomas Laing

Absent: Brittany Boothe

Others: Shauna Hartz, City Administrator Pro Tem & Finance Director/City Recorder; Kay Bork, Community Development Director; Lisa Garbett, Associate Planner; Kyle Schauer, Public Works Director; Katie Babits, Management Analyst; Carrie Connelly, Legal Counsel; Darci Henneman, Assistant City Recorder, and Michelle Ossowski, Fern Ridge Review

CALL TO ORDER

Mayor Sandra Larson called the Veneta City Council Work Session to order at 6:01 p.m.

1. Update on MMD Rules

a. Temporary Rules Adopted April 1, 2014

Bork said hopefully the information she provided at this Work Session will answer some questions the Council had from the last meeting.

Mayor Larson said the information provided was well organized and answered many of her questions.

Regarding Temporary Rules, Ms. Connelly said her interpretation of the Oregon Health Authority (OHA) rules is that OHA has up to 180 days to make any changes after written comment is received, public hearings are held, and it evaluates how the program plays out in the interim. She said OHA can adopt additions to the moratoriums on MMDs; things like "tamper proof containers", etc.

In response to questions from Mayor Larson, Ms. Connelly said OHA is regulating "edible" under packaging rules.

Bork said she couldn't find when the 180 days expires but she thought the date starts counting from March 3, 2014.

Ms. Connelly said the moratorium would expire in six months or by the end of September - beginning of October.

2. Place Regulations - Location of Dispensaries

a. How Exclusion Areas are Measured per Oregon Administrative Rules
i. Distance From Schools

Bork said staff defined "real property" as "the boundary of the property".

Ms. Connelly said in her legal opinion "boundary line starts at the property line".

In response to a question from Thomas Cotter, Ms. Connelly said you can't run afoul of the law if you measure 1000 from the leased premises boundary line. If you want that area to be larger, the language indicates you can measure from the property line. She said we can be less inclusive and measure 1000 ft. from the building. She said OHA will provide a map that includes the existing schools.

In response to a question from Mayor Larson, Bork said the map she created is identical to OHA's map.

Ms. Connelly said staff will be able to inform OHA about any future MMDs, she said the Council may never need to make those determinations on its own and she suggested using the OHA map as it's updated.

3. Review MMD Exclusion Area Maps

- a. Map 1: Exclusion Areas per State Regulations
- b. Map 2: Potential Exclusion Areas – 1000 foot Buffer from Parks
- c. Map 3: Exclusion Areas Combined (Map 1 & 2)

In response to a question from Thomas Laing, Bork said map one identified the 1000 ft. school exclusion areas. Mr. Schlageter's potential MMD site shows as the black circle on map three.

Bork said map two shows the additional 1000 ft. exclusion to include parks if the Council adopts that regulation and map three is a combination of maps one and two which shows the existing regulations and the proposed park exclusion with several areas overlapping.

In response to a question from Mayor Larson, Bork said everything within the black circle is in the exclusion zone.

Ms. Connelly said referencing the overlapping areas; any future MMDs would be prohibited because it's too close to the school and it's too close to an existing MMD.

Bork continued to review the maps and said the only available locations for future MMDs are in the Cornerstone area, along Highway 126, some small lots on Jeans Rd., and on W. Broadway.

In response to a question from Thomas Laing, Ms. Connelly said the BiMart store is not part of the prohibitions and she doesn't know if OHA will consider existing pharmacies as MMDs. She said however, BiMart is in the permitted zone.

- d. Proposed Local Regulations
 - i. Distance from Parks

In response to questions from Calvin Kenney, Bork said park land must be dedicated before it's included in the park exclusion area. She said once the land is dedicated it will be considered in the park inventory.

Calvin Kenney is concerned there may be potential park land yet to be dedicated within an area that allows MMDs.

In response to a question from James Eagle Eye, Bork said all park land shown on the map has been dedicated as City owned land. She said she's not sure that if an MMD went in first, the City couldn't have a park there.

Ms. Connelly said legal counsel discussed adding language that would grandfather in existing MMDs with regard to child care facilities but not parks. She said that would of course be a Council choice but she would recommend the City accept dedicated park property near an MMD but the MMD wouldn't be subject to that exclusion.

ii. Distance From Other Dispensaries/Facilities

In response to questions from Victoria Hedenstrom, Bork said the circles can overlap but only in commercial properties areas. She said Mr. Schlageter's MMD is pending and so another MMD could not locate within that circle.

4. Review Definition of Mixed Use and potential regulations

a. Mixed Use Zoning

In response to a question from Mayor Larson, Bork said if the park exclusion is adopted, it pretty much encompasses all of the mixed used land except for a parcel on 8th and Broadway.

In response to questions from Thomas Cotter, Bork said there are three mixed use zones that would allow MMDs. Industrial/Commercial in Cornerstone and Broadway/Commercial on W. Broadway allows a limited type of Residential/Commercial (a two story building with residential on the second floor and commercial on the first floor). Bork said Ms. Connelly will explain in the rules whether or not it was clear if we could allow dispensaries in mixed use zones or we could exclude them or somehow regulate MMDs in mixed use zones.

Ms. Connelly said current legislature states MMDs will be allowed in mixed use, commercial and industrial zones. She said does that mean we allow them in industrial but prohibit them from Commercial and mixed use? She said the safest way to move forward is to assume that the legislation requires you to allow MMDs in all three zones, so if you didn't want residential near a MMD you would eliminate mixed use zones, however, that is a bad planning tactic.

Thomas Cotter said our largest mixed use zone is our blighted area.

Thomas Cotter said it has always been planned to develop the Broadway area and make it automobile, bicycle, and pedestrian friendly. He said he felt people living in a commercial developed area or mixed use with commercial will likely not be offended by an MMD.

Ms. Connelly said she is not advising the Council prohibit MMDs from mixed use areas but it is an option.

Bork said if the Council agrees, including the buffer around all city parks, will eliminate a portion of that land being developed.

Ms. Connelly said she is just informing the Council of what other cities, that adopted moratoriums, are talking about. She said these are just options and not recommendations.

Thomas Cotter said he doesn't find it necessary to change mixed use zone code language.

Bork said the recommendation from legal was to leave the code as is but there is potential for regulation in the future.

In response to a question from Mayor Larson, Ms. Connelly said the only code change being recommended would be the business license language.

In response to a question from Mayor Larson, Bork said if the Council wanted to pursue including the parks exclusion, staff would need direction at a regular Council meeting. She said business license regulation code amendments are needed no matter what we do, and are not necessarily directed at MMDs.

5. Manner Regulations

a. Signage

- i. The City currently regulates signs (location and size) through the Veneta Land Development Ordinance

Bork said currently business signs are regulated from the City's sign codes. However, it is deemed unconstitutional to regulate the content of a sign.

Ms. Connelly said it's unconstitutional to regulate sign content. She said we couldn't target MMDs in any way.

Bork said OHA has some signage regulations.

Mayor Larson said the City's sign ordinance is fairly restrictive.

- ii. Are additional sign regulations needed?

It was the consensus of the Council that additional sign regulations are not needed.

b. Ventilation

- i. Can odor complaints be addressed through the City's Municipal Code

Bork said current nuisance code includes some language relating to odor but we would not be able to rely on the code language for an odor from a legally regulated substance being the marijuana is in its natural state.

Ms. Connelly said odor can be a nuisance under the code . . . "to cause an offensive odor or are an unsanitary condition", that would mean the MMD would lose its license. She asked what the definition of "offensive" is. She said because marijuana in an MMD is considered a legalized commodity, the odor can't be categorized as an offensive smell. But if it's being smoked in the facility, the smell could be considered legally offensive odor if the breather is having a second hand effect. She said that scenario seems very unlikely.

Tom Laing said when he went to the MMD on Hwy 126, the smell was pretty powerful in the room.

In response to questions from Thomas Cotter, Ms. Connelly said even if we were able to craft detailed regulations to govern air ventilation systems, it would still be difficult and it's not likely to be recommended. She said it would be difficult to write standards.

Mayor Larson said ventilation was not really addressed in the 28 pages of OHA rules which seems like it was not a careless omission. She said landlords of commercial sites will most likely have their own regulations in order to keep other tenants happy.

- ii. Are additional regulations needed?

No.

c. External security

- i. Health Authority Administrative Rules address external security with video surveillance regulations. See OAR 333-008-1170

Bork said because there's been so much discussion external surveillance is included in the regulations.

- ii. Are additional regulations needed?

No.

6. Other

a. Business Registration Amendments

Ms. Connelly said current standards state a registered business within the city must continue to comply with federal, state, and local laws and she suggested the following language should be put in its place “. . . to engage in any activity otherwise prohibited by federal, state and local law”. She said we need to make it perfectly clear that the City is not responsible for policing business activities. She said that is a change we would recommend regardless of MMDs. She said another change other cities are suggesting is if OHA revokes a MMD license, the City business license is automatically revoked. She said this chain reaction would take the City out of policing the business. She is recommending this language should be included but she's not sure where staff is on that.

Bork said she hasn't talked with Ingham about that.

Mayor Larson said she can't think of a downside to include that language in the code.

Ms. Connelly said its OHA's job to police MMD so let's let them conduct their reviews of MMDs in accordance with their regulations. She said OHA would notify the City if a MMD lost its license. She said once a MMD loses its OHA license it would no longer be in compliance with federal, state, or local laws and therefore it would not allowed to continue operating.

Victoria Hedenstrom said we can't just pinpoint MMDs. She said what about beauty salons, spas, etc. they all need licensing.

Ms. Connelly said individual service providers hold the license and not the facility. She said liquor stores hold the license, which are already so highly regulated by the state. She recommended the change in the material and the other change staff can provide the language that has been drafted by other cities and to broaden it for any kind of business that loses its license.

b. Code Amendment Timeline

Bork said there's two amendments; one is if the Council wanted to restrict MMDs 1000 ft. from parks it would be an amendment to the Land Development Ordinance and the timeline, if initiated tonight and streamlined, could go into effect in July. She said amendments to the municipal code isn't as involved and do not require notifying the Department of Land Conservation and Development (DLCD). She said the amended language could be drafted in May and passed in June. She said code amendments could be done simultaneous.

In response to a question from Mayor Larson, Bork said staff can only receive Council direction during a regular meeting by a formal motion.

Thomas Cotter said the information was well put together. He said he would like to see the Council move forward at the regular Council meeting.

Bork said the hours of operation should also be discussed.

Thomas Cotter suggested hours of operation should follow existing pharmaceutical hours so MMDs are open during daylight hours only.

Ms. Connelly said the law lets cities follow reasonable time, place, and manner regulations. She said if we were restricting it significantly, that may not be reasonable, so just keep that in mind when finalizing the hours of operation.

Victoria Hedenstrom said if we're going to allow MMDs then why not just let them operate when they want to. She said the City doesn't regulate hours of other stores. She said it seems a little much to get that minutia. She said MMDs should have an opportunity to operate their business when they want to. Again, she felt like we're singling out MMDs.

Thomas Cotter said we would be regulating hours of operation that are reasonable by asking MMDs to operate 8 a.m. to 8 p.m. He said MMD's are selling one product and it's not unreasonable to set hours that are reasonable. He doesn't consider these as minutia regulations or that we're picking on them.

Victoria Hedenstrom said it doesn't seem right to her that one particular business is being singled out by the City regulating its hours. She said OHA is already regulating MMDs and she felt like we're creating a problem by only regulating hours for MMDs. She said if we're going to do that then we should regulate hours for all the businesses in City limits. She said we need to assume that all businesses will be operated professionally.

Bork suggested reviewing all of the options at the regular meeting when the Council can give direction.

Ms. Connelly said she had not planned to stay for the following Council meeting unless the Council would like her to.

It was the consensus of the Council that it was not necessary for Ms. Connelly to stay for tonight's regular Council meeting.

3. OTHER

None

4. ADJOURN

Mayor Larson adjourned the Veneta City Council Work Session at 7:02 p.m.


Sandra Larson, Mayor

ATTEST:


Darci Henneman, Assistant City Recorder
(Minutes prepared by Dhenneman)