

MINUTES
Newport Business License
Work Group Meeting
City Manager Conference Room
Wednesday, April 9, 2014

Ad Hoc Members Present: Mark Fisher, Rod Croteau, and Mark Saelens.

Ad Hoc Member Absent: Ralph Busby.

City Staff Present: City Manager Spencer Nebel, Community Development Director (CDD) Derrick Tokos, Interim Finance Director Bob Gazewood, Community Services Officer Dustin Kittel, and Executive Assistant Wanda Haney.

The meeting came to order at 3:05 p.m. Tokos noted that the purpose of this meeting was to identify the specific targeted areas in the business license ordinance that we want to look into in greater detail. Fisher said that his suggestion was that cutting out extraneous stuff and keeping it simple seems like a better way to go. Tokos said the group had done a lot in February, but he wanted to highlight a few provisions of the code and suggested going through the code by section and hit on those particular provisions and tackle it that way.

He noted that under "Purpose and Scope," he didn't see anything off hand that needed any particular adjustment but asked if anyone saw anything. Saelens noted that he thought the second paragraph was well-written.

Tokos said that under "Definitions," he flagged three. The first is "business." He feels that it's pretty clear we need to bring other examples of businesses to the table and have a conversation about whether what is in here is right. He noted that the 20-hour provision should be an exemption and shouldn't be in definitions. Saelens said that was a great observation. Tokos said another standard rule of thumb is that you don't put standards in definitions. Saelens said, regarding the definition of business, he wanted to highlight that it is worthwhile to describe it more completely than it has been in the past. From time to time there is going to be some loopholes. It is complicated enough that you want to focus on the definition and capture as much as you can; say it's 80-90% of what we feel we have in businesses.

Under "Fees and Exemptions," Fisher felt that much of the wording was unnecessary where it talks about the annual fee being determined by resolution of the City Council. He said the last line and a half doesn't need to be there. The City Council will be the one determining modifications and maybe simplifying. Fisher suggested taking out the end of that last sentence in 4.05.020 (C) because the Council will be the ones determining how it's done anyway. Croteau thought that language was unnecessary as well. He thought maybe rather than saying all of that, it could just say "rate to be determined by the City Council" or something like that. The Council can set up what manner they want.

Back under "Definitions," Tokos noted that another one he flagged was "person." He said this gets at the timeshare issue and the issue with the Embarcadero; and the question is whether it fits there or if we should develop an example that addresses this situation appropriately. The last definition he flagged was "rental of real property." The last sentence about renting one dwelling for more than 30 days is in the wrong spot and should be moved to an exemption; it's not a definition. Croteau asked Tokos about the difference between renting for 30 days as opposed to a vacation rental and why the month-to-month rental doesn't require a license. Tokos said the thought at the City Council level is that this is talking about one rental; not six or more. They don't want to burden those certain persons that are just simply renting while they are trying to sell their house while market conditions are bad. There's not much of a choice on their part; they are just trying to weather an economic issue. Kittel said that is an assumption; it doesn't mean they are having a hard time just because they have one house. At the time this was established, we were in a big recession. He said for enforcement purposes, how do you know when you come across a person that that is their reason and that they only have that one. He asked how do you track that. Saelens said they would have more than two tax records. Tokos said we have access to the assessment information. We can do a query by name. Kittel noted that the former City Manager had said we would have to evaluate every single tax lot in Newport to guarantee if they have more properties. Tokos said that's more a question of do we have the tools to effectively enforce it; not what's the policy. He said like for VRDs we have the tools, but are we actively scanning the VRBO sites on a regular basis. Kittel said that if we want enforcement to be consistent across the board, it has to be tracked efficiently. He said he knows of a lot of houses that are rentals; but is that their only one. He has no idea. Saelens said if we have the tools, twice a year run a query of who actually owns more than two homes. Tokos said we have the tax records and are linked into GIS. Nebel said sometimes people can get creative in the way they are listing ownership. Tokos said we may get a bunch of LLCs; but we are probably just talking something like 1%. We are in good shape if 90-95% are compliant. Nebel said we could try to figure out what is on the list at this point. Kittel said he could see a lot of work later on. Fisher said it we're not enforcing it, don't have it in here. Kittel said in his opinion, it makes it more complicated to track. Saelens gave an example from the County that based on tax records once a year they bill private landowners a fee to pay for an enforcement program then periodically query what acreage a particular company owns. He said it's not

perfect; it has flaws. Ultimately it's a valuable tool because it gets everybody figuring they need to be honest about the amount of acreage they control; and people are willing to tell them when ownership changes. Saelens said he could see the same thing here. People know we have the ability to look; and periodically we do. He said there was a conscious reason they laid it out so people could do this. He noted that maybe the economy is pulling out; but before selling their property, people are trying to figure out how to earn back the money they lost.

Tokos said the rest of the definitions seemed fine. He summed up that the definitions on the list are "business," "person," and "rental of real property."

Nebel noted that before, "not-for-profit" had been mentioned. He thought it was clear under the ordinance. Saelens noted that there was a reason why we want them to register even though they don't pay a fee. At this point they don't even have to apply. Tokos asked why we necessarily need them to. Saelens said to have a better understanding of who is out there. Nebel gave an example of Goodwill that is a 501C3, and that sort of business entity wouldn't have to register. Tokos asked if the group wanted to explore registration; and was told yes. Kittle said for instance then if their business is broken into, the PD has contact information. Saelens added that there would be no fee for registration. Fisher said the business is then on the record as saying they are nonprofit. He agrees they still don't pay a fee. Saelens noted that there is more than one kind of nonprofit. He said further work needs to be done on setting out how to approach that. Croteau asked if they have to be classified as not-for-profit under the State. Saelens said it's Federal. Nebel noted that C3 is general; but there are others.

Fisher asked why there's an exemption under E2c for consignment stores as defined in this ordinance; why wouldn't they need a business license. It was noted that if it's a little business in a warehouse selling something, then they possibly should have a business license. Kittle said this is the antique mall exemption. He said it's the same thing when clothing is consigned in Rags to Riches. The people owning the store would have the license. Tokos said that was an accommodation made through the last outreach process. He said it's very comparable to a special event like the Seafood and Wine Festival. It's one license; not all individuals. That exemption is under item F. Tokos said that process has been working fairly well, and his recommendation is to stay away from that because a lot of discussion went into where it is now. Kittle said they would have to get the name of everybody selling goods at the antique mall. As it is now, if something happens there in off-hours, he would be contacting the owner; not the individual vendors. Saelens said this goes back to definitions and falls under what is a business. Tokos thought this was a good exemption. Saelens asked what if they were in the category of having to register but not pay. The question was raised about requiring a license for vending machines; and Nebel noted that there is not a City license on that. Tokos said that he didn't see anything under the exemption provisions.

Under the next section, 4.05.025 "Multiple Locations or Businesses," Tokos said we need to revisit item A. Item B gets at what was the issue, which was rental companies like Yaquina Bay Property Management and Dolphin. The issue there was that they were getting hit with a business license for the primary company location and then for every unit they were renting; which was unfair really. So that's addressed under item B. He said item A doesn't make sense and puts the Finance Department in a position of trying to figure it out. The question is, what is meant by "substantially similar." The question was raised that if you are looking at a second location for a McDonald's restaurant, why should they be given a free pass. Saelens said it's totally unfair. If it ends up that the one location is successful, and they open another location; both locations should be tagged. Tokos said that Mo's has multiple locations; and one bank did have multiple locations. The thought was that item A needs to be added to the discussion list.

Tokos had highlighted the last provision, item D, of section 4.05.030 "Application." He said the timing issue gets at the "Issuance" section as well where we have a problem. He thought we need to look at some of these timing provisions. He said to also look at item A under "Issuance." Right now the code basically says they have to pay both the application and the review fees and the application is processed within 30 days. Section 4.05.035 (A) says as soon as they get a receipt, they have a business license. Immediately they get a business license before we have reviewed their actual application. Tokos said we need to look at these provisions and see how we can clean them up. He would guess this was intended to give a provisional license for those only doing business in town for three days or something. He noted that the way Ashland works with that is to parse those out as temporary uses. We may need to look at temporary business licenses as opposed to regular. Saelens said that when this group met on February 25th, he went and applied for his business license. He is in business, and it's his understanding that roughly 30 days later he would get some kind of response from the City. Then if he doesn't hear anything, he would come in to get an update because he would be concerned he was in violation or something. He agrees that if he gets an explanation of what is going to happen; "here is a provisional license and then your application will be reviewed," that tells him he is not guaranteed that he will get a license in 30 days. That would tell him not to start building a structure as is a real danger with the current practice. If you jump the gun, you are taking a risk. Tokos said the receipt provision is for the contractor that can't wait 30 days. Kittle gave an example that for a restaurant/bar they have to get OLCC licensing, and there is no expectation other than with us that you are going to walk in and out with a license that same day. Tokos agreed that 30 days isn't a big deal for brick and mortar businesses because they are dealing with interior remodel and the health department if it's a restaurant. We have to figure how to parse it out to deal with businesses like contractors. Gazewood noted that the ordinance has provisions about the receipt. Croteau asked about contractors that work in Newport four to five times a year. It was noted that there is the 20-hour exemption.

Tokos wondered if right now this is an issue we need to deal with, and he thought so. Saelens said if we did a further conversation with contractors and say the only license you can walk out with the same day is in your situation. Then we have a mechanism to help track that they are not working over the 20 hours if we see them come in several times a year. Kittle asked what about them coming in several times for a business license. Gazewood said we would give them a permanent license; which they would receive in 30 days and is good for a year. Kittle said good for a year, but immediate for a contractor. Saelens said a contractor may get a job in the city limits and the first time he may not know if he will be successful and get more jobs. Kittle said that he catches contractors on the job and they will get cited for not having a business license; in that way they will be able to get back to work the same day. Tokos said we can play around with that definition of what qualifies as a transient license. Tokos said that is basically what he had for "Application" and the first part of "Issuance." Nebel said that 4.05.035 (A) is one of those sections to look at; but he thought of a couple of other components that would be really helpful but wasn't sure whether it was ordinance or administration. He suggested that the license be dated when issued and signed by somebody as well. He said it is confusing to figure out when the licenses were issued. That's something we have to sort through, but he didn't know if that belonged in the ordinance. Tokos said that he would just as soon put it in the ordinance and avoid separate rules. It's easier for staff to administer and for everyone to know if it's written in here rather than having to piece them together.

Tokos said he noted nothing under section 4.05.040 "Disclosure and Delinquency."

Tokos noted that for item A under section 4.05.045 "Administration," we need to look at the option of whether to include administrative rules here in the code. Kittle pretty much thought not. Saelens thought it complements the whole thing. Fisher wondered if the City Manager wanted to be responsible for item B. Nebel said he likes to interpret what the policymakers say. Fisher said this says Nebel can set up his own regulations. Nebel said that one of his big concerns was that there was a philosophy that when the code was codified they really stripped out lots of stuff that seems to him would be important guidelines for him to know how to do things; and there are not really any rules that have been compiled since so he is stuck guessing on a lot of stuff. He has a tendency to agree with Tokos that a little more detail at this level is important so it should be written into the ordinance to a reasonable extent. There is still some little issues dealing with administrative but the more it's spelled out from a professional standpoint, the happier he is. It is there and everybody can read it. Tokos said that he thinks along similar lines. When we have the conversation about administrative rules in item A. We need to look at item B, too. He wondered if administrative rules should be subject to the same enforcement as the ordinance. Is somebody who violates a rule the City Manager drafted subject to the same level as for a violation to the ordinance? It was thought that from a punitive aspect, only the ordinance.

Saelens said if we empower staff to write rules, and people view them as they don't carry the same weight, we'll have the same people coming into the City Council complaining about the rules. At least on the surface, you want to be standing behind the City Manager saying basically the rule carries the same weight. Gazewood said you can always take the administrative rules back to the City Council and have them adopted. Fisher said the punishment is different than being in violation. It may be that punishment can't be handed out for rules made without prior consideration of the Council. Saelens said to the degree that is possible we need to give the impression that we are standing behind the rules that come out. Have an option so if they don't like that, then there is a process.

Tokos said that he didn't see anything in 4.05.050 "Denial or Revocation." Fisher suggested changing the wording in the first sentence from "may" to "shall" be revoked. Tokos said that is a powerful word change. The "may" gives the City Council an opportunity to determine do we want this. Fisher said he thinks there are a lot of things that give the manager of a company a lot of latitude. They could apply for reinstatement, and the City Manager could say now that they've had the training, he is willing to reissue it. Tokos said that is how that would play out in that case if 4.05.050 (A) said "shall" be denied then we would not be issuing a business license for medical marijuana dispensaries. Nebel thought this is a discussion item as well. If a profession requires licensure by another entity then what role should the City be playing with our license. Should we hold it until they have proof or issue conditional upon having the additional certification. Kittle said the code says this does not mean you are clear from OLCC or anything else they have to take care of. Croteau said if they inadvertently violate State or Federal regulations without knowing it, and if it says "shall," they have to start all over. If it is "may," you may interpret it.

Kittle mentioned the "Purpose and Scope" statement; and Nebel said what we should do is have that right on the business license we issue. Gazewood said they could do that right away; and we shouldn't have to wait. Saelens said you could add on that under these conditions, your permit may be revoked. The question was raised whether the content requirements should be in here; "business licenses shall include the following information:" and then list it.

Nebel handed out a memo regarding the medical marijuana dispensaries and what went wrong with the business license issuance. He said it was timely to review in light of this discussion.

Tokos said if that was all for "Denial or Revocation," then he would go on to section 4.05.055 "Violations." He didn't see anything in there. Kittle wondered how the City is handling somebody that just flat refuses to get a license. Nebel said there are several penalties. Kittle said they won't go to court. Gazewood said there could be an arrest provision. Tokos said they could go into collections. Saelens said maybe they go to jail. Gazewood said that he has seen ordinances with that kind of provision.

Saelens asked how many times we fine them before something more happens. The fine is \$500, unless we think we need to revisit it. Nebel said there is no mechanism to collect. Tokos said we should be dealing with collections for any kind of failure to pay. Kittle said that he doesn't have the answer; but he does face it. Nebel said it could always be structured in such a way to become a misdemeanor at some level of ignoring something for years. Fisher said we would have to take it to court, and it's not worth the money. Fisher said how about asking the City Attorney. A question for the City Attorney could be added to the list to ask if additional enforcement provisions should be added for belligerence.

Finally, for section 4.05.060 "Appeal," Tokos noted that he hadn't flagged anything.

Tokos summarized the list of identified issues as follows:

Three under "Definitions;" "business;" "person;" and "rental of real property." Some provisions may get moved to "Exemptions."

Under "Fees; Exemptions" there might be some language we take out and simply say by fee resolution set by City Council. We might explore registration for nonprofits.

We might consider revisiting "Multiple Locations" from a free pass.

There are several provisions under "Application" and "Issuance" to revisit to deal with the timing issue in when you apply, what constitutes an actual business license, and when it's a temporary or transient business as opposed to brick and mortar. We need something about licenses being dated and signed.

Under "Administration" we need to take a look at administrative rules and amend or remove them.

Under "Denial or Revocation," we can look at the ramification of "may" as opposed to "shall" and whether it needs to be in a separate section on the business license content.

Under "Violations," we can take a look at whether to include additional enforcement teeth.

Spencer asked if there was anything else to revisit. He said from a process standpoint, there has been some discussion at the City Council level whether this constitutes an official work group. That's an issue out there. He said it seems that the appropriate thing to do is have this group present this report back to the Council saying these are the issues we think you should take a look at. The Council can decide whether to have a more formal work group or this group take a closer look at these issues. Nebel said it's unsure if our efforts should be a posted meeting or not. Tokos said that he didn't believe so, and we should get back to also let them know why it isn't required to be noticed. Saelens noted that David Allen brought that up. He thought it is a good time to give the City Council an update. Tokos asked if the group wanted him to bring back a list. Nebel said we will hand the Council a list, and they may say they don't think something is an issue. Saelens said we've been meeting since February, and he thinks it's good timing. Fisher wondered if we should have one more meeting to flesh out what we have down on the list. Nebel thought we just give them the items list. Saelens said the Council has no idea whether we have a big bag or have chunked away. Fisher said the Council could have done it themselves; but they chose to get a group together. He thought the logical next step is to get direction from them. Saelens noted that Busby had expressed interest in getting public feedback on these issues, but he was unsure what the best way to do that is. Saelens noted that under what was just suggested, if an official report goes to the City Council, that meeting is noticed and people who are interested can attend. He felt that at this point it would be premature to schedule a public session until we present this to the Council. Tokos agreed. He said it will have been fully fleshed out prior if a recommendation is made. Saelens said who knows what the Council will say. Spencer asked if there were any other issues for the list; and said that seems to be the list then. Tokos said to emphasize though that because we are not doing public involvement up front, if we do a presentation that public involvement comes in once we put details behind the items on the list. There is still an opportunity for the public to say if there is any issue that is not on the list. Nebel said and also to share comments about the list. If there are gaps, we will hear about it.

Nebel said maybe what the Council could do is at the meeting when this is on the agenda, sort of like we did with the composting, is to give an opportunity to the public to provide written comments related to that before we get too far along. The public could submit written comments to the work group to review as part of that process. Tokos said the comments we are likely to get at this point would be on the medical marijuana dispensaries, or from the Embarcadero's attorney, Dennis Bartoldus. Tokos said he would feel better having a better sense of how to address that timeshare issue before we take public testimony as opposed to Bartoldus coming in and talking about lawsuits. He doesn't think that's productive. Nebel agreed having something in writing to this group to understand his issues. Tokos said if we can make revisions and address their issues, it's saving time for everybody. He said maybe we can engage the Embarcadero in the draft form and say this is how we understand it and how we addressed it. It forces them to focus. Tokos said he had a pretty good sense that their fundamental issue is that they don't want anybody at the Embarcadero to have to have business licenses. Nebel said if they had something constructive, we could consider it. Tokos said he thought Bartoldus had already taken that to the City Council; but he would have to dig that up. Gazewood noted that a couple of times last fall he thought Bartoldus had just come in during the public comment time and submitted it. Tokos said much of it was as we implemented the ordinance and the VRD provision came out of zoning. Saelens noted that Bartoldus really laid out a lot of testimony. Tokos said that the Embarcadero thought we were making the individual owners get licensed as opposed to a hotel/motel; and they thought they are being treated differently than the Landing. Tokos said they are not the same. He said they are like a business structure A and B; inherently different, and we can't treat them the same. Kittle said to keep it simple. Tokos said put pen to paper and map it out. Nebel asked like the antique store where they have individual owners, how do we address

that so it's fair for everybody. Tokos said it's his understanding that the Landing controls the access to the units, where the Embarcadero doesn't. What constitutes a hotel/motel was written into the administrative rule. Saelens said that Tokos also did a really good job of providing information of how the Embarcadero wasn't as it was at the start; it's an Embarcadero plus now. Tokos said it's evolved basically into condos.

Nebel noted that a report will be going to the City Council on the hit list of items, and that potentially could be on the 21st. We will wait until then and see what the Council decides. Croteau told Tokos that he had a couple of small things that could be massaged if we get to that point. Nebel said that we will hold off on a meeting until after the City Council presentation to find out if we will continue as an informal work group or if a more formal work group will be established.

Adjournment. Having no further business to discuss, the meeting adjourned at 4:10 p.m.

Respectfully submitted,

Wanda Haney
Executive Assistant