

REQUEST

Text amendment to Tables 9.101, 12.202, 12.302(a) and 12.413 and Sections 2.201, 9.303, 9.503, 9.603, 9.703, 9.802, 9.803, 9.8502, 9.8503, 9.902, 9.903, 9.906, 9.1002, 9.1102, 9.1103, 9.1202, 9.1205, 9.1206, 9.1208, 10.502, 10.602, 10.702, 10.811, 10.812, 10.907, 10.909, 11.203, 11.402, 11.403, 11.702, 11.703, 11.705, 12.206, 12.214, 12.544, 12.546, 13.102, and 13.106 of the Zoning Ordinance

SUMMARY OF PETITION

1. The petition updates current definitions and regulations for nightclubs, bars, restaurants, and lounges which were established in 1981.
2. Recommends consolidating the names of nightclubs, bars, restaurants, and lounges into one name "Eating, Drinking and Entertainment Establishments".
3. Creates new definitions of eating, drinking, and entertainment establishments:
 - a. Type I-establishment where food and beverages (excluding alcohol) are served and indoor or outdoor entertainment are allowed.
 - b. Type II-establishment where food and beverages are served (including alcohol) and indoor or outdoor entertainment are allowed.
4. Eliminates separation requirements when all activities of the eating, drinking and entertainment establishment are totally enclosed within the building.
5. Establishes separation requirements from a single family use (single family, duplex, triplex or quadraplex) or vacant lot when located in a single family zoning district when the use has an outdoor eating/activity area, where food and alcoholic beverages are consumed between the hours of 11:00 p.m. and 8:00 a.m., and there is no outdoor entertainment.
6. Creates additional separation requirements based on zoning when the use has outdoor entertainment that occurs between the hours of 11:00 p.m. and 8:00 a.m.
7. Creates a Certificate of Exemption process to minimize impacts on existing nightclubs, bars, restaurants, and lounges that cannot meet the proposed separation standards from a residential use (single family, duplex, triplex or quadraplex) or a vacant lot when located in a single family zoning district. The process includes a notification process of property owners within the separation distance, a written comment period, and an appeals process.

**PETITIONER
AGENT/REPRESENTATIVE**

Charlotte-Mecklenburg Planning Department
Charlotte-Mecklenburg Planning Department

COMMUNITY MEETING

Meeting is not required.

**STATEMENT OF
CONSISTENCY**

This petition is found to be consistent with the Centers, Corridors and Wedges Growth Framework Plan goals and to be reasonable and in the public interest, based on information from the staff analysis and the public hearing by a vote of 6-0 of the Zoning Committee (motion by Commissioner Ryan seconded by Commissioner Allen).

**ZONING COMMITTEE
ACTION**

The Zoning Committee voted 6-0 to recommend **APPROVAL** of this petition with the following modification:

1. Modify Section 12.546(2)(a) by allowing the minimum separation distance in the MUDD (mixed use development), UMUD (uptown mixed use), TOD (transit oriented development) and TS (transit supportive) zoning districts to be reduced as an optional provision if three conditions are met. The new subsection shall read as

follows:

Minimum 100-foot separation distance in the MUDD, UMUD, TOD and TS zoning districts. The minimum required separation distance cannot be reduced as an optional provision unless the following conditions are met:

- i. There are no principal residential structures within 225 feet of the portion of the property line along which the reduction is being requested;
- ii. The optional request includes zoning conditions to mitigate the impact of a reduction in the separation distance including but not limited to: elevation changes, structures located between the outdoor use and the property line, enhanced screening and buffering, and noise reduction features; and
- iii. The optional request does not reduce the separation distance requirement by more than 50%.

VOTE

Motion/Second:	Allen/Ryan
Yeas:	Allen, Dodson, Eschert, , Nelson, and Ryan
Nays:	None
Absent:	Labovitz and Walker
Recused:	None

ZONING COMMITTEE DISCUSSION

Staff provided a summary of the text amendment, noting changes made to the text since the public hearing.

A question was asked about the proposed separation distances and the fact that the 100-foot separation distance in the MUDD (mixed use development), UMUD (uptown mixed use), TOD (transit oriented development) and TS (transit supportive) zoning districts could not be reduced through an optional provision. A Commissioner pointed out that without a change in the proposed text amendment, the separation distance would stand. Staff confirmed that this was correct.

Several Commissioners asked about the Certificate of Exemption process. If a property was sold, does the exemption run with the current use? If the ownership changes, does the exemption go away? What if the use goes out of business? Staff responded that a use that receives a Certificate of Exemption may not move, expand, enlarge or change the outdoor seating/activity area or building(s), as either existed as of January 1, 2013. A new owner would be able to continue the business in the same fashion as it was established on January 1, 2013. Staff added that if the use is visibly discontinued for more than 12 months, the exemption would be revoked.

A Commissioner voiced concern about not being able to reduce the separation distance requirement. Staff responded that if there were very specific recommendations that would protect single family neighborhoods, staff would be comfortable with adding a provision to allow a reduction in the separation distance requirement through an optional rezoning process. This would allow dialogue with adjacent neighborhoods.

A Commissioner asked if draft language had been presented to staff. Staff responded that the person who introduced the modification is present in the audience. Staff also stated that the community advisory group was notified about the concern voiced by one person at the public hearing, and the proposed modification was provided for their review and response back to staff. Only one response was received that recommended staying with the staff version, as the respondent felt the modification was too complex.

The Commission suspended its rules to ask Collin Brown to introduce his proposed modification, which includes three conditions that would allow a rezoning with an optional provision in MUDD (mixed use

development), UMUD (uptown mixed use), TOD (transit oriented development) and TS (transit supportive) zoning districts. Mr. Brown noted that this modification would give Council the option to consider a rezoning with a reduction in the separation distance.

Staff is comfortable with the proposed change, because it narrows down the possible locations to only a few. Staff noted that this modification would not apply in the PED (pedestrian overlay) zoning district.

A question was asked about the 225-foot separation distance to a residential structure. Staff said 225 feet is a larger separation than the 100 feet proposed. A Commissioner asked if the 225-foot separation distance requirement could be removed. Staff replied that the 225-foot separation distance requirement should be part of the recommendation.

A Commissioner stated that she was uncomfortable with the modifications being suggested this late, and with one person at the public hearing changing the amendment in the eleventh hour. She stated she supports the staff version without the change.

Another Commissioner noted this is what the Commission and Council do. There sometimes are eleventh hour changes that are reasonable. The Commission should consider recommending approval of the text amendment with the recommended change, and sending it to Council for action.

Another Commissioner asked if the vote on this text amendment can be delayed. Staff responded that Council wants the amendment to move forward, but the Commission could hold a special meeting. Otherwise, Council action would be delayed until the end of September.

A Commissioner stated she was uncomfortable with a text amendment that was not in the final form, but trusted the Director to add the correct modifications. Another Commissioner added that the minutes could be included in the motion.

There were no further questions.

FINAL STAFF ANALYSIS (Pre-Hearing Analysis online at www.rezoning.org)

PLANNING STAFF REVIEW

- **Background**

- It has become increasingly difficult to determine differences between nightclubs, bars, restaurants, and lounges. Uses that once primarily served food, i.e. restaurants, now offer in addition to food, alcoholic beverages and provide forms of entertainment both inside and outside of the establishment. In contrast, uses that once provided mostly entertainment now serve food.
- For example, the current definition in the Zoning Ordinance of a "restaurant" does not include the word "entertainment" nor does the ordinance include a definition of the word "entertainment."
- The lack of clarity as to whether a restaurant can have any amount of entertainment could make restaurants in Charlotte that provide entertainment indoors or outside illegal.
- To address the ambiguity in the definitions, in 2011, a Community Advisory Group (CAG) was charged with reviewing the issues associated with nightclubs, bars, restaurants, and lounges in terms of the definitions of these uses, and associated prescribed conditions. The group met four times then stopped due to revisions being made to the Noise Ordinance and confusion caused by the two efforts being undertaken simultaneously.

- In 2013, the Community Advisory Group was reconvened and six meetings were held beginning in January. Participants consisted of restaurant, bar and nightclub operators and owners, entertainment group representatives, residents, neighborhood and business association members, attorneys, musicians, and other interested parties.
- Staff also held 11 additional public outreach meetings specifically directed at neighborhood associations to present the text amendment and receive feedback on the proposed changes.
- Staff has held two additional public outreach meetings for Dilworth and Elizabeth, after the public hearing.
- A public hearing was held on February 17, 2014. Text amendment changes made since the public hearing are considered substantial. A second public hearing was held on June 16, 2014.
- This text amendment proposes to:
 - 1) adequately define the uses;
 - 2) develop standards to allow these uses to exist near residential areas in a way that minimizes adverse impacts; and
 - 3) provide flexibility to business establishments.
- **Proposed Request Details**
 - The text amendment contains the following provisions:
 - Replaces references to “restaurants”, “cafés”, “outdoor cafés”, “nightclubs”, and “bars and lounges”, with “Eating, Drinking and Entertainment Establishments.”
 - Adds new definitions for two types of Eating, Drinking and Entertainment Establishments:
 - Type 1 Eating, Drinking and Entertainment Establishment: An establishment where food is prepared and beverages may be provided, excluding alcohol. Indoor and outdoor entertainment may be provided.
 - Type 2 Eating, Drinking and Entertainment Establishment: An establishment where any alcohol is consumed, food and other beverages are optional, and entertainment may be provided, including outdoor entertainment. [Excluded are adult establishments, athletic and sports facilities, conference centers, cultural facilities, hotels and motels, and recreational facilities approved as part of a residential development plan, and similar uses, and uses exempt in accordance with the Alcohol Beverage Commission standards.]
 - Adds definitions for Entertainment, Outdoor Entertainment and Outdoor Seating/Activity areas.
 - Allows Eating, Drinking and Entertainment Establishments in most zoning districts by-right or under prescribed conditions.
 - Adds new prescribed conditions for Type 2 Eating, Drinking and Entertainment Establishments:
 - If food and beverages are consumed in an outdoor seating/activity area at any time between the hours of 11 p.m. and 8 a.m.:
 - Minimum 100-foot separation distance is required between the outdoor seating/activity area and the nearest property line of a vacant lot or a residential use (single family, duplex, triplex and quadraplex only) when located in a single family zoning district.
 - If the separation distance cannot be met, a Class “A” buffer shall be provided along all corresponding property line(s).
 - If outdoor entertainment occurs at any time between the hours of 11 p.m. and 8 a.m.:
 - Minimum 100-foot separation distance in the mixed use development (MUDD); uptown mixed use (UMUD); transit oriented development - residential (TOD-R); transit oriented development - employment (TOD-E); transit oriented development – mixed-use (TOD-M); and transit supportive overlay (TS) districts. The minimum separation distance cannot be reduced as an optional provision unless the following conditions are met:
 - There are no principal residential structures within 225 feet of the portion of the property line along which the reduction is being requested.
 - The optional request includes zoning conditions to mitigate the impact of a reduction in the separation distance including, but not limited to: elevation changes, structures located between the outdoor use and the property line, enhanced screening and buffering, and noise reduction features; and
 - The optional request does not reduce the separation distance requirement by more than 50%.
 - Minimum 250-foot separation distance in the pedestrian overlay district (PED). The minimum separation distance cannot be reduced as an optional provision. Nightclub, bar, lounge and Type 2 Eating, Drinking and Entertainment Establishments located in a pedestrian overlay district shall meet the separation

- distance standards established in an approved Pedscape Plan.
- Minimum 400-foot separation distance in the urban residential (UR-2 and UR-3); urban residential - commercial (UR-C); research (RE-3); office (O-1, O-2, and O-3); neighborhood business (B-1); general business (B-2); distributive business (B-D); business park (BP); commercial center (CC); neighborhood services (NS); mixed use (MX-2 and MX-3); light industrial (I-1); and general industrial (I-2) districts.
- Adds a Certificate of Exemption application process for eligible establishments that cannot meet the separation distance requirements:
 - The establishment must meet criteria to be eligible to apply for a Certificate of Exemption.
 - A written notification of an application for a Certificate of Exemption shall be sent to property owners located within the designated separation distance. These owners may submit written comments to the Planning Director within 15 days of the date of notification.
 - The Planning Director, or designee, is authorized to issue a Certificate of Exemption and establish administrative processes for such issuance.
 - A written notice about the decision on the Certificate of Exemption shall be sent to the property owners within the separation distance.
 - An appeal process is established for land owners or property owners of a vacant lot or a residential use (single family, duplex, triplex or quadraplex only) when located within the specified separation distances.
 - Establishments that receive a Certificate of Exemption shall maintain compliance with applicable land use and development laws, including, zoning laws and urban design standards for the district in which the use is located.
 - Certificate of Exemptions may be revoked only after written notice and a reasonable opportunity to remedy the violation.
- **Public Plans and Policies**
 - This petition is consistent with both the *Centers, Corridors and Wedges Growth Framework* goal to provide a range of entertainment choices and the guiding principles to protect established neighborhoods and revitalize economically challenged business areas.

DEPARTMENT COMMENTS (see full department reports online)

- **Charlotte Area Transit System:** No comments received.
- **Charlotte Department of Neighborhood & Business Services:** No issues.
- **Charlotte Department of Solid Waste Services:** No issues.
- **Transportation:** No comments received.
- **Charlotte Fire Department:** No issues.
- **Charlotte-Mecklenburg Schools:** Not applicable.
- **Charlotte-Mecklenburg Storm Water Services:** No comments received.
- **Mecklenburg County Land Use and Environmental Services Agency:** No issues.
- **Mecklenburg County Parks and Recreation Department:** No issues.

ENVIRONMENTALLY SENSITIVE SITE DESIGN (see full department reports online)

- **Site Design:**
 - There is no site plan associated with this text amendment.

OUTSTANDING ISSUES

- No issues.
-

Attachments Online at www.rezoning.org

- Application
- Pre-Hearing Staff Analysis
- Charlotte Department of Neighborhood & Business Services Review
- Charlotte Department of Solid Waste Services Review
- Charlotte Fire Department Review
- Mecklenburg County Land Use and Environmental Services Agency Review
- Mecklenburg County Parks and Recreation Review

Planner: Sandra Montgomery (704) 336-5722