

MINUTES
Nightclub, Bars, and Restaurant Citizens Advisory Group Meeting
3-5-13

Citizens In Attendance:

Beard, Natalie K	Gore, Gina	Marrino, John	Stewart, Walter
Cardone, Anthony	Grimes, Andy	Miller, William	Whitcomb, Gail
Corzine, Karen	Gude, Megan Liddle	Myers, Cheryl	Paddock, Lindy
Corzine, Kevin	Henson, Andrew	Nixon, Rob	Norton-Stowe, Betsy
Cullis, Roger	Ingram, Chris	Nolan, Bill	Morris, Rosalyn
Cullivan, Brian	Jenatian, M	Padilla, Joe	Milicevic, Jessica
Dowling, Bryan	Kastanas, Lesa	Pitkin, Ryan	Rosenbero, Don
Ferguson, Russell	Kretschmer II, Frank	Rankin, DJ	Davis, Phil
Fletcher, Shiela	Lynn, Suzanne	Rossi, Phil	Ewert, Mark
Foster, James	Marcuse, Kevin	Sizemore, Melanie	

Others In Attendance:

Yolanda Johnson, Chairperson, Planning Commission

Staff In Attendance:

Debra Campbell, Planning Department	Katrina Young, Planning Department	Sandra Montgomery, Planning Department
Sonda Kennedy, Planning Department	Barry Mosley, Planning Department	Karen Robinson, Planning Department
Pontip Aphyarath, Planning Department	Marci Sigmon, Planning Department	

I. Welcome and Introductions

The meeting began at 6:05 p.m. Debra Campbell, Planning Director, welcomed everyone to the meeting, and introduced herself. This is the third meeting of the Nightclub, Bar, Lounge and Restaurant Citizen Advisory Group.

Before introductions around the room, Ms. Campbell stated she wanted to begin with the end in mind. By the end of the meeting, everyone will be brought up to date with the discussion from the last meeting, and the majority of the meeting would be spent using a new technology to conduct an opinion survey about restaurants, nightclubs, lounges and bars.

Ms. Campbell asked everyone to introduce themselves, and to identify what industry or organization they represented.

II. Recap from Last Meeting

Ms. Campbell asked if there were new people at the meeting, and a few people raised their hands. She said she wanted to bring everyone up to speed with the purpose of this citizen advisory group and recap information from the last meeting. Follow-up information requested at the last meeting will also be presented, as well as a summary of the previous group discussion exercise.

Ms. Campbell stated that our goal is to look at the issues associated with nightclubs, lounges, bars, and restaurants with regards to the definitions of these uses in the Zoning Ordinance. Our goal is to provide additional flexibility to businesses. Flexibility is important because the Zoning Ordinance definition of restaurants is too restrictive, and does not include a reference to entertainment. Staff understands that this is the new paradigm for restaurants. To say that this use cannot have any entertainment is not how many restaurants are operating now, or in the future. Our goal is to correct the definitions in the Zoning Ordinance.

At the last meeting, a number of questions were asked about restaurants and nightclubs. Staff has mapped the locations of 1,823 restaurant locations within Mecklenburg County. The Fire Department's definitions of a restaurant were used: "Those eating places specializing in food for consumption primarily on the premises." Included are cafeterias, and diners, with table or automatic service. *The map can be viewed in the PowerPoint presentation.*

In addition, the Fire Department defined nightclubs as "Those places specializing in food and drink. They can offer dancing, or entertainment". Included are key clubs, supper clubs, and diner theatres". Staff mapped 223 nightclub locations in the county. *The map can be viewed in the PowerPoint presentation.*

Ms. Campbell stated that another question asked of staff was to map the location of the 29 notices of violation that were issued between 2010 and 2011, and to provide information on how many were repeat offenders. Staff mapped the locations and they are dispersed throughout the city. There are three locations with repeat violators. Eight locations have multiple violations, but had different owners. *The map can be viewed in the PowerPoint presentation.*

Citizen: Can you define "violation"? Are these violations specific to restaurants, nightclubs, bars, and lounges?

Mark Fowler from Neighborhood & Business Services stated that the violations identified were related to the definitions in the Zoning Ordinance, and were specific to these four uses. If a restaurant had entertainment, for example, and a zoning inspector visited the location, and it had a nightclub atmosphere, then it was cited as a use violation of the Zoning Ordinance, if it was permitted as a restaurant.

Citizen: Were any of these violations due to a regular inspection of businesses, or were they complaint driven?

Mr. Fowler indicated that Neighborhood & Business Service only inspects property where complaints have been received. It is all complaint driven. His department works closely with the Police Department and the North Carolina ABC, who often visit the site together at the same time. Most of these violations were issued through joint visits.

Citizen: Can you provide a list of the violations and the locations, so we can understand who filed the complaint, whether it was a citizen, business owners, or the police?

Mr. Fowler stated that the complaints were filed by a mix of citizens, business owners, and the police. A lot of these complaints could have been funneled through the Police Department as a result of noise complaints. When zoning inspectors visit these locations, the presence of entertainment is what we look at. A number of the locations that received violations were restaurants having entertainment, and no separation distance to residential. A nightclub requires a separation distance. All the notices of violations were related to the Zoning Ordinance, not the Noise Ordinance.

Citizen: To form an analysis, can you provide us with a list of the addresses for the violations to put the problem in perspective? Were 29 of these violations related to noise? If so, we have a Noise Ordinance in place that takes care of noise.

Ms. Campbell asked if the citizen wanted information on what precipitated the call. Ms. Campbell stated that the zoning inspectors look at land use and how the use was permitted to see if the use is operating according to how it was permitted. If it is not, that is a violation of the Zoning Ordinance. The Police Department represents the ABC and looks at enforcement of the alcohol laws and also enforces the Noise Ordinance, which is separate from the Zoning Ordinance. While these violations might have originated with a noise complaint, they could have resulted in a violation related to the Zoning Ordinance after a site visit.

Citizen: The 29 notices of violation don't lend themselves specifically to the problem our community is dealing with, which is why we are here. I want to see the actual data. Can we see it?

Ms. Campbell asked Mr. Fowler if the data includes a reason for the complaint. Mr. Fowler said the data does include the initial complaint. He reiterated that enforcement is complaint driven.

Citizen: Every time we have meetings, we have new people who attend. I hate to say this, but for some of us who have been here at the previous meetings, it is not fair to rehash everything every time. We addressed this issue last time. Ms. Campbell explained the violations last time. She wants to change the regulations so that these violations don't occur in the future. It doesn't matter about past violations.

Citizen: How do we adjudicate them? If we don't know what the violations were, then we can't know how to solve them.

Citizen: We are here to change the definitions so that violations that occurred in the past will not occur in the future. We talked a lot about the definitions. Discussing who made a complaint, or what the complaint was, is not productive, when Ms. Campbell has said we are going to change them.

Ms. Campbell stated that we need to focus on solutions. Citizen advisory group members at the past meetings asked for this information, and staff responds to every question asked of us. We bring that information back to the group at the next meeting. She stated that if there is an additional need to drill down further into the notices of violations, she asked those citizens to call Mark Fowler to get into the details. They are public records. Ms. Campbell stated that staff has fulfilled our obligations to answer past citizen questions about repeat offenders and where the 29 violations were located. We provided that information to you tonight, and said the violations were dispersed throughout the city, which is what the mapped information reflects.

Citizen: I understand that the main reason we are here is that some think the definitions are outdated and result in some of these notices of violations. I don't need the details, but Mr. Fowler mentioned that when they inspect a location, they refer to something to judge if there is a violation. What are these sources of information? Are there written texts or regulations used to determine the criteria for the violation?

Mr. Fowler gave an example. An inspector visits a business permitted as a restaurant. The complaint may be that it is functioning as something else. The inspector might find that the restaurant has changed into a nightclub atmosphere with entertainment. They look at the definition and regulations for both uses. If the tables are moved back and there is room for dancing or a DJ, then a restaurant it is functioning as a nightclub.

Citizen: What do you refer to, beyond your interpretation, of what a restaurant or nightclub is? With due respect, it seems we have a hooked on phonics problem here. The definition for "restaurant" is very broad. It reads, "an establishment designed, in whole, or in part, to accommodate the consumption of food and/or beverages". I am an attorney. Using "in whole or in part", makes this a very broad definition. But you are presenting the problem to us as the definition for restaurants is not broad enough. I would say that the problem for the City is that the real, legal construction definition is way broader than the City, or some of its residents are comfortable with. The interpretation that is being made is that every little thing is entertainment and that makes the use a nightclub. I have no problem with the current definition in the Ordinance for restaurant, because it lets a restaurant do, based on the definition, anything that any restaurant across the country can do, because it says "in whole or in part". So if it is "in part" selling food, what is the other part?

Ms. Campbell said that we understand your point and that you do not have a problem, but we are suggesting that others have a problem. The people enforcing the Zoning Ordinance have a problem and the Zoning Board of Adjustment has a problem. We are going to work on this.

Citizen: I understand that we are trying to change the wording of the Zoning Ordinance to make it clear for enforcement. One thing I think may help us is to know how many notices of violation resulted in a variance, an appeal and how many were thrown out. This can help us redefine the new Ordinance.

Ms. Campbell clarified that we are not trying to narrow the definition of restaurants.

Citizen: With all due respect about what the complaints are, I don't think we need to harp all night, but it does matter when we are developing policy. We should know what the impetus is for the action. If the impetus to tackle this is complaint driven, then it matters what the complaint was about. I would like to see it adjudicated some way. Regarding the last slide, I tried to count the number of locations with notices of violations. Is 15 right? I know there are less than 18, since there are 11 that are double. So we are talking about 15 locations with violations? I want to confirm that the 29 violations are from what years?

Ms. Campbell said the violations were from 2010 and 2011.

Citizen continues: How many violations were there before 2010?

Mr. Fowler stated he does not have that data with him. Ms. Campbell added that in 2012 there was a stay of the enforcement.

Citizen: The citizen who just spoke with that line of questioning, was trying to allude to the fact that if we are looking for solutions, we need to know what the problems are. If eight notices of violations had multiple violations, then there were 15 isolated violations in 2010 and 2011. Out of almost a million people in the surrounding area that go to restaurants, nightclubs, and bars, 15 violations seems very low.

Ms. Campbell stated that these violations are complaint driven. The City does not go out looking for violations. We do not have a real good idea of how many violations there actually are.

Citizen continues: But if there are not complaints, then there is not a problem.

Ms. Campbell stated that people complained, the locations were inspected, and these are the violations. We need to move on. This is the third meeting where we have gone over this. We can either not go over, ever again, what we did, or the questions you asked, so we don't get into rehashing them again, or we can present the information for you.

Ms. Campbell resumed the PowerPoint presentation. At the last meeting, staff was asked to provide information about how many of the notices of violation resulted in appeals or variances. Some violations were taken to the Zoning Board of Adjustment, and others were resolved by the entity stopping what they were doing that put them in violation. Two variances and three appeals were made to the Zoning Board of Adjustment during 2010 to 2012, as a result of the notices of violations.

Ms. Campbell noted that at the last meeting, staff indicated in the PowerPoint presentation that there were 10 appeals and 27 variances, but several cases were transposed into different categories. Since 2003, there were 12 appeals filed with the Zoning Board of Adjustment. Since 2002, there were 25 variance requests made to the Zoning Board of Adjustment.

Ms. Campbell stated that at the last meeting the CAG asked for information related to what agencies regulate nightclubs, bars, lounges and restaurants. The North Carolina ABC regulates these uses and have definitions for restaurants and retail businesses, but no specific definitions for nightclubs, bars or lounges. We think the ABC considers a retail business to be a nightclub, bar, or lounge. The ABC definitions are:

RESTAURANTS - An establishment substantially engaged in the business of preparing and serving meals. To qualify as a restaurant, an establishment's gross receipts from food and nonalcoholic beverages shall be not less than thirty percent (30%) of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages. A restaurant shall also have a kitchen and an inside dining area with seating for at least 36 people.

RETAIL BUSINESS – An establishment engaged in any retail business, regardless of whether food is sold on the premise.

Ms. Campbell said at the last meeting, comments were made about the various agencies and organizations that have regulations for restaurants, nightclubs, bars and lounges. We said staff would put together a list of the various agencies that we were aware of, that regulate restaurants, nightclubs, bars and lounges:

- NORTH CAROLINA ABC/CHARLOTTE-MECKLENBURG POLICE DEPARTMENT:** Controls the sale and use of alcoholic beverages
- CHARLOTTE-MECKLENBURG POLICE DEPARTMENT:** Monitors sound decibels for Noise Ordinance
- LAND USE AND ENVIRONMENTAL SERVICES AGENCY (BUILDING):** Ensures safe building through NC Building Code
- FIRE DEPARTMENT:** Enforces fire safety through National Fire Code
- HEALTH DEPARTMENT:** Eliminates food-borne illness through Health & Sanitation Codes
- ZONING/PLANNING:** Regulates land use and development standards through Zoning Ordinance

Ms. Campbell reviewed the group discussion from the previous meeting, with the actual newsprint responses duplicated below. She stated staff wants to keep it all intact, because we heard at the first meeting that staff was using its own discretion and not listening to what CAG members said. The first groups of responses were to the question, “What are the major issues or concerns that need to be addressed in this process?”

① What do you think are the major issues or concerns that need to be addressed in this process? Green

② ~~What should be done to address these issues + concerns?~~

- defining entertainment
- noise/nuisance
- outdoor vs. indoor
- size/scale
- traffic vs. pedestrians
- simplify definitions
- additional permits / cost
- Music
- regulation from real estate

Definitions Blue

- new - but keep simple
- primary use
- uniformity in code w/ALE
- zoning entertainment district
- no limits on music/entertainment
- distance to a certain degree

What should be done?

- uniform w/code with ALE
- primary use to serve food
- Do not define entertainment
- with distance attached
- with specific property line

(YELLOW)

1.) A) Define Modern Entertainment

B) What is a Bar, Restaurant, Night Clubs?

C) Compare/contrast ALE. & ABC.

D) Police Enforcement vs. Zoning Enforcement

2.) "Let it Be"

MAJOR ISSUES + CONCERNS Red/Orange

- ~~one size fits all~~
- ONE SIZE DOES NOT FIT ALL
- change definition of RESTAURANT
- restaurant needs to include ENTERTAINMENT
- broad category

- Trying to make definitions - they do NOT WORK
(definitions ARE NOT VISIONARY)

- STANDARDS OF OPERATIONS FOR ESTABLISHMENT
- Aligned w/ 70/30 by STATE

Any establishment w/ food & beverage that has entertainment

No distance requirement

Ability of entertainment (BROAD) regulated by NOISE + NUISANCE

The next set of newsprint responses prepared by CAG subgroups was in response to the question, "What should be done to address these issues and concerns? These responses are shown below:

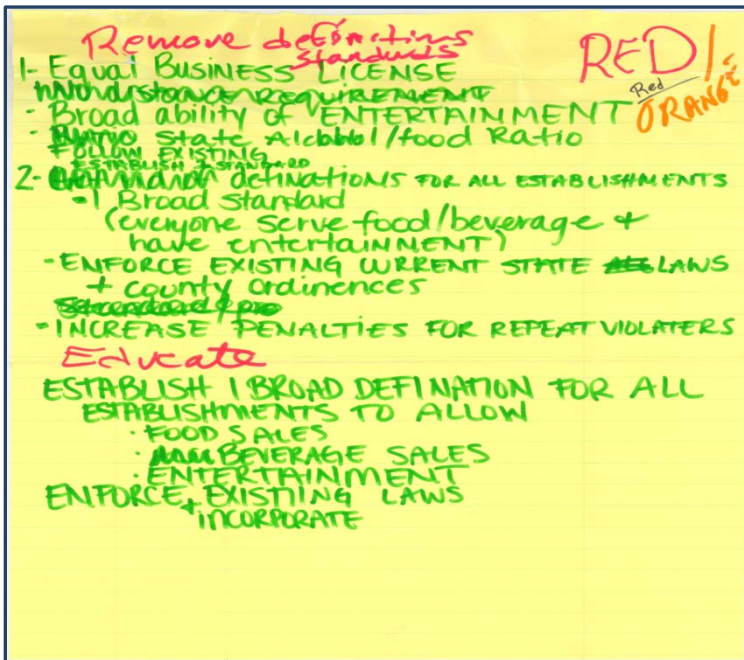
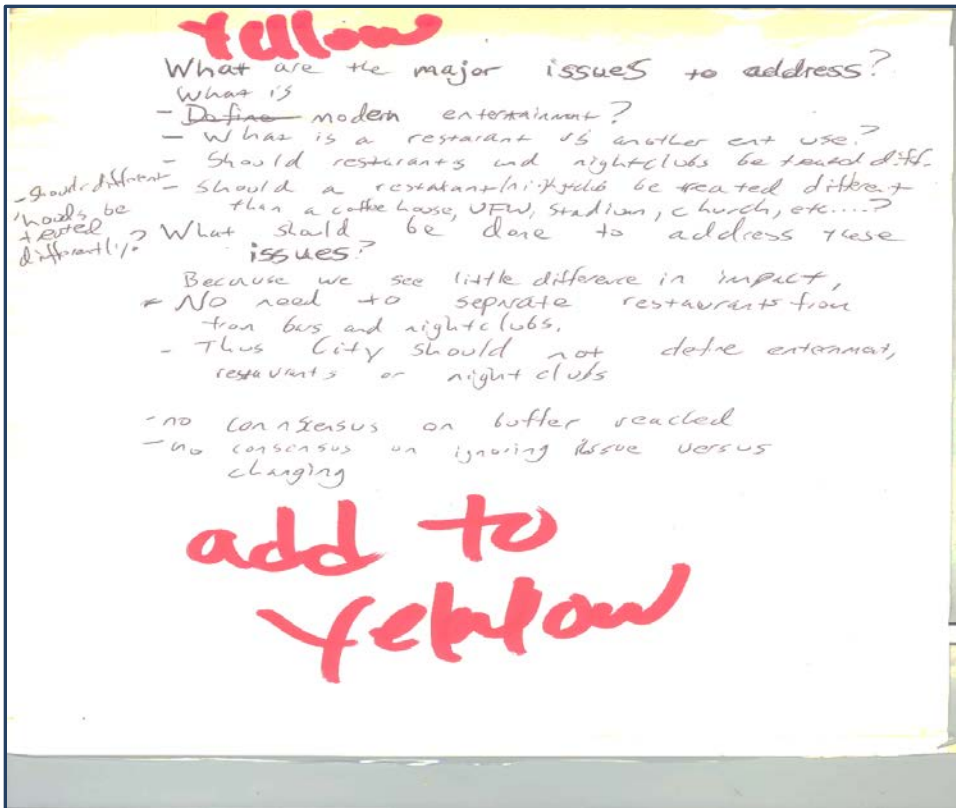
② What should be done to address these issues and concerns? Green

- simplicity
- clarity
- possibility of taking ^{minority principle} entertainment out of definition for all of zoning
- focus on external impacts
- permitting?
- grandfathering
- police enforcement
- separation by size

Zones + Earplugs - Keep It Simple

Grandfather in venues

BLUE



Ms. Campbell said that staff took the input above and took a little bit of discretion to summarize the group discussion as follows:

What are the Major Issues: SUMMARY OF GROUP DISCUSSION

1. Define entertainment
2. One size does not fit all
3. Simplify definitions
4. Aligned with 70/30 by state
5. Any establishment w/food and beverage that has entertainment

6. Have no distance requirement
7. Let It Be

What should be Done? SUMMARY OF GROUP DISCUSSION

1. Clarity
2. Separation by size
3. No need to separate restaurant from bars and nightclubs
4. Uniform w/code with ALE
5. Follow existing regulations
6. Have broad ability of entertainment
7. State alcohol/food ratio

Staff then identified the common themes from the group discussion:

1. Concerns With Definitions
2. One Size Does Not Fit All
3. Size Does Matter
4. Allow Entertainment In Restaurants
5. Use Alcohol Beverage Commission Definitions
6. Require/Do Not Require Separation From Residential
7. Enforce Current Regulations
8. Have Additional Permitting Requirements - (Ex. For Late Hours, Size)

Ms. Campbell indicated the CAG was going to have some fun with an opinion survey using a new technology that staff is testing for the first time. She said a number of citizens may have attended public meetings and been asked for your opinion. Through this poll, staff is interested in your opinions about restaurants, nightclubs, bars and lounges. This is not a majority rule type of poll. The purpose is to get a sense of the group as to categories of regulations and possible types of regulatory standards that may be included for restaurants, nightclubs, bars and lounges. This is not intended to be a vote, but an expression of your opinion on specific topics. Staff will consider these opinions along with other research in drafting recommendations to be presented at future meetings.

Ms. Campbell said that at the next meeting, staff will be providing you with some preliminary draft recommendations and possible changes to the Zoning Ordinance. Members can review and gnaw on the recommendations and we'll determine next steps from there.

Ms. Campbell reviewed the features on the individual polling keyboard and explained what buttons to push to send responses for recording. Most of the questions are "yes" or "no". Staff will not be participating in the opinion survey, only CAG members.

Citizen: The only definitions we mentioned were restaurants to agree with the ABC definition.

The results of the opinion survey are attached below. There were 36 participants.

1.) Should Restaurants have a unique and separate definition from Nightclubs, Bars, and Lounges?

	Responses	
	Percent	Count
Yes	19.44%	7
No	80.56%	29
Totals	100%	36

2.) Should the definition for Restaurants be the same as the State ABC?

	Responses	
	Percent	Count
Yes	74.29%	26
No	25.71%	9
Totals	100%	35

3.) Should the definition for Restaurants include the word “Entertainment”?

	Responses	
	Percent	Count
Yes	62.86%	22
No	37.14%	13
Totals	100%	35

4.) Should there be a separate definition for a Nightclub, a Bar, and a Lounge?

	Responses	
	Percent	Count
Yes	11.11%	4
No	88.89%	32
Totals	100%	36

5.) Should the definition for Nightclubs, Bars, and Lounges include the word “Entertainment”?

	Responses	
	Percent	Count
Yes	52.78%	19
No	47.22%	17
Totals	100%	36

6.) Should the word “Entertainment” be defined?

	Responses	
	Percent	Count
Yes	36.11%	13
No	63.89%	23
Totals	100%	36

7.) Should a restaurant that has no entertainment have a separation requirement if it abuts a residential zoning district?

	Responses	
	Percent	Count
Yes	26.47%	9
No	73.53%	25
Totals	100%	34

8.) Should a restaurant have a separation requirement if it abuts a residential zoning district and it includes “entertainment”?

	Responses	
	Percent	Count
Yes	29.41%	10
No	70.59%	24
Totals	100%	34

9.) Should a N-B-L have a separation requirement if it abuts a residential zoning district?

	Responses	
	Percent	Count
Yes	32.35%	11
No	67.65%	23
Totals	100%	34

10.) Should N-B-L located in urban districts or unique locations have different separation requirements?

	Responses	
	Percent	Count
Yes	47.06%	16
No	52.94%	18
Totals	100%	34

11.) What distance should a restaurant with “Entertainment” be located from a residential use?

	Responses	
	Percent	Count
No distance requirement	60%	21
100 feet	8.57%	3
150 feet	0%	0
200 feet	5.71%	2
250 feet	5.71%	2
Greater than 250 feet	20%	7
Totals	100%	35

12.) What distance should a Nightclub be located from a residential use?

	Responses	
	Percent	Count
No distance Requirement	42.86%	15
100 feet	17.14%	6
150 feet	0%	0
200 feet	2.86%	1
250 feet	11.43%	4
Greater than 250 feet	25.71%	9
Totals	100%	35

13.) What distance should a Bar or Lounge be located from a residential use?

	Responses	
	Percent	Count
No distance Requirement	64.71%	22
100 feet	11.76%	4
150 feet	0%	0
200 feet	5.88%	2
250 feet	2.94%	1
Greater than 250 feet	14.71%	5
Totals	100%	34

14.) Should any requirements for Restaurants with entertainment be established according to the size of the establishment?

	Responses	
	Percent	Count
Yes	29.41%	10
No	70.59%	24
Totals	100%	34

15.) Should any requirement for N-B-L be established according to the size of the establishment?

	Responses	
	Percent	Count
Yes	38.24%	13
No	61.76%	21
Totals	100%	34

16.) Should hours of operation be regulated for N-B-L?

	Responses	
	Percent	Count
Yes	25%	8
No	75%	24
Totals	100%	32

17.) What's the Major Issue or Concern?

	Responses	
	Percent	Count
1. Should special zoning districts be developed to allow Restaurants w/entertainment?	Malfunction	Malfunction
Totals	Malfunction	Malfunction

18.) Should special zoning districts be developed to allow Restaurants w/entertainment?

	Responses	
	Percent	Count
Yes	28.12%	9
No	71.88%	23
Totals	100%	32

19.) Should special zoning districts be developed to allow N-B-L?

	Responses	
	Percent	Count
Yes	25.71%	9
No	74.29%	26
Totals	100%	35

Ms. Campbell wanted to learn more about some of the opinions expressed. For those of the audience that indicated a separate definition was needed for nightclubs, bars and lounges, what were some of the reasons?

Citizen: They each have a different character.

Ms. Campbell then asked for some reasons from people who felt the definitions should not be different.

Citizen: I am a resident and I have been frustrated for three years. Not about the definitions, but about how property is built and insulated so that a resident living above or near a bar or nightclub, can live in harmony. For years I have been trying to live in harmony, and it is not working. It is not about the definitions. If you are going to have a club, take responsibility, and respect the people that live in your community and insulate. If you own your own establishment, 99% of the complaints were noise, and you all know that. If you have money to build a place, build it respectfully. NODA was originally an arts district, but now it is all about the bars and being drunk and hanging out until 3:00 am. You can't sleep if you have a regular job.

Ms. Campbell said the citizen had a right to be frustrated in terms of this process. This process has taken a long time.

Citizen continues: The people who work in building permits should make sure that if a bar is built it adheres to the building regulations, is insulated, and observes the Noise Ordinance. That is what I thought when I went to 700 N. Tryon Street. I talked to five people, and no one there could tell me anything about anything. It was very frustrating. As a homeowner, property owners should take responsibility for their establishment and respect residents living near bars and nightclubs.

Ms. Campbell said she wanted to let this citizen speak longer than usual, because it was her first time here. Some of you have had multiple times to speak over the previous meetings.

Citizen: I agree with the past speaker. There should be a requirement to take responsible action, and it should be in the Ordinance. But bars and restaurants were there before residents moved in and now the residents are asking them to turn down the volume and potentially put some of them out of business and make people lose their jobs. Let's look at the reverse side of that coin, too. Let's also look at what multi-use districts are for. People that move in to these districts know what they want, which is an urban area with options. If people want quiet, they can choose to live in the suburbs. If we restrict that from those areas, we are making a bigger mistake by destroying the cultural fabric of that district. People moved there to be near a vibrant area with things to do, and options, not to get away from it. It's a choice of what you want to do, where you want to live, and what kind of lifestyle you want to live. Cities have great centers, where things are happening, and now you are saying take it away, and you will make citizens madder, by taking things away. Of course, there are exceptions to that. Let's look at the total picture and the number of complaints. How responsible should the establishment be to insulate? Who comes first? Grandfathering of uses that were there first? There are many issues to consider.

Citizen: I understand the complaints. I brought this up last time. If people are drunk, call the police and get them arrested. If the rumor gets around that this is not going to be tolerated in this neighborhood, word gets around. Loitering and drunk people should not be out at 2:30 am. I moved to Plaza-Midwood because of the walkability to restaurants. I love it. You are right about destroying the character of district. I'm not sure who to blame when you have patrons that won't leave or start fights in the parking lot. There are plenty of cabs around in these districts to take people home.

Ms. Campbell stated that zoning is about compatible uses. It is about how do we allow like and different uses to co-exist near or abutting one another? The Noise Ordinance should take care of the noise. Building codes should take care of how much insulation building have and the health and safety. But what this effort is about is use. What is the use and what regulations should there be? What are the characteristics and features of the use that may need to be regulated? I want to be sure we are focusing on the use.

Citizen: The attraction of these mixed-use districts is that uses are within walking distances of residents.

Ms. Campbell said the issue is that some restaurants behave in a manner with other things, like entertainment, or outdoor areas that may be different from the use that was permitted. Some restaurants sell food, maybe 95% of the time. But 5% of the time they behave like a nightclub, and Mr. Fowler gets a complaint from a resident that they are operating like a nightclub. This is why we are here.

Citizen: There should not be a separation distance for restaurants, bars, nightclubs and lounges. We are a 24-hour City. Why discriminate against a workforce that gets off between the hours of 11 pm and 2 am? Stores are 24-hours now. We provide a service. We should create a new definition, and put restaurants, nightclubs, and bars together and they should obey the Noise Ordinance. There should be no separation distances. We should be able to sell 24 hours a day to our demographic.

Citizen: Let's get to the heart of the matter. It seems that the early discussion was about complaints, but isn't it really about noise? If the use is too loud, the Noise Ordinance should regulate the noise. It doesn't matter what the definitions are for a restaurant or nightclub. It's about the decibels. If you moved into a neighborhood and it is quiet and then someone opens a restaurant that is noisy, that is a pain. The simple solution would be to have different zones with different decibel levels throughout the city.

Ms. Campbell said we are focusing a lot on noise, and that may be what precipitates a call to Mr. Fowler. From a regulatory perspective in the Zoning Ordinance, zoning and planning regulates for example, the parking requirements.

Citizen continues: So you are trying to approach the citizen's problem in NODA from the Planning Department perspective. But the Planning Department can't change the decibel levels in the Noise Ordinance, and we can't even discuss that as a solution because you are saying you only have a certain number of tools in your toolbox.

Ms. Campbell stated that we are trying to solve the problem of a definition for restaurant in the Zoning Ordinance, that doesn't include entertainment. The 29 notices of violations were originated for whatever reason. The complaint results in an inspection of the site. The inspection staff checks the Zoning Ordinance to see what uses are permitted in the zoning district, and also checks the use permit to see how the use was permitted. If it is permitted as a restaurant and there is entertainment, a notice of violation is going to be issued. It has nothing to do with the Noise Ordinance.

Citizen continues: Then leave the Zoning Ordinance alone and let people do what they want.

Citizen: I had trouble answering the questions. The survey didn't address the "leave it alone" option, as far as the Zoning Ordinance is concerned. The marrying of the definition to the ABC definition and to the Noise Ordinance, and enforcing what we have. The ABC has no definition for nightclubs or bars. You are either a restaurant or a private club.

Ms. Campbell asked if the citizen wanted the City to call the State when there was a complaint to make the determination of whether a use was a restaurant or a nightclub.

Citizen: Yes, unless you can change the ABC Board definition to match our definition. We all know there is a true difference between a true restaurant and an entertainment use.

Ms. Campbell said staff will bring back some preliminary recommendations at the next meeting. You will either agree with them or not. As we said earlier in the process, if the "leave it alone" option is the opinion of

some of you, then that will go forward as a minority opinion, to Council as well. There could be four or five recommendations moving forward. If you suggest some tweaking, we may agree and tweak or we may not.

Citizen: I think the idea of leaving it alone is a mistake. The current definition of restaurant is everything until you have entertainment. Then it is a nightclub, bar or lounge. The current definitions leave you at the mercy of the government. If the city starts enforcing it, every single restaurant is in violation. I think we should have separate definitions. Some problems will be solved with the Zoning Ordinance; others with the Noise Ordinance. We can solve the problems with the Zoning Ordinance through this process. The noise issues will have to be solved somewhere else.

Ms. Campbell said the Noise Ordinance was reviewed and finalized about a year ago.

Citizen: I live in the Elizabeth neighborhood. We have had a great relationship with different establishments in our area. That is what it is about. Be respectful of your neighbors. Some of these uses are great, but others may not be. While we may have great relationships now, but what happens in the future, if there is a change in ownership?

Citizen: I advocate for a choice presented to Council being instead of defining "entertainment" in the Ordinance, let's look at the enforcement problem regarding bad precedent stemming from poor interpretation of the statutes. The idea that the definition of restaurants that includes the phrase "in whole or in part", somehow excludes entertainment, because entertainment is mentioned in other definitions, will not fly in any court. It may fly with the Zoning Board of Adjustment, but would not fly in the N.C. Superior Court. This brings it back to the point that if it's not broke, don't fix it. The simple solution that should be presented to Council, and has been discussed in this group since 2011, is that using entertainment to define these uses is a poor way to go. We can undo the poor precedent that has led to this enforcement problem. We can base it on what these uses are.

Citizen: Noise is a by-product of the zoning problem. The root of the problem is the zoning. We can't leave it alone. We need to change it. The Zoning Ordinance was written around 1980, when the city got liquor by the drink. The planners were trying to protect citizens back then, because we didn't know what allowing liquor by the drink would do to our city. Times have changed; the city has grown and brought entertainment, businesses, hotels and convention businesses to town. Social times have also changed. The consumer demands a different level of entertainment. Entertainment is food, drink, DJ, entertainment, everything. That is what the restaurant industry has responded to. Throw the Zoning Ordinance out and start from scratch. Social attitudes have changed, people have changed, and people want more. We've given them more to stay alive and afloat. As business owners, we can't be defined by the old definitions. The root of evil is the Zoning Ordinance. It needs to change. The Noise Ordinance will comply.

Citizen: I disagree with that. I don't think there is anything wrong with the definition of a restaurant. I would like to ask Mr. Fowler for some examples of what could happen in a restaurant, that doesn't "in whole or in part" encourage the consumption of food and beverages, like a tanning bed, for example. What uses would not encourage "in whole or in part" the consumption of food and beverages?

Ms. Campbell indicated Mr. Fowler does not understand the question.

Citizen continues: If he has been issuing violations of being a restaurant, then what are they doing "in whole or in part" that does not encourage the consumption of food and beverages? What uses would be objectionable?

Ms. Campbell said she understands the question, but Mr. Fowler can't answer because the Zoning Ordinance is unclear.

Citizen continues: The presumption is that we are going to change the definition. The real answer is that a restaurant can do almost anything that encourages the consumption of food and beverages.

III. Wrap Up and Next Steps

Ms. Campbell wrapped up the meeting by saying that it doesn't matter if the definition for restaurant is too broad or too narrow. We think it is problematic. You can choose to participate in the process if you like, or not. You can support, or not support, the staff recommendations for definitions. You can carry your own minority opinion forward to Council, if you like. But we are moving forward with this process.

Citizen: What bothers me with Mr. Fowler's earlier response on enforcement is that he said he "feels" that it is a violation. It is a feeling.

Ms. Campbell said that yes, it is a feeling. Every inspector can interpret differently.

Ms. Campbell thanked everyone for coming and participating. The meeting was adjourned at 7:30 p.m.