

**MINUTES**  
**Nightclub, Bars, and Restaurant Citizens Advisory Group Meeting**  
**9-10-13**

**Citizens In Attendance:**

Barker, Pat	Guide, Megan Liddle
Beard, Natalie	Graham, Courtney
Dowling, Bryan	Nolan, Bill
Fergusson, Russell	Pitkin, Ryan
Fletcher, Sheila	Sizemore, Melanie
Foster, James	Stewart, Walter

**Staff In Attendance:**

Debra Campbell, Planning Department	Katrina Young, Planning Department	Sandra Montgomery, Planning Department
Sonda Kennedy, Planning Department	Barry Mosley, Planning Department	Jason Kay, City Attorney's Office
Pontip Aphayarath, Planning Department	Marci Sigmon, Planning Department	Donald Moore, Code Enforcement
Jan Whitesell, Planning Department	Michael Jenkins, Code Enforcement	

**I. Welcome and Introductions**

The meeting began at 6:09 pm. Debra Campbell, Planning Director, welcomed everyone to the meeting and introduced herself. She asked everyone to introduce themselves before she began. This is the last meeting of the Nightclub, Bar, Lounge and Restaurant Citizen Advisory Group (CAG), and she appreciates the time that everyone has contributed to this initiative. E-mail's were sent to CAG members with the proposed "Eating, Drinking and Entertainment Establishment" text amendment (petition 2013-090), and the actual language has also been posted on the website at:

<http://charmeck.org/city/charlotte/planning/Rezoning/StakeholderGroups/TextAmendmentStakeholderGroup/Pages/Restaurants-Nightclubs-Bar-Lounges.aspx>

The text amendment was first posted prematurely. There were some changes to the definitions and a few other minor changes. The amendment was reposted yesterday and there may be a few more minor technical changes as the amendment moves through the process. To keep up-to-date with any changes to the text amendment, revisions will be posted under petition 2013-090 at:

<http://charmeck.org/city/charlotte/planning/Rezoning/RezoningPetitions/2013Petitions/Pages/2013-090.aspx>

Ms. Campbell gave a brief overview of the Agenda. Restaurants, nightclubs, bars and lounges are now proposed to be called, "eating, drinking and entertainment establishments", rather than having separate definitions.

Currently there is a lot of ambiguity with the definitions for restaurants, nightclubs, bars and restaurants. The uses are acting more alike rather than being separate and distinct uses. Our goal has been to 1) adequately define the uses, 2) develop standards to minimize adverse impacts to nearby residential areas, and 3) provide more flexibility to businesses.

Ms. Campbell reviewed the current definitions for nightclubs and restaurants:

- Nightclub: Any commercial establishment serving alcoholic beverages and providing entertainment for patrons including bars, lounges and cabaret.

- Restaurant: An establishment designed, in whole or in part, to accommodate the consumption of food and/or beverages.

## II. Process Overview

Ms. Campbell provided an overview of the CAG process. The process began in 2011 and the CAG met four times, and then stopped meeting due to revisions being made to the Noise Ordinance. The group reconvened and held five more CAG meetings since January, 2013:

- Meeting #1: Project Overview and Issue Identification
- Meeting #2: Community Survey, Issues, Solutions
- Meeting #3: Opinion Polling and Discussion
- Meeting #4: Draft Recommendations Discussion
- Meeting #5: Draft Recommendations Discussion continued

Over 100 CAG members attended the first three meetings; the last two meetings averaged 15-20 CAG participants.

Ms. Campbell stated that staff has been busy meeting with many groups around the community:

Date	Community Group/ Business Organization	Location
June 25, 2013	Neighborhood Advisory Council – Mecklenburg North Division	Assurance United Methodist Church - 9700 Mt Holly Huntersville Road
July 2, 2013	Elizabeth Community Group	St. John’s Baptist Church – 300 Hawthorne Lane
July 23, 2013	Plaza Midwood	Petra’s Piano Bar & Cabaret – 1919 Commonwealth Avenue
August 1, 2013	Plaza Shamrock	St. Luke’s UMC – 2019 Shamrock Drive
August 8, 2013	Hickory Grove	Hickory Grove Recreation Center – 6709 Pence Road
August 13, 2013	Sedgefield/Park Road South	St. Paul UMC – 2830 Dorchester Place
August 15, 2013	Eastway Sheffield Neighborhood	Eastern Hills Baptist Church 4855 Albemarle Road
September 3, 2013	NoDa Community Meeting	Evening Muse - 3227 N Davidson Street
September 12, 2013	Bahama-Havana Park HOA	CMPD – 10430 Harris Oaks Boulevard, Suite R
September 14, 2013	Historic West End Neighborhood Association	Old Fighting Back Building – 1705 Rosa Park Place

Ms. Campbell said that staff will continue outreach to any community group or business organization that wishes to have a presentation from staff. She summarized what she has heard at these meetings:

- The Elizabeth community still has concerns about parking. They want to make sure that these types of uses provide appropriate parking near residential areas. The secondary impacts of spill-over parking is occurring in residential areas where people are walking, talking, and exhibiting behaviors that are sometimes inappropriate in these areas.

- The Elizabeth community also states that it is not enough to just think about the zoning regulations. Police enforcement needs to also be done to enforce the Noise Ordinance. Some level of collaboration is needed.
- Another issue raised was about existing establishments and what are we going to do to minimize the impacts of these uses.

Ms. Campbell said that generally, the feedback on the proposed regulations has been positive.

A CAG member added that another issue that came up during the Elizabeth community meeting was, that enforcement will be the responsibility of the Code Enforcement staff. This is an issue that has not been resolved. This is kicking the can down the street. This process began as a Code Enforcement issue and it will continue to be a Code Enforcement issue. Ms. Campbell responded that the amendment does resolve the ambiguity of the uses by providing new definitions for two types of eating, drinking and entertainment establishments, entertainment, outdoor entertainment, and outdoor seating/activity area. It does help. The CAG member agreed that it does help, in that respect.

Ms. Campbell added that both the Police Department and Code Enforcement, who have had representatives attending these meetings, know that there has to be some level of coordination. In addition, the Greater Charlotte Hospitality and Tourism Alliance also needs to help get the message out by talking to business owners, and educating them on the new standards in order to become a good neighbor. Ms. Campbell stated she has met with the Alliance twice, and also hopes to do a newsletter article to educate these types of businesses about the new standards.

The CAG member asked how many Code Enforcement employees there are. Mark Fowler responded that there are about 40 inspectors, with about 12 that focus on zoning issues. Mr. Fowler added that Code Enforcement responds to complaints. It is reactive, not proactive. He said that he does not see the enforcement piece changing at this time. Code Enforcement will collaborate with the Police in enforcing the new regulations. Ms. Campbell added that any Zoning Ordinance amendment relies on Code Enforcement to enforce regulations.

The same CAG member asked of the 12 inspectors, how many work after 11:00 p.m.? Mr. Fowler said that the inspectors have standard hours from 8 a.m. to 5:00 p.m., but hours are adjusted to meet business needs. Inspectors will be available if they need to be, and have a good relationship with the Police Department. Ms. Campbell said that if the regulations are approved, and there is a problem, then we will rethink/relook at the regulations. There are higher expectations of the Police and Code Enforcement. They will have to respond.

The CAG member asked an additional question: If someone is in violation, who can report the violation? Mr. Fowler responded that anyone can file a complaint. The member asked if a Code Enforcement inspector has to witness the violation in order for it to be a valid violation. Mr. Fowler said, yes, that is the process. Code Enforcement will evaluate the complaint in a proper manner, and if it means that the inspectors have to visit the establishment at night, they will do so.

Ms. Campbell continued with the PowerPoint presentation. The recommendations were presented to the outreach groups over the summer, as well as the vision and guiding principles for development in the City, including maintaining and stabilizing our neighborhoods. Staff wanted the community and business groups to understand there is a vision for the community and there is a goal of having choices of establishments and entertainment. There is also a goal of providing the opportunity for redevelopment of existing structures.

Ms. Campbell and Mr. Barry Mosley presented the highlights of the text amendment recommendations:

- Change from individual definitions for restaurants, nightclubs, bars and lounges to creating a new name for all these uses: “eating, drinking and entertainment establishments”.
- There are two types of eating, drinking and entertainment establishments:
  - Type 1: An establishment where food is prepared and beverages may be provided, excluding alcohol. Indoor and outdoor entertainment may be provided.

- Type 2: An establishment where any alcohol is consumed, food and other beverages are optional, and entertainment may be provided, including outdoor entertainment.
- New definitions are provided:
  - “Entertainment” is defined as any activity or game that is live, broadcast, or recorded, including, but not limited to, dancing, music, theater or comedy performance, sporting event, trivia game, or game of skill or chance.
  - “Outdoor entertainment” is defined as any activity or game that is live, broadcast, or recorded, including dancing, music, theater or comedy performance, sporting event, trivia game, or game of skill or chance which occurs on the premises of, but outside, an EDEE. Entertainment occurs outdoors when it is outside a permanent enclosed area, contained by permanent walls and a permanent roof of the establishment.
  - “Outdoor seating/activity area” is defined as any area outside the permanent building, including without limitation, patios, decks, rooftops, open areas, or parking lots where food or beverages are consumed or entertainment takes place.
- The separation distances for these uses are reduced by using proximity to a vacant lot or a single family dwelling use when either is located in a single family zoning district.
- The recommendations create consistent separation distances for the urban districts (MUDD, UMUD, PED, TOD and TS), although an adopted PED streetscape plan may call for a different standard.
- Outdoor Activity and Entertainment is permitted in any Outdoor Seating/Activity Area outside the permanent building between the hours of 6 a.m. to 11 p.m.
- Outdoor Activity that includes the consumption of food and alcohol with no entertainment is allowed between the hours of 11 p.m. to 6 a.m. under prescribed conditions.
- Entertainment Activity is permitted inside and outside the permanent building.
- Outdoor Activity and Entertainment is permitted in any Outdoor Seating/Activity Area outside the permanent building between the hours of 6 a.m. to 11 p.m.
- Outdoor Entertainment is permitted in any Outdoor Seating/Activity Area outside the permanent building between the hours of 11 p.m. to 6 a.m. under prescribed conditions.

Mr. Mosley reviewed some example diagrams to illustrate the above regulations. Ms. Campbell reviewed the issues and concerns discussed at the last CAG meeting held on May 30, 2013:

1. Definition of Entertainment is too broad
  - Allow Unamplified Televisions & Music
  - Staff is not recommending a change
2. No Separation
  - Determine if there should be a separation if the activity is completely contained inside
  - Staff is not recommending a change (no separation if there is no outdoor activity)
3. Impact on Existing Uses
  - How to address if use can’t meet proposed standards and how to continue to protect residential areas
  - Staff is recommending the following:
    - Business establishments that would have met the definition of a Type 2 Eating, Drinking and Entertainment Establishment as of 1-1-13, and that have an outdoor seating/activity area located within the required separation distances required by this section, and that provide entertainment between the hours of 11 p.m. and 6:00 a.m., are exempt from meeting the separation distance requirement if either of the following apply to that business:
      - An Eating, Drinking, and Entertainment Establishment abuts a public right-of-way that is 60’ or greater in width.
      - An existing commercial building (either on- or off-premise) is located between the outdoor seating/activity area, and a vacant lot or a single family dwelling use when either is located in a single family zoning district.

The Planning Director, or her or his designee, is authorized to certify if a business is in compliance with the above as of the applicable date and to establish the process and requirements of such certification. Businesses eligible for the exemption provided above shall not expand the scope or location of outdoor entertainment provided on January 1, 2013 without prior authorization of the Planning Director or her or his designee.

All other federal, state, and local regulations shall be met, including the development and urban design standards of the zoning district in which the use is located.

Any use exempt from the separation requirement that is visibly discontinued for 12 consecutive months shall not be re-established or resumed, and any subsequent use of the land or structure shall conform to the requirements of these regulations.

A CAG member asked how big of a commercial building is needed for the exemption? Would a small shack qualify? What is the definition of a commercial building? Mr. Jason Kay, with the City Attorney's Office, responded that any size building would qualify, including a shack.

A CAG member asked if the right-of-way exemption applies to both lanes, and asked if it included the sidewalks. Mr. Jason Kay responded, yes, it applies to both lanes. In some locations it does include the sidewalk. There are maps available that detail the right-of-way location for each street, which may go beyond the sidewalk as well.

Another CAG member asked if an establishment located on a major public street can still play music between the hours of 11 p.m. and 6 a.m., if there is a single family dwelling located in a single family district located behind the establishment? Mr. Kay responded that there were no establishments that exist that are immediately right behind a single family residence. Ms. Campbell clarified that these exemptions only apply to existing uses, not new establishments.

The CAG member continued and asked if there was an existing establishment with a commercial building on either side, can it still play music between the hours of 11 p.m. and 6 a.m. if there is a single family dwelling located in a single family district behind the use? They could not have music? Mr. Kay drew a visual to illustrate the regulation. It could not play music unless it was located on a public right-of-way of a certain size.

The CAG member observed that the text amendment wording does not explain the size of the building. It could be a shack or a larger building. Could the establishment play music between the hours of 11 p.m. and 6 a.m. if there is a single family dwelling located in a single family district behind the use? Mr. Kay said that a shack does not adequately buffer the use. The member observed a contradiction in the previous response. Ms. Campbell added that we ought to define a commercial structure, if it is not defined, because it should be related to the parcel where the establishment is located. Mr. Kay asked if the CAG member had a recommendation.

The CAG member asked what was meant by the language, "on- or off-premise". Ms. Campbell responded that "on-premise" means that there is a building that separates the establishment on the same premise. "Off-premise" means the building is on another property. The CAG member asked what if there was a restaurant with a storage building behind it that may or may not be part of a restaurant, because it may be a rented facility. The restaurant has no control over it. The storage shack may be 6'X4', a commercial use, but not used by the restaurant. Ms. Campbell added that there is a verification and certification process that an existing establishment can use to establish an exemption. The CAG member acknowledged this, but observed that the language is wide open. If the intent was to shield the single family, a 6'X4' structure could technically meet that exemption. Mr. Kay asked if the member was suggesting that a commercial facility actually buffer the use from the residential area. Ms. Campbell added that is the intent of the exemption.

The CAG member continued by stating their dislike for these two exemptions, because they are problematic for an existing use. The member continued by stating that what will happen is that we will be back to where we were when we started. Ms. Campbell asked for clarification. The CAG member said that if you look at the problem

areas we have in Elizabeth.... Ms. Campbell responded that this process is not about one business in Elizabeth, nor is it related to the Noise Ordinance. It is about definitions.

The CAG member continued that the Elizabeth neighborhood needs a successful business district. There are parking problems. People are cannibalizing each other. Neighbors are upset. People have invested in homes adjacent to commercial businesses, and that needs to be recognized. Ms. Campbell added that investment is in both retail and residential properties, and commercial businesses have to assume some responsibility to be a good neighbor. The residential property owner also needs to assume some responsibility that they located next to a commercial corridor. Staff is trying to achieve a balance.

The CAG member continued by saying that some people moved into Elizabeth when it was not a commercial corridor. The problem in the area is from drug addicts. Residential property owners have invested for decades. To sit here and say residential property owners that located there should assume some responsibility is not respectful. Ms. Campbell responded that it not the message she is conveying. The message is that both uses need to co-exist and this process is about mitigating the impacts on both to allow them both to locate in close proximity to each other. That is what this process is about.

Another CAG member asked what if an establishment is sold to someone else? Can they continue to run the business? Mr. Kay responded, yes, the business can be sold. However, if the use of the property ceases for 12 or more months, then it cannot continue.

Another question was asked about a fire in an establishment. It can be difficult to get a permit and Certificate of Occupancy within 12 months. What if there is not intent to abandon? There are situations that are beyond the control of the property owner. Mr. Mosley stated that there is a section in the Zoning Ordinance that addresses this issue, allowing up to 12 months to obtain a permit.

Mr. Kay asked for additional questions. A CAG member asked if these regulations only applied to the definitions and is separate from the Noise Ordinance. Mr. Kay replied that it is very separate. Both apply.

Another question was asked about who enforces the Noise Ordinance. Mr. Fowler replied that the Police Department enforces the Noise Ordinance and works collaboratively with Code Enforcement, when necessary.

A CAG member stated that by exempting existing establishments, isn't the City providing a benefit to the property owner to the detriment of the value of residential property that is nearby? Mr. Kay indicated he could not speak to the question, and that the intent of the Zoning Ordinance is not to regulate the value.

Another CAG member observed that the text amendment exemptions are confusing in the PowerPoint and text because the exemption part is much further away from the beginning of the section. It may be better to reorder the paragraphs and sentences.

A CAG member asked if there was an appeal process to the Planning Director's decision on exemptions. Ms. Campbell responded that appeals would go to the Zoning Committee of the Planning Commission.

Ms. Campbell reviewed the three major issues again discussed at the May 30<sup>th</sup> meeting, and asked if there were comments.

1. Definition of Entertainment is too broad
  - Allow Unamplified Televisions & Music
  - Staff is not recommending a change
2. No Separation
  - Determine if there should be a separation if the activity is completely contained inside
  - Staff is not recommending a change (no separation if there is no outdoor activity)

A comment from a CAG member was made about tobacco use with entertainment events. The State requires people to go outside to smoke. Talking can lead to singing and yelling. Does that apply? How does that work? What about people that take beverages outside into a patio area with no food/beverage service and the noise occurs due to the congregation of folks? Ms. Campbell stated that smoking outside is not considered to be entertainment. Mr. Kay said that people just smoking in outside areas would not trigger the requirements, but if the outside area is being used to serve food and beverages, then they would apply.

Ms. Campbell asked for comments about the third item, "Impact on Existing Uses". She summarized what she had heard this evening: There are concerns about the criteria for exemptions; the 60' right-of-way exemption; using commercial structures and their size; the definition of a commercial building; and if there an appeal process. Ms. Campbell added other concerns she had heard over the spring and summer related to restaurants and their impacts. A lot of people indicated that they liked their restaurants and didn't want to impact exiting restaurants. This was staff's rationale in looking at these uses and determining how to lessen the impact on these uses. If these uses became non-conforming, they would be frozen in terms of size if these recommendations are approved.

Another question was asked about the 11 businesses affected by these regulations: Are they going to be coached about the exemptions? Ms. Campbell replied that staff has been meeting with them and would assist them.

A member asked how many of the 11 businesses will not be impacted by the exemptions? Ms. Campbell replied that one business out of the 11 would not be able to be exempt [*Note: subsequent correction of information: All 11 businesses would be able to utilize the exemption process*].

Ms. Campbell indicated this would be the last meeting of the CAG, but that staff will continue the community outreach efforts. She stated that anyone interested in having staff come to their community or business, should contact staff to schedule a meeting.

Ms. Campbell noted that the public hearing is scheduled for October 21, with the Council decision scheduled for November 18.

A CAG member observed that staff had previously stated that a decision would be made before the election date. Ms. Campbell responded that even though there will be an election, the new members don't take office until December. The current Council will vote on the proposed amendment.

A question was asked about future changes to the text amendment. Will they be e-mailed out? Ms. Campbell indicated, yes, they would be e-mailed to CAG members, and posted on the website.

A question was asked about the next project for staff. The CAG member stated that there is a parking crisis in Plaza Midwood. The Thirsty Beaver and the fence around it are a blight on the neighborhood. People are angry. Ms. Campbell said, yes, parking is a broader issue, and is an issue in the community.

A CAG member asked about restaurant square footage. Does the outdoor seating area count in the total square footage for parking requirements? How many parking spaces have to be located on the actual site? Mr. Fowler responded yes, the square footage of outdoor seating areas is counted for parking requirements, as well as for the bathroom requirements. Mr. Fowler will follow-up with a response to the number that have to be on-site. Engineering reviews these commercial site plans for compliance.

The CAG member continued there are a number of commercial streets that now restrict on-street parking. Ms. Campbell said that parking requirements for urban vs. suburban areas may be different. Parking studies are being done for South End and NODA so that staff can better understand the issues in these geographies.

The CAG member continued with observing that valet parking is also being done with the cars parked in the public right-of-way, not on a parcel. Ms. Campbell said that she understands it is a problem, and we need the Hospitality Alliance to help educate the business owners. These problems can't be solved through one set of regulations, when there are unique areas with unique problems.

Ms. Campbell thanked everyone for their service and dedication to this effort. She encouraged everyone to attend the public hearing in October and the decision meeting in November. Any changes to the text amendment will be posted on the website at:

<http://charmeck.org/city/charlotte/planning/Rezoning/StakeholderGroups/TextAmendmentStakeholderGroup/Pages/Restaurants-Nightclubs-Bar-Lounges.aspx>

The meeting was adjourned at 7:15 pm.