

MINUTES
Nightclub, Bars, and Restaurant Citizens Advisory Group Meeting
1-16-14

Citizens In Attendance:

Burt, Greg	Marcuse, Kevin
Fergusson, Russell	Meyer, John
Foster, James	Nolan, Bill
Harris, Herbert	Padilla, Joe
Jenatian, M	Pitkin, Ryan
Kretschmer II, Frank	Port, Alfonso
Kuhlman, Joe	Rice, Brett
Lockamy, Christian	

Planning Commissioners In Attendance:

Michael Sullivan

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
Barker, Pat, CMPD	Gina Gore, Neighborhood and Business Service	

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.

Ms. Campbell said that by the end of the meeting, she will have explained the changes to the Eating, Drinking and Entertainment proposed text amendment that began over a year ago. She noted that the process actually extends back into 2011 when the first set of Citizen Advisory Group meetings were held on this topic. The time has now come to proceed with the public hearing and for City Council to make a decision on the proposed amendment.

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 lounges. Through the CAG meetings, staff has heard lots of issues regarding these uses, including discussion about definitions, separation distances, and obstacles to allowing these uses in close proximity to residential uses.

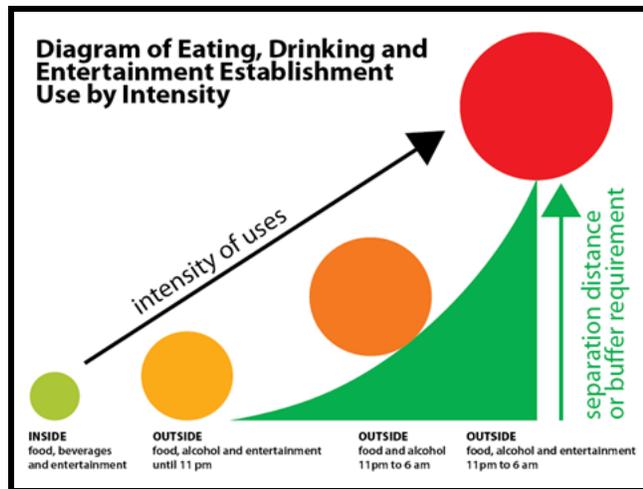
As our community continues to evolve into a great urban place with many opportunities and amenities, Ms. Campbell stated that we must allow for many types of uses to co-exist in a positive way. This is the sixth meeting of the CAG. Over the summer, staff attended numerous neighborhood residential, business, and community group meetings to share information on the proposed text amendment. The outreach meetings also included meetings with business owners of affected properties. Staff has hosted a total of two (2) additional meetings since our June 2013 Citizen Advisory Group meeting.

Ms. Campbell referred to the PowerPoint presentation that summarized the proposed text amendment highlights. The amendment:

- Creates new definitions for "eating, drinking and entertainment establishments", that replace the individual definitions for "restaurants", "nightclubs", "bars and lounges"

- Creates 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.
- Creates additional new definitions:
 - “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 Eating, Drinking, and Entertainment Establishment. 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 across urban zoning districts (MUDD, UMUD, PED, TOD, and TS).

Ms. Campbell reviewed the diagram of Eating, Drinking and Entertainment Establishment Use by Intensity:



When activity is contained within the building, there is not a need for an extensive separation distance. As the use moves outside and continues later in the evening, the separation distance between the use and abutting residential uses becomes greater.

Ms. Campbell noted that at the September 10th CAG meeting, staff heard issues about the impact on existing businesses. The concerns were: 1) what if the use can’t meet the proposed standards, and 2) how can we continue to protect residential areas. Based on the input received and the concerns expressed from a variety of sources, staff is recommending additional changes to the proposed text amendment.

Ms. Young from Planning and Jason Kay in the City Attorney’s office reviewed the changes:

- Certificate of Exemption – Application: The new text clarifies that affected establishments shall apply for and obtain a Certificate of Exemption to be exempt from the separation distance requirements (subject to certain conditions).

- Certificate of Exemption – Time Period: The September draft of the text amendment does not specify a time period for a business to apply for an exemption. The proposed amendment change specifies that if the establishment has received a written notice from the Planning Director, application must occur within 90 days. For all other establishments, the time period to submit an application is one year from the date the text amendment is adopted.
- Certificate of Exemption – Zoning Regulations: The September draft text did not require an establishment to be in compliance with zoning laws and urban design standards in order to be eligible for an exemption. The proposed text requires that the zoning development and urban design standards of the district must be met in order for the business to be eligible for an exemption.
- Certificate of Exemption – All Other Laws: The September draft text and this current draft both require an establishment to be in compliance with all other applicable laws.
- Certificate of Exemption – Revocation: The September draft text did not allow an exemption to be revoked. The proposed text clarifies that if, after receiving a Certificate of Exemption, an establishment fails to maintain compliance with the exemption requirements, then the Planning Director may revoke the Certificate of Exemption.
- Certificate of Exemption – Appeal Process: The September draft text did not allow for an appeal process. The proposed text specifies that an appeal of a denial, approval or revocation of a Certificate of Exemption must be filed with the Zoning Board of Adjustment within thirty (30) days from the date of the action.

After the presentation, CAG members raised the following questions that were answered by staff:

- **What is meant by design standards?** Staff Response: For existing uses, the urban design standards in the Zoning Ordinance (based on the zoning district in which the use is located) must be met to qualify for an exemption. For all other existing uses that don't need an exemption, no compliance is required unless the business is expanded or is a new use.
- **Does the definition of “outside entertainment” mean that it must be contained by a permanent roof and walls?** Staff Response: No, the definition says that “entertainment occurs outdoors when it is outside a permanent enclosed area, contained by permanent walls and a permanent roof of the establishment.” It does not require a permanent roof and walls.
- **Review the revocation items?** Staff Response: The Certificate is related to land use and zoning. If the business does something that is outside of what is approved, i.e. expand their use or violate any other zoning or urban design regulations the Certificate may be revoked.
- **Can the revocation be appealed?** Staff Response: Yes to the Zoning Board of Adjustment.
- **What is the reasoning behind choosing 1900 square feet as the size criteria for a commercial building to qualify for an exemption?** Staff Response: At the last Citizen Advisory Group meeting, concerns were expressed that a small storage building could qualify for the exemption. Staff then clarified the size of the structure.
- **What if the intervening building is a condominium? Would that qualify? Does it make a difference if the building is commercial or residential in that both block the noise? Does it have to be on-site or off-site?** Staff Response: No, a condominium would not be considered as a “commercial” building. It is considered to be a multi-family, residential building. Staff's intent is that if there is a building intervening between the outdoor seating/activity area of a Type 2 Eating, Drinking and Entertainment Establishment and a vacant lot or a residential use (single family, duplex, triplex or quadraplex), then that building would qualify for the exemption. . The building can be on- or off-site to qualify.
- **The language states, “For a Type 2 Eating, Drinking and Entertainment Establishment that receives a Certificate of Exemption, the outdoor seating/activity area or building(s) as either existed as of January 1, 2013, may not be moved, expanded, enlarged or changed”. What is the basis for this language? Can a business change the interior of the building, for example, by changing seating areas or moving televisions?** Staff Response: This language is consistent with the body of law dealing with variances. It does not mean that you can't change the floor plan inside or move televisions around inside the building. However, a Certificate of Exemption is provided to allow an existing business to continue to exist, but you are limited to a point in time in terms of how large your business is. If you want to grow, then the use must meet the new requirements.

- **Is this going to be a case by case evaluation?** Staff Response: The draft application does provide a checklist of the items that must be met. Staff has mapped existing uses, interviewed businesses, and done research to know generally how many establishments may not meet the standards. If a business gets a letter, please pay attention to it. Staff will not be able to know every business that may not be in compliance, and those uses have one year to apply for a Certificate of Exemption. (Staff distributed a copy of the draft application to CAG members.)
- **Are you spotlighting businesses by requiring us to apply? Does every business need to go through the exemption process?** Staff Response: If you are a business that can't meet the separation distance requirements, and you met the three criteria to qualify for a Certificate of Exemption, then you need to request the exemption.
- **Does the exemption exist for future development?** Staff Response: The Certificate of Exemption runs with the land. New uses would need to meet the new standards. An ownership change does not require a new Certificate of Exemption. For example, new owners would need to maintain the limits of a shuffleboard area to the extent that it existed as of 1-1-13. That is the benchmark. It is important that the extent of the business be clearly listed on the application form.
- **Wouldn't it be simpler to grandfather in uses?** Staff Response: No, because knowing what businesses to grandfather would be difficult. Many uses with entertainment are illegal, according to the current definitions in the Zoning Ordinance. A Certificate of Exemption is not guaranteed. You are eligible if you meet the criteria. This freezes the extent of the business as of 1-1-13. If a business qualifies, then the owner has the opportunity, if needed, to come into compliance with all applicable land use and development laws, including zoning laws and urban design standards for the district in which the use is located.
- **Can businesses start the application process now?** Staff Response: No, not until City Council approves the text amendment. The application is in draft form at this point.
- **Does staff have an idea of how many notices may be sent to businesses?** Staff Response: Our estimate is seven establishments, but some may have been missed. Staff may send notices to businesses that may have been missed at a later time, too. Our research information is one-year old. Staff will have to do another analysis before 2-17-14 to have a better estimate if there are more than seven businesses that cannot meet the new separation distances. Staff reached out to those seven businesses to determine how best to minimize the impact.
- **My business has a smoking patio with a television, with no sound. Customers walk out on the patio with their drinks to consume outside while smoking. I meet the 100' separation distance requirement. Is a television with no sound allowed?** Staff Response: The separation distance is 100' if food and beverages are consumed in the outdoor area after 11:00 pm, or a Class A buffer must be provided. In addition, if outdoor entertainment occurs after 11:00 pm, a minimum 100' separation distance is required in the MUDD, UMUD, TOD, TS and PED zoning districts. A television that is on, with or without sound, is considered to be entertainment. In other districts, the minimum separation distance required is 400'. If the business can't meet the 400' separation distance, no outdoor entertainment is allowed unless you receive a Certificate of Exemption.

Ms. Campbell informed the group that there is an optional Citizen Advisory Group meeting scheduled for Tuesday, January 28, 2014 where stakeholders who could not make tonight's meeting, can attend to hear the proposed changes presented this evening, and ask questions.

Ms. Campbell thanked everyone for their service and dedication to this effort. She encouraged stakeholders to e-mail staff directly with any questions about the proposed text amendment. She also invited stakeholders to voice their concerns to City Council at the public hearing scheduled for February 17th at 6:00 pm in the Council Chambers. She noted that during the public hearing, if there is opposition to the text amendment, both sides (those in favor and those opposed) would have 10 minutes to speak to the amendment. She suggested that each side organize their comments by groups. Ms. Hagler-Gray added that if there is no opposition, speakers for the text amendment will be limited to three minutes.

The meeting was adjourned at 6:54 pm.