

## MINUTES

Regular Meeting  
City Hall Council Chamber

February 16, 2009  
Monday, 6:00 p.m.

**Present:** Mayor W. Ted Alexander, presiding; Council Members Christopher H. (Chris) Mabry, Larry G. Ware, Jeanette D. Patterson, Michael R. (Mike) Royster, Joel R. Shores, Jr., Andrew L. Hopper, Sr.; City Manager Rick Howell, City Attorney Robert W. (Bob) Yelton, City Clerk Bernadette A. Parduski, CMC; and media representatives

Mayor Alexander called the meeting to order at 6:00 p.m. and welcomed all who were in attendance. The Mayor gave the invocation and Mr. Mabry led the *Pledge of Allegiance*.

**A. Approval of agenda:**

**1) Motion to adopt the proposed agenda**

**ACTION TAKEN:** Upon a motion by Mr. Ware, second by Mr. Royster, City Council voted unanimously to approve the agenda as presented.

**B. Special Presentations: None**

**C. Public Comment: None**

**D. Public Hearing:**

**1) Consideration of an ordinance of the City of Shelby, amending Section 30-5 of Article 1 of Chapter 30; amending Section 10-132 of Article III of Chapter 10; and by adding a new Section 10-135 to Article III of Chapter 10, in order to allow the sale of alcoholic beverages at sidewalk cafes: Ordinance No. 9-2009**

Mr. Howell provided a review of the content of the existing City Code as well as the proposed amendments that would allow for the sale and consumption of malt beverages and unfortified wine in properly permitted sidewalk cafes as follows:

- **Amendment No. 1 – Section 30-5 of Article I of Chapter 30 – This section does not apply to sidewalk cafes as described in Chapter 10, Article III of the City’s Code of Ordinances.**

- **Amendment No. 2 – Subsection (2) of Section 10-132 of Article III of Chapter 10 – A temporary physical barrier, as approved in the permitting process, shall be erected separating the permitted area from the unobstructed contiguous sidewalk.**
- **Amendment No. 3 – Subsection (7) of Section 10-132 of Article III of Chapter 10 shall be deleted in its entirety.**
- **Amendment No. 4 – Article III of Chapter 10 shall be amended by adding a new Section 10-135. Notwithstanding any other provisions of the Code, alcoholic beverages may be served in approved sidewalk cafes provided that the following requirements are met:**
  - **The sidewalk café shall be part of a restaurant which shall otherwise be authorized, permitted, or licensed under the State law and the City’s Code to serve and sell alcoholic beverages for on-premises consumption.**
  - **The sidewalk café must be included as part of the premises for which an ABC permit is issued pursuant to State law, for the purpose of applying and enforcing State laws regarding the sale or consumption of alcoholic beverages.**
  - **Signs shall be posted, visible at all exit points from the sidewalk café, that it is unlawful to remove alcoholic beverages from the premises.**
  - **The restaurant operator shall not have violated any law, regulation, or ordinance relating to the possession, sale, transportation or consumption of intoxicating beverages or controlled substances for the three years preceding the commencement of the sale of alcoholic beverages at the sidewalk café.**
  - **No outdoor bar is allowed within the sidewalk café, nor shall outdoor preparation of alcoholic beverages be permitted except that unfortified wine may be decanted or beer poured at a table as part of a meal.**
  - **Any alcoholic beverages served and consumed at an approved sidewalk café must be served and consumed in glasses or cups which bear no markings other than the logo or the name of the business operating the sidewalk café.**
  - **Any alcoholic beverages served and consumed at an approved sidewalk café can only be served to and consumed by a customer**

while that customer is consuming a meal purchased from the business operating the approved sidewalk café.

- No advertising of alcoholic beverages (including, by way of illustration, signs, napkins and coasters) shall be allowed in the area of an approved sidewalk café.
- Only unfortified wine and beer may be served in the area of an approved sidewalk café. No other alcoholic beverages are permitted.

Next, Mayor Alexander provided instructions as to the decorum of this public hearing which included the following remarks:

- We are going to conduct ourselves in a manner that bespeaks the dignity of the Council Chambers and demonstrate respect.
- City Council has set a hearing to hear genuine citizen comments and concerns from people who may be on either side of this issue. Respect the process that has been laid out.
- Each person must state his/her name, address, organization, or business representation. Comments must be succinct, to the point, and under two minutes.
- It is not a time to query Council members or to debate overall the morality or merits of alcohol in general. It is a hearing, not a dialogue.
- After precisely two and a half hours, the hearing will be closed. Once the hearing is closed, Council members will be given an opportunity to make remarks, comments, or ask questions. At that point, the time for public statements has elapsed and it is a time solely for Council to discuss and take action.

Mayor Alexander concluded by stating that this is the democratic process and the way citizenship works.

Mayor Alexander opened the public hearing at 6:16 p.m. and invited comments from the public:

Rev. W. Marion Adams who resides at 1007 Hardin Drive in Shelby spoke against the proposed ordinance amendment. Rev. Adams is a retired pastor who served Lily Memorial Baptist Church for 17 years and was present on behalf of his family. During his career, Rev. Adams conducted revivals in 14 countries and never saw alcohol sold on any of those city streets.

Rev. Timothy M. Sims representing Bethel Baptist Church located at 606 South Dekalb Street in Shelby spoke against the proposed ordinance amendment. Rev. Sims gave the reasons for his opposition to alcohol which included that it is morally and scripturally wrong as well as citing social and physical reasons. Rev. Sims stated that alcohol is a drug that alters the mind, body, and spirit of people under its influence.

Melissa Abernathy who resides at 157-8 Delta Park Drive in Shelby spoke against the proposed ordinance amendment. Ms. Abernathy quoted excerpts from the City's website and questioned how does allowing alcohol on the City streets display the City of Shelby as unique in its identity. Ms. Abernathy also stated that allowing alcohol on public streets implies a stamp of approval and may even glamorize public alcohol abuse. She does not wish to be subjected to this activity.

Steve Melton who resides at 1039 Allendale Street in Shelby spoke against the proposed ordinance amendment. Mr. Melton stated that along with the introduction of alcoholic sales to improve the economic condition in Shelby, there has been a failure to attract the new jobs which were anticipated. On the contrary, there has been an exodus of most of the City's industrial jobs. Mr. Melton suggested a different approach to improve the economic situation in downtown Shelby i.e. specialty shops, etc. Mr. Melton asked if any City Council member had one industry or shop tell them that they will locate here if they were allowed to eat and drink on the sidewalk.

Nathan Deatruck, Assistant Pastor, representing Maranatha Baptist Church located at 413 Polkville Road in Shelby spoke against the proposed ordinance amendment. Pastor Deatruck stated that 16 years ago Cleveland County chose to become wet, but now the encroachment of alcoholic beverages is pushing from the private sector onto public property, the City's sidewalks. After 16 years, an erosion has occurred. What the previous generation allowed in moderation, this generation is indulging a little further, and Pastor Deatruck questioned to what extent the next generation will take this issue. Increased revenue for the City will not be worth any price his children and grandchildren will have to pay. Pastor Deatruck stated that erosion is as destructive as dynamite given one factor, time.

Susan Young who resides at 922 Elizabeth Road in Shelby spoke in support of the proposed ordinance amendment. Mrs. Young stated that this is not a religious issue or a referendum about the sale of alcohol in this community, which was done years ago. It is about opportunities and choices for individuals to dine inside or outside of a restaurant. It is also an economic issue for the City, which has implications for future growth. Mrs. Young urged Council to vote for the ordinance amendment.

**Will Rucker who owns property at 233 South Lafayette Street in Shelby spoke in support of the proposed ordinance amendment. Mr. Rucker stated that he provided the City Manager with a list of names and letters from Uptown business and property owners who agree that the sale of alcoholic beverages at sidewalk cafes would be an asset for Uptown Shelby. Mr. Rucker complimented City staff for preparing a worthy ordinance, which continues to work successfully for other towns in the area. This proposed ordinance has been endorsed by the Uptown businesses, the Uptown patrons, Uptown Shelby Association, and the Cleveland County Chamber. Mr. Rucker hoped that the City of Shelby will continue to be progressive and that residents will seek to find new ways to support the struggling Uptown area. Mr. Rucker said that in order to attract new businesses, Shelby must support the existing businesses now.**

**Wade Nichols, who resides at 206 Grigg Street in Shelby, is also the Executive Director of Uptown Shelby Association (USA). Mr. Nichols spoke in support of the proposed ordinance amendment by stating that USA has a renewed commitment to Uptown Shelby's businesses and works to ensure they have every tool possible to thrive. The USA Board voted to voice support for the study and adoption of changes to the ordinances that might give restaurants in Uptown Shelby another means of generating new business, new jobs, and more tax revenue. Mr. Nichols urged support for the careful and smart business owners who can manage growth and help generate new jobs and new businesses in Uptown Shelby.**

**Pastor Andy Stevens representing Manna Baptist Church located 1714 Burke Road in Shelby spoke against the proposed ordinance amendment. Pastor Stevens stated that the people of Manna Baptist Church are in opposition to this proposal for the following reasons: Alcohol has degenerating effects on society; alcohol will drive godly citizens away from town and draw troublesome people to our town; alcohol is a drug that has negative consequences; and alcohol drinking is contrary to God's word.**

**Michael Chrisawn, who resides at 157-1 Delta Park Drive in Shelby, is also the President of the Cleveland County Chamber of Commerce. Mr. Chrisawn spoke in support of the proposed ordinance amendment by reading into the record the resolution adopted by the Chamber's membership on January 20, 2009.**

**Chris Canoutas who resides at 830 East Graham Street in Shelby spoke in support of the proposed ordinance amendment. Mr. Canoutas is the co-owner of Pleasant City Wood Fired Grille located at 233 South Lafayette Street. He made reference to his family's long history in Uptown Shelby with their operation and ownership of the Sanitary Lunch and Shelby Café. Mr.**

Canoutas elaborated on the advantages of sidewalk cafes by stating the following: They encourage a pedestrian-oriented environment; they help to create a visually attractive atmosphere; they promote overall commerce; and with more eyes on the street, they can provide for a safer environment. If the ordinance passed, Mr. Canoutas personally promised full responsibility and compliance with the new regulations.

Joyce Condrey who resides at 2907 Poplar Circle in Shelby spoke against the proposed ordinance amendment. Ms. Condrey commented on how the many securities of the past are gone. She questioned whether legalizing other drugs to be used or abused on the streets is possible. Ms. Condrey said that the streets belong to the taxpayers of Shelby and serving alcohol at sidewalk cafes will not bring prosperity to Shelby.

Mark Alan Hudson, who resides at 1300 Turtle Crossing in Shelby, is also the Board Chairman of the Cleveland County Chamber of Commerce. Mr. Hudson echoed the Chamber's resolution read by Mr. Chrisawn. Mr. Hudson added that the comments received from the discussion held by the Chamber's membership on this issue were in favor of the proposed ordinance amendment.

Betty McKesson who resides at 934 West Warren Street in Shelby spoke against the proposed ordinance amendment. Ms. McKesson is a registered nurse and has seen the end result of alcohol abuse throughout her years as a medical professional. She cautioned against the problems alcohol brings upon the social system.

Rev. Mike Carper representing Shelby Free Will Baptist Church located at 403 College Avenue was completely opposed to the proposed ordinance amendment.

Steve Abernathy, who resides 157-8 Delta Park Drive in Shelby, is the Minister of Music at Bethel Baptist Church. He spoke against the proposed ordinance amendment.

Melvin Kale who resides at 1026 Hunter Valley Road in Shelby spoke against the proposed ordinance amendment relating his personal experience as a recovering alcoholic.

James (Tony) West who resides at 1004 Leander Street in Shelby spoke against the proposed ordinance. Mr. West said alcohol is a drug and urged Council to consider a well thought out decision for a better community without alcohol.

Mary Degree who resides at 1110 Stanton Drive in Shelby spoke against the proposed ordinance. Mrs. Degree said she is a Christian educator who has

been involved in the D.A.R.E. (Drug Abuse Resistance Education) Program which teaches children about the ill effects of alcohol. She urged Council to make their decision for the children of future generations and not the present set of circumstances.

Cheri Evans who owns property at 618 North Morgan Street in Shelby spoke against the proposed ordinance. Mrs. Evans said she is a Christian who views alcohol as morally wrong. She works at a psychiatric office and sees the effects of alcohol every single day. Mrs. Evans raised two concerns related to sidewalk cafes namely the length of time a patron can drink alcohol after a meal and who is responsible for any anticipated problems.

Page Morgan who resides at 1225 Brookwood Drive in Shelby spoke in support of the proposed ordinance amendment. Mrs. Morgan stated that the ordinance under consideration is merely a “tweaking” of the current ordinance, not a public referendum. Alcohol sales have been allowed in Shelby for over 15 years. She views this amendment as one additional tool given to local businesses allowing for a restaurant’s choice to serve or not to serve alcoholic beverages. Other local restaurants currently serve alcoholic beverages on patios or in enclosed venues. Mrs. Morgan said the ordinance is well-written and well-reasoned and urged its consent.

J. Benton Reid who resides at 317 South Thompson in Shelby spoke in support of the proposed ordinance amendment. Mr. Reid stated that Council included many safeguards in the amendment under consideration. Mr. Reid said looking at the vacant storefronts in Uptown Shelby calls for a change. Only change is constant and those who envision no change leave themselves and the City behind in the dust of progress. He added passing this ordinance will positively stimulate the business economy and growth in Shelby and urged Council to pass the amendment.

Carol Addis who resides at 1621 Mountain Lane in Shelby spoke against the proposed ordinance amendment relating her personal experience about her son, who passed away before the age of 21, due to alcohol and drug use.

Rev. Lamont Littlejohn representing Mt. Calvary Baptist Church located at 422 Carolina Avenue in Shelby spoke against the proposed ordinance amendment. Rev. Littlejohn, along with many others, has worked diligently with the Weed and Seed initiative in Northeast Shelby. Referencing Weed and Seed’s progress, he questioned how one community can make alcohol and drugs illegal in one section and legal in another section. He suggested the City find other ways to promote growth and urged Council to vote against the ordinance.

Lizzie Ponder who resides at 103 Mario Drive in Shelby spoke against the proposed ordinance amendment. Mrs. Ponder is a member of New Ellis Chapel Baptist Church, a retired teacher, and a Christian wife and mother. She stated it is hypocrisy to teach children that alcohol is a drug and then to advertise it on the City's streets. For the sake of children, Mrs. Ponder urged Council to vote against the ordinance.

Jeremiah R. Parker who resides at 1331 North Lakewood Drive in Shelby spoke against the proposed ordinance amendment. Mr. Parker stated that the only differences between a wino clutching his brown bag leaned against a wall in front of a business on the sidewalk in downtown Shelby and those people who sit at tables and drink from glasses are the tables and glasses and the only thing missing would be the brown bag.

Mayor Alexander closed the public hearing at 7:05 p.m.

Mayor Alexander gave each Council member the opportunity to make their remarks. The following main points were made:

Mr. Hopper – Mr. Hopper suggested to the local restaurants that were not enjoying the benefits of full capacity at their dining establishments should first reconsider their menu, food preparation, staff, and customer service to make improvements. He believes these improvements, not alcoholic beverages, will bring an economic upturn in their businesses. Mr. Hopper was not convinced that a few restaurants in Uptown Shelby with sidewalk cafes would make a significant impact on the local economy.

Mr. Shores – As the son of a minister with 19 years in law enforcement, Mr. Shores knows firsthand the problems associated with alcohol. For many reasons, he requested that the City's ordinance related to sidewalk cafes have the most conservative and most restrictive amendments added before he would consider voting for it. Mr. Shores carefully evaluated the issues and said that the root of the problem is in the family unit itself. He said that there are people all over Cleveland County selling alcohol to children and reiterated that it is a criminal offense to sell alcohol to a minor or to an intoxicated person. With this in mind, Mr. Shores stated that it is his intention to vote for the restrictions included in this ordinance.

Mr. Royster – Mr. Royster stated that State laws allow and govern the sale of alcoholic beverages and the City's ordinance is merely a modification of those laws. The City has prepared its ordinance in a very responsible manner. Mr. Royster reiterated his position that parents and families are responsible for educating their children about moral convictions and vices. He said that job does not belong to the City.



**Mrs. Patterson – Mrs. Patterson apologized to all for the lack of accommodations during this meeting. She said she is a Christian who always wanted the very best for the City of Shelby. Mrs. Patterson reiterated her position that she does not believe God will let the City prosper with alcohol on the streets.**

**Mr. Mabry – Mr. Mabry stated he has respect for all the opinions on this matter and has studied the issue. His focus is to help the City as a whole with diverse choices and realizes that all cannot be accommodated. He said this proposal has firm requirements and is considerate of the public. It has the support of Uptown Shelby Association and the Cleveland County Chamber. Mr. Mabry views the ordinance as a tool for investing in the City with the hopes of cultivating entertainment growth.**

**Mr. Ware – Echoing all the Council members' appreciation to the public for their opinions and participation, Mr. Ware added his own appreciation and promised to respond to all those who sent messages to him. Mr. Ware stated that a great deal of collective thought has gone into this ordinance and he called for continued support of the community as a whole.**

**Mayor Alexander – In the event of a tie vote, Mayor Alexander decided to share his thoughts on the issue. He said he understood the aspects of outdoor dining which can add vibrancy and activity to an uptown area. It is an attraction and can add to the bottom line of businesses. It is Mayor Alexander's desire for Uptown Shelby to be successful as he invested 13 years working at Uptown Shelby Association and promoting it. Ten years ago, he assisted in writing the first ordinance which allowed for sidewalk cafes. The Mayor explained his major issue with sidewalk cafes is that since the original ordinance only two restaurants have applied for permits to his knowledge. In essence, Council has been asked to make a judgment, by its introduction into the public realm, of a substance, that while many see no harm, there are many who do hold moral and social reservations about this introduction into the public realm. Council is also being asked to believe that the only people who may eat outdoors are people who drink. The Mayor does not believe this because there has been no real push in the past to go outside. As to the matter of his own conscience as well as social responsibilities, Mayor Alexander stated he will not support this ordinance.**

**ACTION TAKEN: Upon a motion by Mr. Ware, second by Mr. Royster, City Council voted 4 to 2 (Patterson and Hopper) to approve and adopt Ordinance No. 9-2009 entitled, "AN ORDINANCE OF THE CITY OF SHELBY, AMENDING SECTION 30-5 OF ARTICLE 1 OF CHAPTER 30; AMENDING SECTION 10-132 OF ARTICLE III OF CHAPTER 10; AND BY ADDING A NEW SECTION 10-135 TO ARTICLE III OF CHAPTER 10, IN ORDER TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES AT SIDEWALK CAFES".**

Mayor Alexander declared a recess at 7:25 p.m. and reconvened the meeting at 7:29 p.m.

**E. Consent Agenda:**

**ACTION TAKEN:** Mayor Alexander presented the consent agenda. Mr. Royster made a motion to approve the consent agenda and each item as presented. After a second from Mrs. Patterson, the consent agenda and following items were unanimously approved:

- 1) Approval of the Minutes of the Special Meeting of January 23, 2009
- 2) Approval of the Minutes of the Special Meeting of January 24, 2009
- 3) Approval of the Minutes of the Regular Meeting of February 2, 2009
- 4) Approval of a Special Event Permit Application:
  - a. Buffalo Creek Gallery and Uptown Shelby Association, Inc. to sponsor Shelby Art on the Square 2009 on April 25, 2009
- 5) Approval of a resolution recommending 8-hour ozone non-attainment boundary delineations for the Charlotte-Gastonia- Rock Hill, NC-SC 8-hour ozone non-attainment area: Resolution No. 8-2009

**END CONSENT AGENDA**

**F. Unfinished Business: None**

**G. New Business: None**

**H. City Manager's Report: None**

**I. Council Announcements and Remarks: None**

**J. Adjournment:**

- 1) Motion to adjourn

**ACTION TAKEN:** Upon a motion by Mr. Shores, second by Mr. Hopper, City Council voted unanimously to adjourn the meeting at 7:31 p.m.

Respectfully submitted,

Bernadette A. Parduski, CMC  
City Clerk

W. Ted Alexander  
Mayor

Minutes of February 16, A. D. 2009