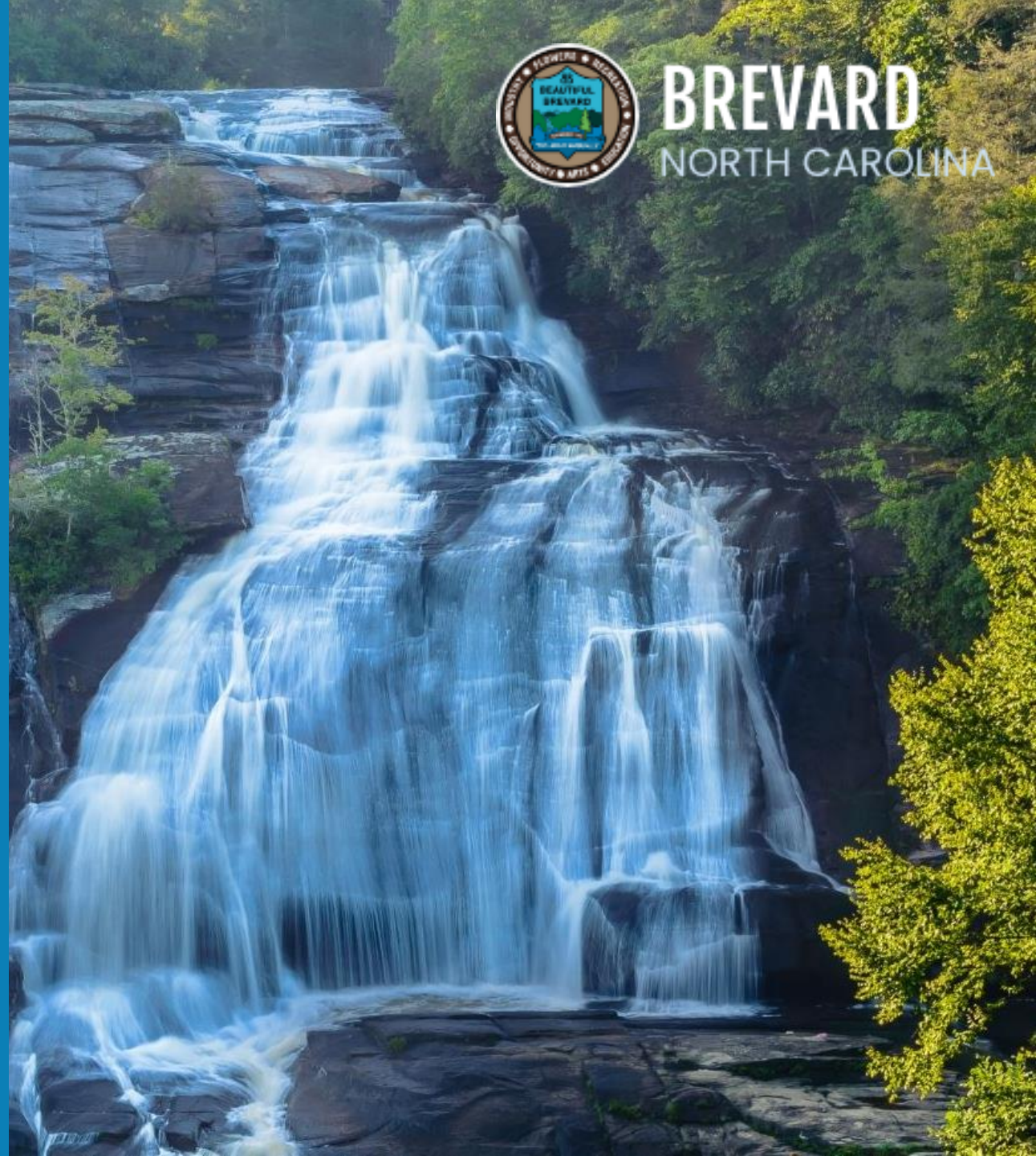
Sidewalk Usage Public Hearing

City Council | June 17, 2024



Rationale / Background

- N.C.G.S. 160A-296 imposes upon cities the duty to keep public streets and sidewalks **open for travel** and **free from unnecessary obstructions**.
- NC League of Municipalities (NCLM), the City's insurance provider, advised Staff that in order to be adequate covered:
  - **All items** placed in the public rights-of-way must have an encroachment / hold harmless agreement
  - **All items** placed in the public rights-of-way must have insurance naming the City as an additional insured
  - City must proactively monitor items and take enforcement actions, when necessary

How did we get here?

2020

- City permitted usage of sidewalk by businesses in response to COVID-19 pandemic
- City signed Sidewalk Dining Agreement with NCDOT to permit sidewalk dining on NCDOT rights-of-ways
- Staff consulted with Downtown Master Plan to amend the sidewalk usage ordinance

2021

- City Council approved text amendment to expand regular usage of public space

2023

- Main Street Improvement project adds additional public areas and amenities
- City Council approved Downtown Social District

How did we get here?

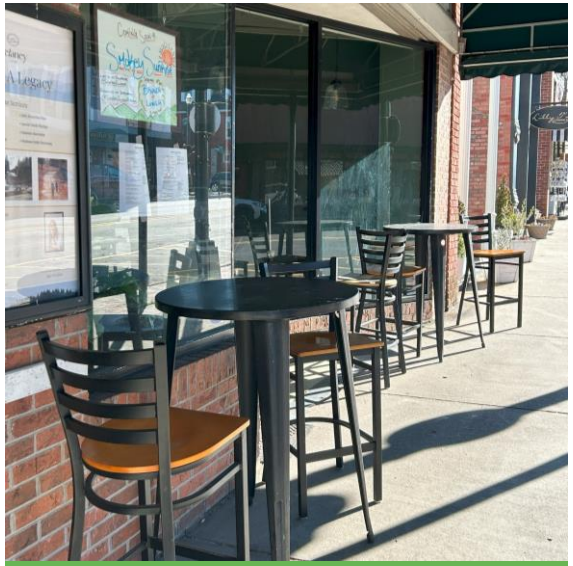
2024

- **January 10th** – City Staff shared an introduction / facilitated a discussion with the Downtown Master Plan (DTMP) Committee
- **April 10th** – Staff shared a fully revised draft of the text amendment to the DTMP Committee
- **May 8th** – Staff brought a revised draft of the text amendment to the DTMP Committee
- **June 12th** – Staff brought a revised draft of the text amendment to the DTMP Committee, and they unanimously recommended in favor of approval

Text Amendment Goals

- Ensure at all items (e.g., merchandise, planters, furnishings) placed in the public rights-of-way have **insurance**
- Ensure that the City is **adequately protected** in the event of an incident
- Ensure that items placed on the sidewalk **do not interfere with the flow of traffic**
- Ensure that items placed in the rights-of-way **do not impede the use of public infrastructure / amenities** (bike racks, trash cans, seating, etc.)
- **Reduce the burden on business owners** by making it a one-time permit

Sidewalk Usage Regulations - Current



Sidewalk Dining

Regulated by agreement with NCDOT & State law



A-Frame Signs

Regulated in the UDO, must get a sign permit



Permanent / Semi-Permanent Objects

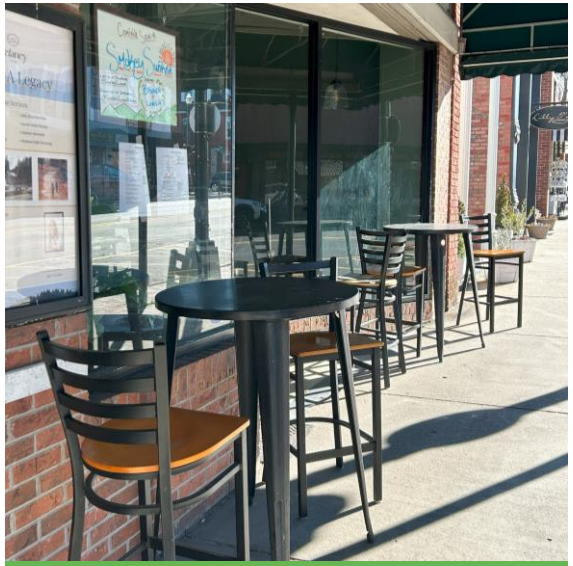
Regulated in Code for specific items



Merchandise

No permit or insurance currently required

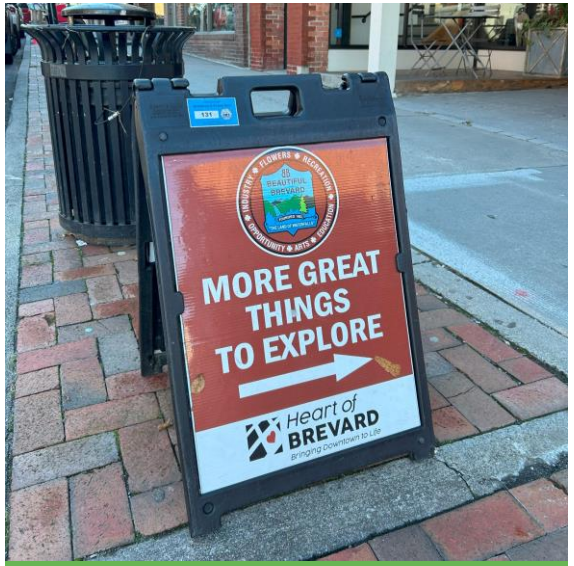
Sidewalk Usage Regulations - Proposed



Sidewalk Dining

Regulated by agreement with NCDOT & State law

Minor changes to allowable materials



A-Frame Signs

Regulated in the UDO, must get a sign permit

No changes proposed

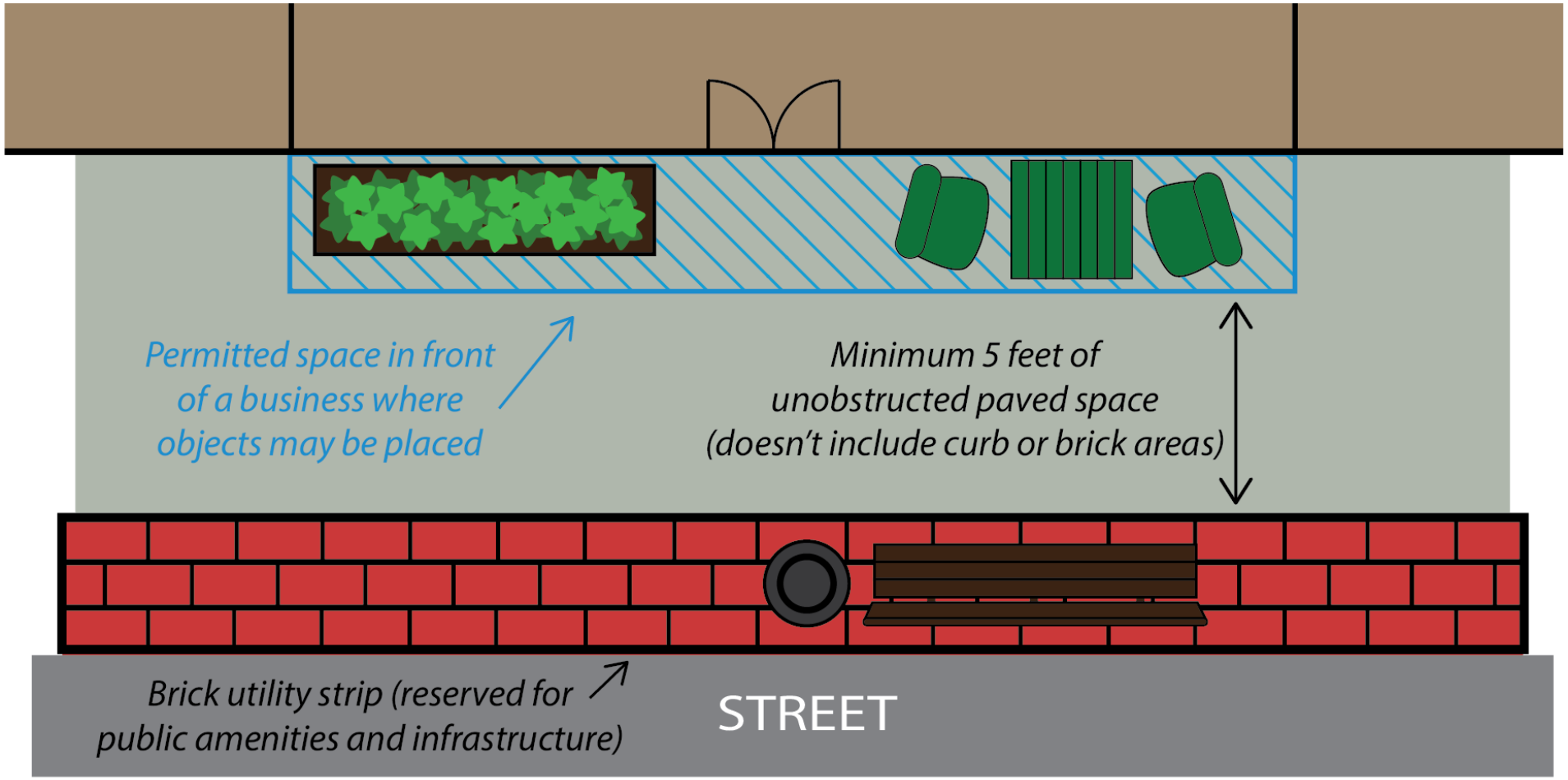




Objects Placed on Sidewalks

Permit, insurance and hold harmless agreement required for a space where obstructions can be placed

Approach for Sidewalk Obstructions

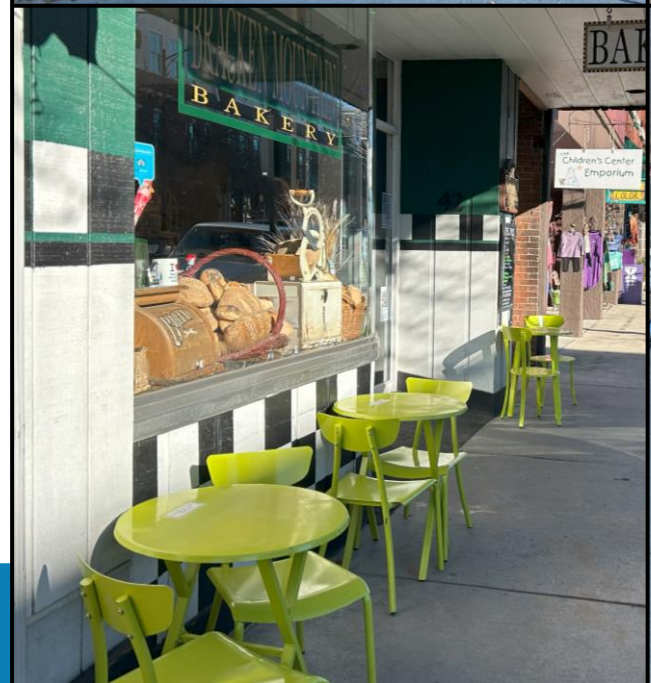


Sidewalk Obstructions

- Permit required for a ***space***
- Insurance required for a ***space***
  - $2,000,000 liability coverage
- Placement
  - Must be immediately adjacent to business
  - Must have 5ft of unobstructed sidewalk for pedestrians
  - Cannot obstruct fire lane, driveways, alleyways, building entrances, utility access, fire hydrants, ADA ramps, etc.
  - Cannot be in the bricked area*
  - Merchandise still needs to be removed at the end of every business day, but furnishings can remain









Other Municipalities

- **Asheville** – Merchandise and Sidewalk Dining
  - $1,000,000 minimum liability coverage
- **Waynesville** – Merchandise and Sidewalk Dining
  - Only permitted on sidewalks greater than 10 feet in width
  - Must have 7 feet of clearance
  - Insurance required (amount not specified)
- **Lenoir** – Sidewalk Dining Only
  - $1,000,000 minimum liability coverage
- **Wake Forest** – Merchandise and Sidewalk Dining
  - $1,000,000 minimum liability coverage (general)
  - $3,000,000 minimum liability coverage (sidewalk dining)
- **Sylva** – Temporary Only
  - Not allowed unless part of a temporary sidewalk sale
  - $100,000 liability insurance
- **Black Mountain** – None
- **Hickory** - None

Policy Analysis

Downtown Master Plan (2021):

- Enhance mobility, accessibility, and safety in Downtown
- Create an attractive and engaging pedestrian experience

Building Brevard 2030 Comprehensive Land Use Plan (2023)

- Create a built environment that prioritizes a safe, active, multi-modal transportation
- Prioritize pedestrians in Downtown and Major Activity Center

Brevard Pedestrian and Bicycle Plan (2023):

- Create safer conditions for walking and biking

Statement from NCLM

"Displays that are impeding pedestrian traffic, or creating slip/trip/fall hazards, may result in a liability claim in the event of an incident. It is important to **establish clear guidelines** for sidewalk displays and **ensure vendors have liability coverage** if a claim arises.

It is also advisable to have a **Hold Harmless Agreement** releasing Brevard of any liability resulting from damage to the vendors' display, or any incident caused by the display, since Brevard is not creating the hazard.

Vendor sidewalk displays are a common practice and create an inviting shopping atmosphere for the public. **It is just important that displays are done safely**."

Amy Whisnant, Risk Control Consultant

NCLM
NC LEAGUE OF MUNICIPALITIES

Next Steps

If passed tonight, Staff will take the following steps over the summer:

- Inventory objects on streets (Downtown and beyond)
- Hold public information sessions with businesses
- Contact business owners that have objects, identify whether or not they comply, and facilitate permitting




Paint
Lawn & Garden
Propane
Sidewalk
7ft wide
5 ft of unobstructed
pedestrian space
Permitted space
extending 2 feet
from the wall

Restaurant that does not have sidewalk dining can get permit for tables



A-Frame Sign in the Brick Area



Items <u>fully</u> behind the wall / front do not need a permit because it is not in the right-of-way. Business owner is liable.