TOWN OF BLACK MOUNTAIN
STAFF REPORT
For August 11, 2025, Town Council Meeting

STAFF RECOMMENDATION

Staff recommend Town Council direct staff to strengthen and clarify the Land Use Code's allowance of sidewalk seating in the Central Business (CB) zoning district, by drafting text amendment language for consideration by the Planning Board.

The text amendment will add a definition of sidewalk seating, add a barrier requirement, add Sidewalk Seating to the Table of Uses by Zoning District, implement an annually-renewed permit requirement, and move the standards from the CB "Supplementary District Requirements" section of Chapter 4 (Zoning) to Chapter 5 (Additional Use Standards for Specified Uses).

DETAILS OF STAFF RECOMMENDATION

Sidewalk seating is not listed on the Table of Uses by Zoning District (Sec. 4.7.14) even though it can be considered a use.

The allowance for existing sidewalks to be used for seating in CB is explained in one sentence: "Existing sidewalks may be used for outdoor seating." (reference: item ***B*** in Sec. 4.7.7.2) Business owners, property owners and staff are provided no standards for outdoor seating, including regarding safety and passage for pedestrians and wheelchairs.

However, for the placement of displays or temporary signs, there is a safety requirement: "Sidewalks may also be used for displays or temporary signs as permitted by Chapter 9 of this LUC as long as four feet (4' or 48"), as measured from the back of the curb toward the building, is maintained as free and clear for pedestrians and wheelchairs."

CB is a nearly fully built-out zoning district. For the infrequent situation where new construction occurs, a significant width requirement is imposed if the sidewalk is intended to include outdoor seating; this width requirement implicitly adds a measure of safety as far as room for pedestrians and wheelchair users. The new-construction provision is: "As part of new construction, sidewalks are required adjacent to state and town roadways and must be a minimum of six feet wide. Sidewalks intended for shared use with outdoor seating or retail displays must be a minimum of 12 feet wide." (reference: item ***C*** in Sec. 4.7.7.2)

Staff suggest Sidewalk Seating be added as a use in the Table of Uses by Zoning District (Sec. 4.7.14), with the use coded ***A*** for Additional Requirements (***A*** uses are detailed in Chapter 5 – Additional Use Standards for Specified Uses) for the CB zoning district.

Section **5.[#] – Sidewalk Seating** would state the following requirements:

- A free-and-clear passage area on the sidewalk that is a minimum of four feet wide between the outermost edge of the seating area barrier and the closest point of all fixtures, planter boxes, poles, etc., on the street side of the sidewalk.
- A removable post-and-rope type stanchion barrier.
- An annually renewed Sidewalk Seating permit that includes:
    - If alcoholic beverages are to be served on any day of the week, or at any time of day, in the sidewalk seating area: a copy of the relevant ABC permit.
    - A site plan
    - Acknowledgement that the entire post-and-rope barrier system will be removed by the permit holder at the end of business hours on any day during which outdoor seating is set up.
    - Acknowledgement that the area will be used exclusively for dining, drinking, and circulation of customers.

The minimum width requirement of four feet is based on ADA's minimum three-foot requirement for wheelchairs plus one foot for emergency situations, per the Fire Marshal.

With use requirements listed in Chapter 5, items ***B*** and ***C*** in Sec. 4.7.7.2 would be amended to refer only to displays and temporary signs.

Staff recommend the following being incorporated in the text amendment:
If there is insufficient room to establish outdoor seating, a parking space (or spaces) in a parking lot can be converted to a parklet through a joint agreement among property and business owners. A parklet is a cordoned-off area for seating and dining, and it typically includes significant landscaping or hardscaping to enhance the cordoning to make it noticeably clear that the area is not for vehicles.

Section 1.2.3 (Definitions) of the Land Use Code has one sidewalk definition:

> Sidewalk: A paved or otherwise surfaced area designed for pedestrian and wheelchair use.

Staff suggest amending Section 1.2.3 to add the following:

> Sidewalk Seating: An area adjacent to and directly in front of a street-level eating or drinking establishment located within the sidewalk area of the public right-of-way and used exclusively for dining, drinking, and circulation of customers.

(definition language based on a sample definition in *A Planner's Dictionary*, published by American Planning Association)

ANALYSIS

CONSISTENCY WITH ADOPTED POLICY GUIDANCE:

The Future Land Use Map in the Town's comprehensive plan, *Elevate Black Mountain*, identifies Downtown as one of six ***Activity and Employment*** areas on the map. (In addition, there are five ***Neighborhood*** areas.) One of the four *Opportunities* for Downtown aligns with Council amending the

Land Use Code to provide clear standards for business owners to safely establish sidewalk seating: "Enhance streetscapes with street trees, wider sidewalks, pedestrian amenities, and burying overhead wires."

The *Black Mountain Creating Outdoor Recreation Economies (CORE) Strategic Plan 2023-2028* includes Action Strategy #5 that states, in part, "Walkability and bikeability are vital to making the community more hospitable to a broader variety of people including young children." Sidewalk seating is an important non-vehicular use of outdoor and right-of-way space.

Black Mountain by Bike – A Plan for Bicyclists identifies how the Town can create places where residents can access healthy food and reconnect neighborhoods via multi-modal transportation infrastructure. Sidewalk seating is an important non-vehicular use of outdoor and right-of-way space; it implicitly supports a multi-modal transportation environment.

REASONABLENESS/PUBLIC INTEREST:

Public health and safety are at the core of the Town's Code of Ordinances, including the Land Use Code. In all of Western North Carolina, and across the state and country, removable post-and-rope type stanchion barriers provide aesthetically pleasing, non-intrusive, reasonably priced demarcation of a zone for seating and dining separate from other uses on a sidewalk.

By grounding sidewalk seating in a permit that includes a site plan and a requirement for annual renewal, staff will be able to efficiently and fairly ensure proper and safe passage for pedestrians and wheelchair users throughout the Central Business zoning district.

Commercial property owners and business owners regularly state that clearly stated, safety-based code requirements are not only reasonable, they're also good for business. Permitted and defined sidewalk seating would allow the private sector to safely, fairly and consistently maximize the uses that occur on downtown sidewalks.

Example of removable post-and-rope type stanchion barrier styles:





