ORDINANCE NO. 2024-41

AN ORDINANCE AMENDING CITY OF BREVARD CODE OF ORDINANCES CHAPTER 1 – GENERAL PROVISIONS, CHAPTER 46 – PEDDLERS AND SOLICITORS; AND CHAPTER 62 – STREETS, SIDEWALKS AND OTHER PUBLIC WAYS

WHEREAS, North Carolina General Statutes Section 160A-296 states that municipalities have regulatory authority over all public sidewalks within its corporate limits and are responsible for keeping these public sidewalks open for travel and free from unnecessary obstructions; and,

WHEREAS, the City of Brevard Downtown Master Plan Committee reviewed the proposal and unanimously recommended in favor on August 29, 2024; and,

WHEREAS, the City of Brevard Downtown Master Plan Committee unanimously recommended in favor of amending City of Brevard Code of Ordinances Chapter 1 – General Provisions, Chapter 46 – Peddlers and Solicitors; and Chapter 62 – Streets, Sidewalks and Other Public Ways on August 29, 2024; and,

WHEREAS, the City Council of the City of Brevard finds that the proposed amendment is consistent with the goals and objectives of the City of Brevard Comprehensive Land Use Plan *Building Brevard 2030* and the City of Brevard Downtown Master Plan;

WHEREAS, a public hearing was conducted on Monday, October 21, 2024, by the Brevard City Council, and, after hearing all persons wishing to comment, and upon review and consideration of the proposed amendments, it is the desire of the City Council of the City of Brevard Code of Ordinances be amended as outlined below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

SECTION 01. City of Brevard Code of Ordinances is hereby amended as depicted in Exhibit A, which is attached hereto and incorporated herein by reference.

SECTION 02. As to any conflict between this Ordinance and any parts of existing ordinances, the provisions of this Ordinance shall control.

SECTION 03. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 04. This Ordinance shall be in full force and in effect from and after the date of its adoption and approval.

Adopted and approved this the 4th day of November 2024.

Maureen Copelof
Mayor

ATTEST:

Denise Hodsdon, CMC
City Clerk

APPROVED AS TO FORM:

Mack McKeller
City Attorney

EXHIBIT A

PART II: CODE OF ORDINANCES

CHAPTER 1. GENERAL PROVISIONS

1-2. Definitions and rules of construction.

Obstruction: An object that is placed on public streets, sidewalks, and alleyways. Such objects include but are not limited to displays, fixtures, inventory racks, display cases, planters, and seating. See also obstruction – permanent or semi-permanent.

Obstruction - permanent or semipermanent: An obstruction or object that is kept out on public streets, sidewalks, and alleyways after business hours. Such objects include but are not limited to displays, fixtures, inventory racks, display cases, planters, vending machines, and seating. Also referred to as a semipermanent or permanent object.

Sidewalk dining: Serving food and beverages from a restaurant abutting a public right-of-way to customers seated in the public right-of-way.

CHAPTER 46. PEDDLERS, SOLICITORS, AND BUSINESSES

ARTICLE I. IN GENERAL

46-1. Selling on streets and sidewalks.

A. It shall be unlawful for any vendor, or for any person whatsoever, to sell, barter, exchange or attempt to sell, barter, or exchange any goods, wares or merchandise from any city street, city sidewalk or pedestrian way, or from any vehicle except:
   1. As may be authorized with respect to vending carts in CHAPTER 3 of the City of Brevard UNIFIED DEVELOPMENT ORDINANCE; or
   2. As the prohibition may be waived by the approving authority for special events recognized by the city provided that the applicant satisfies all permit requirements of Section 66-13 and complies with Article I of CHAPTER 66 and other applicable provisions of this Code.

B. Merchandise or other obstructions may be placed on the sidewalk or pedestrian way pursuant to Section 62-1; provided no transactions occur outside of the business' legal premises.

46-6. Reserved.

ARTICLE II. SIDEWALK DINING AREAS

46-33. Application.

Any restaurant owner desiring to operate a sidewalk dining area shall prepare and file an application with the city manager which shall contain the following information:

A. The name, addresses, and telephone number of the restaurant desiring to operate a sidewalk dining area.

B. The name, address, and telephone number of the restaurant operator.

C. A drawing or site plan showing the section of sidewalk or pedestrian way to be used for sidewalk dining, and the section to be kept clear for pedestrian and fire lane use, and depicting the proposed dimensions and placement of tables, chairs, barricades, umbrellas, trash receptacles, and other furnishing on the sidewalk or pedestrian way.

D. A description or images of the barricades to be used (if any) around the sidewalk dining area and of the furniture to be used, i.e. tables, chairs, umbrellas, etc.

E. Proof of an insurance policy, issued by an insurance company licensed to do business in the state, protecting the permittee, the city, and NCDOT, if applicable, from all claims for damages to the property and bodily injury, including death, which may arise from operation under or in connection with the permit. Such insurance shall name the city and, if applicable, NCDOT as additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without advance written notice to the city. Such insurance shall afford minimum limits of $1,000,000.00 aggregate annually.

F. A copy of all permits and licenses issued by the state, county or city, including health and ABC permits, if any, necessary for the operation of the restaurant, or a copy of the application for the permit if no permit has been issued. This requirement includes permits or certificates issued by the city or other governmental authority for exterior alterations or improvements to the restaurant.

G. The restaurant operator shall provide an agreement to indemnify and hold harmless the city and, if applicable, NCDOT from any claim resulting from the operation of sidewalk dining activities.

H. Additional information may be requested by the city manager or his designee in order to determine compliance with this section.

I. At the time the application is filed, the applicant shall pay the city a fee as set forth in the schedule of taxes, fees and charges.

46-34. Standards for sidewalk dining areas.

No permit for the operation of a sidewalk dining area may be issued unless the application is complete and the following standards are met:

A. The sidewalk dining area must be associated with an operating restaurant such that it is under the same management and shares the same food preparation facilities, restroom facilities, and other customer convenience facilities as the restaurant. The sidewalk dining must be operated under the same name as the restaurant and may not be open or operated at any time when the restaurant is not open for business.

B. The operation of the sidewalk dining area must be clearly incidental to the associated restaurant business. The seating capacity of the sidewalk dining area may not be more than 50 percent of the interior seating capacity of the associated restaurant.

C. The restaurant seeking to operate the sidewalk dining area must abut, front on, and open onto the sidewalk or pedestrian way. Tables, chairs, and other furnishings may be placed on the sidewalk which fronts the business and on the sidewalk on the side of the business if located on a street corner. Furnishings and barricades may extend up to eight feet onto adjacent property frontage in either or both directions with the written permission (provided at the time of application) of the occupant of the adjacent property.

D. Tables, chairs and other furnishings shall be placed a minimum of six feet from any travel lane.

E. The placement of tables, chairs and other furnishings as shown in the drawing submitted with the site plan must be done in such a manner that complies with Section 62-1.

F. The tables, chairs and other furnishings used in the sidewalk dining area shall not be anchored and shall be made of a type of street furniture that is movable. Furnishings must be constructed of metal (aluminum, steel, wrought iron, etc.) or other non-combustible material of similar durability. Commercial umbrellas must be made with outdoor fabric and a metal or commercial grade plastic stand. Advertising messages may not be displayed from tables, chairs, umbrellas, or other furnishings.

G. Tables, chairs, and other furnishings that remain on the sidewalk at times when the business is not in operation shall be secured in a manner that allows clear access from the street, and umbrellas shall be taken inside.

H. Merchants with sidewalks dining are responsible for cleanliness and are subject to all applicable health department regulations.

I. Umbrellas over tables are permissible but must provide a clearance of a minimum of 78 inches from the lowest point of their canopy.

J. The maximum posted speed permitted on the roadway adjacent to the right-of-way to be used for sidewalk dining activities shall not be greater than 45 miles per hour.

K. The restaurant operator shall cease part or all sidewalk dining activities in order to allow construction, maintenance, or repair of any street, sidewalk, utility, or public building, by NCDOT, the city, its agents or employees, or by any other governmental entity or public entity.

46-37. Terms and transfer.

If a permittee discontinues the restaurant operation or the sidewalk dining area, no refund of the permit fee shall be made. Permits issued pursuant to this section shall not be transferable or assignable. Permits may prohibit operation of sidewalk dining areas during special events and contain other conditions and restrictions as may be necessary to protect the public health, safety and welfare.

CHAPTER 62. STREETS, SIDEWALKS AND OTHER PUBLIC WAYS

ARTICLE I. IN GENERAL

62-1. Placing objects on streets and sidewalks.

A. No obstruction of any kind shall be placed or allowed to lie in any of the alleys, streets, sidewalks or other public ways of the city obstructing the free passage of persons or vehicles except as permitted by the provisions of this subsection; provided, any person erecting a building may, with the permission of the city manager or his/her designee, place building materials for immediate use on the streets or sidewalks in such a way as to not unduly interfere with vehicular or pedestrian traffic.

B. ***Setbacks and separation requirements.*** Obstructions of any kind of public sidewalks or other pedestrian way closed to vehicular traffic shall adhere to the following setback requirements:

1. The placement of the obstructions shall be done in such a manner that at least five feet of unobstructed paved space of sidewalk, excluding the curb, bricked utility area, or any planting strip, measured from any permanent or semi-permanent object for the passage of pedestrians.
    a. On sidewalks at least twelve feet in width, excluding the curb, the maximum distance that the obstruction may be placed from the wall or front of the place of business shall be 36 inches.
    b. On sidewalks at least seven feet in width, excluding the curb, the maximum distance that the obstruction may be placed from the wall or front of the place of business shall be 24 inches.
    c. On sidewalks less than seven feet in width, excluding the curb, no obstructions shall be placed on the sidewalks or streets.
    d. Tables, chairs and other furnishings shall be placed a minimum of six feet from any travel lane.
2. In accordance with North Carolina Fire Code, no fire exits or lanes may be blocked and must remain clear at all times.
3. The placement of the obstructions shall not impede any driveway, alleyway, building entrance or exit, visibility sight distance triangle, emergency entrance or exit, fire hydrant or standpipe, utility access, ventilation areas, or ramps necessary to meet accessibility requirements under the Americans with Disabilities Act.
4. The obstructions shall not impede any public infrastructure or amenities, such as bicycle racks, benches, utility poles, trashcans or other similar objects.
5. Alleyways closed to vehicular traffic shall not be subject to the sidewalk setback requirements, so long as a minimum at least four feet of unobstructed travel way must remain open and clear.
6. Public infrastructure and amenities placed by the City of Brevard, NCDOT, or other governmental agency are exempt from setback and separation requirements of this subsection, provided the applicable NC Building Code and Americans with Disabilities Act requirements are met.

C. ***Permission for obstructions.*** Businesses operating from a permanent physical facility desiring to place obstructions on the sidewalk adjacent to the premises may do so after obtaining a permit in accordance with the requirements of this section.

1. *Permitted space.* The permit shall be for the space on the sidewalk where the objects will be placed, provided that:
    a. The business seeking to place obstructions must abut and front on the public sidewalk or pedestrian way, and the permitted space immediately abuts their business.
    b. The permitted space complies with the setback and separation requirements of subsection 62-1.B.
2. *Allowable objects.* Within the permitted space, the permit holder may place merchandise, displays, planters, seating, furnishings, or other obstruction, provided that it does not extend beyond the permitted space, does not endanger public safety, and complies with the standards of this section.
    a. The obstructions shall not be anchored or otherwise permanently affixed to the sidewalk or building, unless explicit authority is granted but the City and NCDOT, if applicable.
    b. The administrator and/or the police department reserve the right to inspect the obstructions and remove hazardous materials.
    c. Merchandise, along with all racks, display cases and other accessories thereto, shall be removed from all public sidewalks at the end of every business day during which the same may have been displayed.
    d. Tables, chairs, and other furnishings may remain on the sidewalk at times when the business is not in operation so long as they are secured in a manner that allows clear access from the street.

e. Any lighted obstructions, including but not limited to holiday decorations, shall comply with CHAPTER 11 of the City of Brevard Unified Development Ordinance.

f. Signage may only be included as obstructions if permitted in accordance with CHAPTER 12 of the City of Brevard's Unified Development Ordinance.

g. No moving or other device to attract attention, including but not limited to pennants, flags, propellers, discs, or inflatables, whether or not any said device has a written message, shall not be allowed as obstructions.

3. *Application.* The business owner shall file an application with the administrator which shall contain the following information:

   a. The name, address, and telephone number of the business owner.

   b. A drawing or site plan showing the section of sidewalk or pedestrian way to be used, and the section to be kept clear for pedestrian and fire lane use, and depicting the proposed dimensions of the desired area on the sidewalk or pedestrian way.

   c. Descriptions and/or photos of the objects or the types of objects to be placed in the permitted space.

   d. Proof of an insurance policy, issued by an insurance company licensed to do business in the state, protecting the permittee, the city, and NCDOT, if applicable, from all claims for damages to the property and bodily injury, including death, which may arise from placement of obstructions under or in connection with the permit. Such insurance shall name the city and, if applicable, NCDOT as additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without advance written notice to the city. Such insurance shall afford minimum limits of $1,000,000.00 aggregate annually.

   e. An agreement to indemnify and hold harmless the city and, if applicable, NCDOT from any claim resulting from placement of obstructions.

   f. Additional information that may be requested by the administrator in order to determine compliance with this section.

   g. A fee as set forth in the schedule of taxes, fees and charges.

4. *Administrative review procedure.*

   a. The administrator shall review and comment on the application and supporting materials.

   b. If deemed necessary by the administrator, the application and supporting materials may be circulated to the Downtown Master Plan Committee and any other relevant city, county, and state agencies, committees, and officials for comment(s) as to the proposed obstruction's conformance to all applicable standards and requirements and whether approval is recommended.

   c. The administrator shall approve, approve with conditions, or deny the application.

5. *Permit denial.* A permit may be denied if it is found that:

   a. The application does not demonstrate compliance with this section;

   b. The application is not consistent with adopted plans or policies of the city; and/or

   c. The granting of the permit would not be in the public interest or would jeopardize public safety.

6. *Obstructions placed in violation.*

   a. Obstructions placed in violation include, but are not limited to:

      1. Placed or moved obstructions in violation of any city, county or state law, ordinance, or other regulation.

      2. Placed or moved obstructions in such a manner as to create a public nuisance or to constitute a hazard to the public health, safety, or welfare.

      3. Violation of the approved permit, insurance requirements, or hold harmless agreement.

   b. In the event the administrator determines an obstruction is placed in violation, he or she shall provide the business owner written notice stating the violation. Such notice shall direct that all violations existing thereupon be resolved within 15 days from the certified receipt of the such written notice.

      1. The business operator may appeal any such order by filing a written notice of appeal with the city clerk within 30 days of receipt thereof. The board of adjustment (BOA) shall conduct a hearing on the appeal and render its decision thereon. Such notice of appeal shall stay the revocation of the permit and/or abatement by the city until a final determination by the BOA.

      2. However, if, in the opinion of the administrator, police department, or fire department, the unlawful condition is such that is of imminent danger or peril to the public, the city

may, without notice, proceed to abate, and the cost thereof shall be charged against the property.

c. Violations not resolved within 15 days from the certified receipt of the written notice shall be subject to the following:

1. City abatement and/or object removal with the cost thereof charged against the property;
2. Permit revocation; and /or
3. Civil penalties in accordance with North Carolina General Statutes or any executed encroachment agreements.

7. *Permit exemptions.* The following types of obstructions shall not require a permit.

a. Objects owned, installed, and placed by the city, county, NCDOT, or any other state or federal agency.

b. Temporary objects placed as part of a permitted special event, provided the setback and separation requirements of this section are met.

D. Any existing door which opens outward over a public sidewalk may remain in place so long as the building owner executes an agreement acknowledging that the door could present a safety hazard to pedestrians and holding the city harmless for any and all costs to the city, including attorney's fees, court costs and all damages suffered by any pedestrian claiming injury from such door, provided that (1) no such door shall occupy more than 24 inches of space over the public sidewalk and (2) the city manager reviews, approves and accepts the specific provisions contained in the hold harmless agreement. Should no such agreement be made within 30 days' notice to the building owner, then all doors on such building which open over the public sidewalk shall be removed by the building owner.

62-2. Reserved.