



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE:** December 18, 2018

**AGENDA TITLE:** Items Related to the Opportunity Zone located in federal census tract 122.03:

1. Opportunity zone update, responses to council member inquiries, and discussion of next steps, and
2. Introduction and consideration of a motion to order published by title only and adopt by emergency Ordinance 8308 temporarily suspending accepting building permit, site review, and other development applications that will result in adding floor area or dwelling units to land within the census tract 122.03 opportunity zone, generally bounded on the west by 28th Street, on the south by Arapahoe Avenue, on the east by 55th Street/Airport Road and on the north by Highway 119/Independence Road until June 22, 2020; and setting forth related details.

**PRESENTER/S**

Jane S. Brautigam, City Manager

David Gehr, Chief Deputy City Attorney

Yvette Bowden, Director Parks and Recreation and Community Vitality

Chris Meschuk, Interim Director, Planning/Assistant City Manager

Jennifer Pinsonneault, Business Liaison, Community Vitality

Charles Ferro, Development Review Manager, Planning

**EXECUTIVE SUMMARY**

On April 11, 2018, census tract 122.03 – a 2.5 square mile area in the city of Boulder – was certified by the U.S. Department of the Treasury under the federal Opportunity Zone Program. Recently, community members have inquired as to:

- the process that led to certification,
- general information about the Opportunity Zone Program and the certified zone in Boulder,

- the applicability of local regulations, zoning and planning as well as how community-identified priorities will inform that program's implementation in Boulder, and
- currently applicable zoning, pending projects and potential Council actions influencing the Program's implementation in Boulder.

Council requested staff provide information on these topics. This memorandum responds to that request, provides additional staff research related to the Opportunity Zone Program and Census Tract 122.03, and proposes next steps for Council's consideration. Further, this memo provides potential moratorium language responsive to Council's request for same.

Council members and members of the community have expressed concerns that the recent opportunity zone certification will accelerate investment in the area and spur additional development. In response, staff drafted interim development regulations that restrict development in the opportunity zone while the community considers whether its development regulations will deliver development that meets community expectations. If passed as proposed, the Ordinance will add the following regulations to the opportunity zone.

- The city manager will not accept any building permit, site review or use review applications that will result in additional floor area for the office, medical, or financial uses that are described in Table 6-1 "Use Table," in Section 9-6-1, "Schedule of Permitted Uses of Land, B.R.C. 1981, or the creation of any new dwelling units in the opportunity zone or the creation of any new dwelling units in the opportunity zone. The uses selected have been identified as land uses that contribute to Boulder's job-housing imbalance.
- The Ordinance allows development to be completed for previously approved building permits and development review approvals. It also allows projects for which completed applications have been made to finish the process and construct based on laws in effect at the time of application.
- The Ordinance exempts development within the Phase 1 area of the Transit Village Area Plan, an area generally bounded on the west by 30<sup>th</sup> Street, on the south by Pearl Parkway, on the east by the Burlington Northern Rail Road Tracks and on the north by Valmont Avenue. The reason for this exemption is that this area is one of the most highly planned areas in the community and this phase of TVAP is almost completed.
- The Ordinance also exempts Diagonal Plaza. Diagonal Plaza is a neighborhood center that has been identified in previous planning efforts as an area that needs revitalization. The BVCP provides that the city will use a variety of tools and strategies in area planning and in the creation of public/private partnerships that lead to successful redevelopment and minimize displacement and loss of service

and retail uses. In large part, the application for the opportunity zone status was to provide additional tools that may be used help revitalize this property.

The moratorium is proposed for 18 months, until June 22, 2020 to allow time for the necessary changes to development regulations and planning to occur in the area.

### **QUESTIONS FOR COUNCIL**

*Does Council support staff's proposed next steps regarding the federal Opportunity Zone Program including additional research, benchmarking, and aligned 2019 staff work related to the certified Opportunity Zone census tract in Boulder?*

*Does Council support adoption of the Ordinance placing a moratorium on consideration of permits within the Opportunity Zone as drafted by staff at Council's request?*

### **Suggested Motion Language:**

*Motion to order published by title only and adopt by emergency Ordinance 8308 temporarily suspending accepting building permit, site review, and other development applications that will result in adding floor area or dwelling units to land within the census tract 122.03 opportunity zone, generally bounded on the west by 28TH Street, on the south by Arapahoe Avenue, on the east by 55th Street/Airport Road and on the north by Highway 119/Independence Road until June 22, 2020, and setting forth related details.*

## **I. BACKGROUND ON OPPORTUNITY ZONES**

The Opportunity Zone Program (Program) is a new federal tax incentive initiative arising out of the Tax Cuts and Jobs Act (TCJA) passed in December 2017. It reflects tax incentive-related legislation, the [Investing in Opportunity Act](#), introduced by a bipartisan congressional coalition led by Sen. Cory Booker (D-NJ), Sen. Tim Scott (R-SC), Rep. Pat Tiberi (R-OH) and Rep. Ron Kind (D-WI). The legislation provides a federal tax incentive for eligible investments in certified Opportunity Zones through qualifying Opportunity Funds. The legislation further specifies:

- Census tracts with federal Opportunity Zone designation remain subject to all local zoning and regulations;
- Opportunity Zone certification remains in effect for the 10-year duration of the program; and
- Opportunity Zone certification cannot be changed after census tracts are certified by the U.S. Treasury Department.

On conclusion of a nomination process completed in April 2018, the U.S. Treasury Department certified 8,700 census tracts located in all 50 states, the District of Columbia and five U.S. territories as Opportunity Zones. In Colorado, 126 census tracts were certified as Opportunity Zones including census tract 122.03 located in the city of Boulder and three census tracts located in other Boulder County communities.

**a. Opportunity Zone eligibility and designation process**

Tax Credit and Jobs Act (2017) [legislation established Opportunity Zone census tract eligibility criteria](#). Based on 2015 U.S. Census Bureau American Community survey data (5-year average), eligible tracts would include those having a poverty rate of 20 percent or higher, or a median family income that did not exceed 80 percent of the statewide or metropolitan area median family income, whichever was higher.

Following passage of the TCJA, state governors were invited in January 2018 to nominate up to 25% of eligible census tracts in their states for coverage under the Program. In Colorado, 500 of the state's 1,249 census tracts met the eligibility criteria and only 25% (126) of those tracts could be nominated for opportunity zone designation.

The state Department of Local Affairs (DOLA) and Office of Economic Development and International Trade (OEDIT) were directed to research and recommend areas of the state that would benefit most from the Program. In January and February 2018, those state departments issued press releases and communications with elected officials, community stakeholders and economic development partners providing information about the Program and requesting input on eligible census tracts across the state.

Twelve of the 28 census tracts located in the city of Boulder were identified as eligible for Opportunity Zone designation by OEDIT. Eligibility was based on:

- Poverty rate and median income (federal requirements)
- Need Index
- Opportunity Index

Census Tract	Federal Eligibility	OEDIT Need Index	OEDIT Opportunity Index	OEDIT Overall Index
122.01	Yes	9.0	19.5	28.5
122.02	Yes	7.0	19.5	26.5
<b>122.03</b>	<b>Yes</b>	<b>6.0</b>	<b>21.0</b>	<b>27.0</b>
123	Yes	7.0	21.0	28.0
124.01	Yes	10.0	16.5	26.5
125.07	Yes	8.0	15.0	23.0
125.11	Yes	8.0	16.5	24.5
126.05	Yes	10.0	19.5	29.5
126.07	Yes	12.0	13.5	25.5
127.05	Yes	4.0	21.0	25.0

City of Boulder staff became aware of the Program on Feb. 22, 2018. In efforts to meet the deadline for input concerning eligible census tracts, staff considered the Program's intent and alignment with achieving or addressing community priorities (including but not limited to housing and those other priorities provided in the Boulder Valley Comprehensive Plan). On March 5, 2018, city staff provided responsive information on only one of the 12 eligible tracts in Boulder. Staff's Hotline post concerning the timing and content of the city's response to that state solicitation for input can be found [here](#).

Upon consideration of responsive input across the state, [Gov. Hickenlooper nominated 126 census tracts for Opportunity Zone designation](#) on March 23, 2018. All of the tracts nominated by the governor were determined to be eligible and received federal certification, including census tract 122.03.

#### **b. Federal Program Update**

Since certification was determined and announced by the U.S. Treasury Department, limited additional guidance has been provided concerning the Program's implementation. The Internal Revenue Service (IRS) has issued only [preliminary guidelines](#) concerning the means by which Opportunity Funds will be qualified and invested. No further federal guidance has been issued as to the Program, but hearings are anticipated in January 2019.

##### *Qualifying Opportunity Funds*

Opportunity Funds will be qualified by the IRS. Funds are likely to seek IRS qualification through 2018 tax filings (via form 8996) which provide filers an opportunity to self-certify to that agency and will thereafter be used for annual asset reporting. Opportunity Funds may be declared by filers with any annual tax filing during the Program's 10-year effective period. It is, however, believed that some funds are forming now and will seek qualification with their 2018 tax filing (in 2019) in order to maximize the period and potential amount of tax relief under the Program. There are no set minimum or maximum capital gains investments required to establish a qualified Opportunity Fund.

IRS guidelines do not presently require any publication of the creation of an Opportunity Fund nor the assets held or invested by that fund. Further, funds need not be local to invest in businesses or real property within an Opportunity Zone and there is no requirement that Opportunity Funds be divested of or sell capital assets and business interests improved, built or redeveloped at the end of the Program's 10-year period. The IRS has also provided some guidance concerning Opportunity Fund investments in assets owned or held by an investor prior to passage of the legislation (presumably January 1, 2018) indicating that assets to be improved under the program are to be "acquired" and improved during the 10-year period. Further guidance on this and other issues arising from this new legislation is expected before year-end. Finally, Opportunity Zone funding can be combined with other incentives including, but not limited to, grants programs or other federal programs.

### Investments made by Opportunity Funds

Opportunity Funds are created to invest in real property or businesses located in Opportunity Zones. The IRS has specified certain business types which will not qualify for investment under the Program including, but not limited to, golf courses, country clubs, gaming establishments and liquor stores, similar to exclusions made in other federal programs. It is unclear whether exclusions might be further defined by the next publication of any IRS guidance.

There is a difference between the date when an Opportunity Fund is certified, assets or businesses are invested in, and projects must be completed under the Program. That is, a formed Opportunity Fund may be certified in 2019, investments may be acquired 180 days after certification of that Opportunity Fund and the asset or investments improved at any point over the remainder of the Program's 10-year period. In fact, it is possible under current guidance for the entirety of redevelopment or enhancement of an Opportunity Zone project to still be in the process of development and for the tax relief to be received by the Opportunity Fund if the basis of that property has been sufficiently improved and there are 'plans' to complete the project. Future IRS guidance may refine this possibility.

The Opportunity Zone Program may generate investment in the creation or redevelopment of housing within the census tract area. Such real property investment would meet Program objectives if it provides for basic appreciation throughout the Program period. The Program calls for 'held' assets over a period of time in order to garner Program tax relief. This might make investment in rental or rent-to-own properties more likely than property investments when development is intended for sale (affordable or market-based). Nevertheless, rental or rent-to-own inventory may be desired in portions of the Opportunity Zone. This factor holds similarly true for commercial development.

## **II. CHARACTERISTICS OF CENSUS TRACT 122.03**

The Boulder census tract certified as an Opportunity Zone (tract 122.03) encompasses an area measuring approximately 2.5 square miles. As the map below shows, boundaries for the tract are 28<sup>th</sup> Street (west), Diagonal Highway/Independence Road (north), Airport Road/55<sup>th</sup> Street (east), and Arapahoe Avenue (south).





Based on information used by the U.S. Treasury Department to determine eligibility for the program (2011-2015 Census data), median family income for census tract 122.03 was 74.9% of the median family income for Boulder County and 69.1% of the median family income for the city of Boulder. Twenty-one percent of the people who live in the census tract had, at that time, incomes in the preceding 12 months below the poverty level, compared to 14.1% for Boulder County and 23.1% for the city of Boulder.

American Community Survey 2011-2015 (5-year estimate)	Census Tract 122.03	Boulder County	City of Boulder
Median family income*	\$72,604	\$96,926	\$105,034
Income below poverty level – all people*	20.9%	14.1%	23.1%
Median household income	\$51,719	\$70,961	\$58,484
Annual household income			
Less than \$25,000	27.0%	17.8%	24.8%
\$25,000-\$49,999	20.0%	19.0%	19.6%
\$50,000-\$74,999	22.7%	15.5%	14.6%
\$75,000-\$99,999	10.9%	12.0%	10.6%
\$100,000 or more	19.4%	35.6%	30.4%

\*U.S. Census Bureau 2011-2015 American Community Survey 5-year estimates.

Boulder specific information tracked and compiled by city staff indicates the following data regarding census tract 122.03 (as of January 2018):

- Includes approximately 8,300 residents and approximately 4,000 households
- Includes approximately 1,500 businesses with a total of 23,000 employees

- Businesses in the census tract:
  - Are mostly small; 95% have fewer than 50 employees and many are early- or second-stage companies (past the startup phase, but not mature companies yet)
  - Represent a mix of industries including Professional, Scientific and Technical Services (23%), Health Care and Social Assistance (12%), Retail (11%), Other Services (8%), Manufacturing (7%) and Wholesale (7%).

### **III. EXISTING LAND USE, ZONING AND DEVELOPMENT POTENTIAL IN TRACT 122.03**

The Boulder Valley Comprehensive Plan (BVCP) guides decisions about growth, development, and preservation in the Boulder Valley. The Opportunity Zone is in parts of two of Boulder’s subcommunities, Crossroads and East Boulder. The following is a description of key areas, policies, and plans that are within the opportunity zone.

#### **a. Boulder Valley Comprehensive Plan Policies and Land Use**

##### *Crossroads Subcommunity*

The Crossroads subcommunity, including the Boulder Valley Regional Center (BVRC), is the city’s primary commercial area providing retail at a range of scales, restaurants, offices and hotels. As a part of the 2015 update to the BVCP, a key focus area was the future character of the BVRC. Additional guiding principles were developed (**See attachment B**) to encourage mixed use, ensure appropriate scale and transitions to residential areas, to encourage infill in appropriate places, function as a multimodal hub, encourage parking management strategies and ensure comfort and safety. Policy 2.18 was revised to focus on increasing residential capacity, reduce non-residential capacity and preserve retail.

The crossroads subcommunity also includes Diagonal Plaza, a neighborhood center that has been identified as an area for redevelopment. The BVCP states “neighborhood centers often contain the economic, social and cultural opportunities that allow neighborhoods to thrive and for people to come together.” The BVCP has guiding principles for the city’s neighborhood centers to guide their evolution to meet every day needs of the neighboring community (including locally serving retail, grocery stores and local markets, and smaller scale office), as well as to ensure appropriate scale transitions, encourage rich transportation connections, parking management strategies, and comfort and safety.

Located in both the Crossroads and East Boulder subcommunities is Boulder Junction, which was the focus of an area plan (Transit Village Area Plan, or TVAP) completed in 2007. The city creates area plans where change is expected in the near future. Area planning provides an opportunity for the community to evaluate and shape its expectations and goals for the area in anticipation of that change. It helps ensure that



when redevelopment occurs, property owners can design their projects to be consistent with the vision for the area. It also helps ensure that public improvements will be in place to support the new development and advance city goals.

The first phase of the Transit Village Area Plan (30<sup>th</sup> to the Railroad tracks, between Pearl Pkwy and Valmont) is nearly complete, with the city-owned site at 30<sup>th</sup> and Pearl in the development review stage (see additional info below). The second phase of TVAP (from the railroad tracks east to Foothills Pkwy) has not been initiated, with the plan envisioning areas for additional housing and industrial mixed use. The criteria for city initiation of Phase 2 land use and zoning changes are 1). Substantial redevelopment of Phase 1; 2). Plan in place for providing public improvements to Phase 2; and 3). Market support for Phase 2 land uses.

#### *East Boulder Subcommunity*

The east Boulder subcommunity and the area within the Opportunity Zone also includes some of the city's primary light industrial areas. Policy 2.21 of the BVCP focuses on the future of the city's light industrial areas and was also a focus area of the last BVCP update, with intention to encourage housing infill in appropriate places and offer a mix of uses. (See Attachment B).

#### **b. Existing Zoning:**

Per the image below, there are 21 zone districts within Track 122.03. A majority of the land within the tract is zoned Industrial (30.3%). The next most prevalent zoning designations are Public (15.6%) and Residential Mixed Use-One (RM-1) (10.5%). Zone district percentages within the track can be found in **Attachment B**.

There are currently two sets of adopted design guidelines within the tract ([Boulder Valley Regional Center Design Guidelines](#), [Crossroads East / Sunrise Center Design Guidelines](#)) as well as one adopted area plan ([Transit Village Area Plan](#)).



Recognizing the continued need for housing, the recently adopted [2015 BVCP](#) included two new policies that encourage additional housing opportunities. Policy 2.18 encourages residential infill in the Boulder Valley Regional Center while 2.21 encourages infill housing in industrial zones. Code changes to implement this policy direction have not yet started and the [BVCP Action Plan](#) has identified this as an action for mid-term consideration (2019-2021).

**d. Development Review Processes, Interim Height Regulations and pending BC-1 & BC-2 code changes:**

The Opportunity Zone Program does not impact the city's existing regulatory processes, nor does it modify zoning in any way. Properties that have existing discretionary approvals would continue to be required to undergo amendment processes. Similarly, redevelopment projects that exceed the thresholds for Site Review would continue to be required to undergo the process. Site Review thresholds for all zone districts can be found in [§9-2-14, B.R.C. 1981, table 2-2](#).

The city's interim height regulations will also continue to apply. There are three exempted areas in the tract that are eligible to request height modifications through the Site Review process. The 29<sup>th</sup> Street Mall, Boulder Junction Phase I, and Boulder Community Hospital. None of the industrially zoned areas are exempt from the interim height regulations, nor the other areas of the Regional Business zoning districts. This interim height regulation significantly limits the development potential in these districts.

The city is also currently considering changes to the BC-1 and BC-2 zones with the intent of preserving ground floor retail and commercial with the goal being to allow uses on the ground floor that will not adversely affect the intended function and character of the area as a neighborhood serving business area where retail-type stores predominate. Ordinance 8296 describing these changes is to be considered by council on December 18. City Council passed the Ordinance on first reading, so the pending Ordinance rules apply for 120 days or effectively until February 2019. This rule provides that the city manager will *"not issue a building permit, for a period not to exceed one hundred twenty days, that conflicts with a proposed amendment to this title, between the earlier of the date of the planning board's recommendation to the city council or the city council's first reading on such amendment and the city council's final action thereon."* See § 9-1-5 (b), "Amendments and Effect of Pending Amendments," B.R.C. 1981.

**e. Future development potential**

The city's current projected growth based on current zoning (aka zoning capacity) for the opportunity zone area could allow for approximately 2,000 additional dwelling units, and 15,600 jobs. Most of the housing unit growth is in Boulder Junction (including some units under construction), and some other limited infill sites. The potential job growth is located across the area, and is based on zoning capacity. Using historic growth rates, the capacity jobs number would not be achieved until well beyond 2040. Information on growth projections can be found [here](#).

## **IV. RESPONSES TO COUNCIL QUESTIONS**

Council provided questions to staff addressing a range of issues related to the Opportunity Zone Program including:

- Census tract eligibility and the certification process;
- Qualified Opportunity Fund creation and utilization;
- Local planning/zoning and regulatory authority and other actions the city might take to incentivize or mitigate impacts of potential investment; and
- Other topics

Responses to those questions are provided in Attachment C which refers to and includes additional responses provided by the State OEDIT in Attachment D.

## **V. PROPOSED MORATORIUM**

Council members and members of the community have expressed concerns that the recent opportunity zone certification will accelerate investment in the area and spur additional development. In response, staff drafted interim development regulations that restrict development in the opportunity zone while the community considers whether its development regulations will deliver development that meets community expectations. The proposed Ordinance will add the following regulations to the opportunity zone.

If passed as proposed, the city manager shall not accept any building permit, site review or use review applications that will result in additional floor area for the office, medical, or financial uses that are described in Table 6-1 “Use Table,” in Section 9-6-1, “Schedule of Permitted Uses of Land, B.R.C. 1981, or the creation of any new dwelling units in the opportunity zone or the creation of any new dwelling units in the opportunity zone.

The Ordinance allows development to be completed for previously approved building permits and development review approvals. It also allows projects for which completed applications have been made to finish the process and construct based on laws in effect at the time of application.

The Ordinance exempts development within the Phase 1 area of the Transit Village Area Plan, an area generally bounded on the west by 30<sup>th</sup> Street, on the south by Pearl Parkway, on the east by the Burlington Northern Rail Road Tracks and on the north by Valmont Avenue. The reason for this exemption is that this area is one of the most highly planned areas in the community and this phase of TVAP is almost completed.

The Ordinance also exempts Diagonal Plaza. Diagonal Plaza is a neighborhood center that has been identified in previous planning efforts as an area that needs revitalization. The BVCP provides that the city will use a variety of tools and strategies in area planning and in the creation of public/private partnerships that lead to successful redevelopment and minimize displacement and loss of service and retail uses. In large part, the

application for the opportunity zone status was to provide additional tools that may be used help revitalize this property.

Included in **Attachment A** is a draft Ordinance for council consideration. The Ordinance is proposed to be effective until June 22, 2020 (18 months) to allow for the necessary changes to development regulations and planning to occur in the area.

This Ordinance is constructed to start by prohibiting office uses, and any new residential dwelling units, while allowing other uses (such as retail, restaurants, daycares, etc.) to proceed. The Ordinance then specifically exempts TVAP Phase 1 and Diagonal Plaza, and new dwelling units if the development provides all the required affordable units on-site.

If council desires to prohibit all non-residential uses (not just office, medical, and financial uses), council could consider modifying Section 2 of the Ordinance to say “The city manager shall not accept any applications that will result in additional nonresidential floor area or the addition of any new dwelling units in the Planning Area.” Similarly, if council desires to allow specific uses to apply for additional floor area, additional uses could be added to section 3 of the Ordinance.

If council desires to focus by zoning district to exempt or prohibit development by zone, Section 2 of the Ordinance could be modified.

### Considerations

Opportunity Zone investments may attract investment in local businesses (funding start-ups, business equipment or other appreciating investments). Although businesses will not be able to self-invest, Opportunity Fund investments might afford employers and businesses an ability to secure funding for appreciating equipment, office space or other property aiding in their sustainability and in the vibrancy of Boulder’s local employment environment.

Smaller or start-up businesses may also look to Opportunity Funds to provide needed capital supporting Boulder’s innovation and small business community and allowing retention of growing businesses by financing their enterprises’ transition to larger spaces. It should be noted, however, that published IRS guidance does not dictate the size, type or sector in which an Opportunity Fund might invest potentially leading to the substantial growth of already well-situated businesses. This is not to imply that large businesses do not require investment and do not contribute to Boulder’s sustainability or quality of life (affording employment opportunities for local workers and graduates, for example). These investments, however, may not be equally valued or appreciated across the community. The proposed Ordinance would allow for the renovation of existing buildings provided they do not add floor area for uses defined as office, medical office, or financial institutions.

Opportunity Funds might also invest in commercial spaces of smaller and/or more flexible scale attracting or meeting the needs of Boulder's evolving commercial businesses. Such spaces might be developed with higher energy efficiency features, smaller scale or shared footprints, and potentially greater vibrancy and service reach in the community. The development or redevelopment of commercial spaces within the Opportunity Zone may also address retail area gaps across the Opportunity Zone, factors which will be further studied as part of the current retail study. The proposed Ordinance would allow for redevelopment or development of commercial uses.

The BVCP suggests the city explore opportunities to fund and sustainably provide for services and facilities necessary to maintain the community's safety, sustainability and quality of life. This includes continuing investment and upkeep of public infrastructure critical to those services. Dependent upon how the federal government further defines the method of determining appreciated investment value under the Program, Opportunity Zone certification might attract investments in public infrastructure serving the community. The proposed Ordinance would allow for public and institutional uses.

Among the city's considerations, of course, should be the fact that such funding for public infrastructure is another form of debt to be approached conservatively in accordance with other city practices and council direction. Small scaled public infrastructure projects might be defined as request for proposals (RFP) opportunities seeking Opportunity Fund investment paid off and owned by the municipality at the end of or during the Opportunity Zone program period. In such instances, the city might negotiate purchase of the infrastructure, potentially incurring less risk during the program period for infrastructure maintenance.

The opportunity zone includes two of Boulder's mobile home parks. The proposed Ordinance would continue to allow for home replacements and work defined within Section 10-12 "Mobile Homes", B.R.C., 1981.

## **NEXT STEPS**

*2019 Work Plans* - Staff has identified 2019 work plan projects which will inform community land use, environmental initiatives, housing, infrastructure, quality of life and financial sustainability efforts of the city. These projects are included in the 2019 Council Action Guide. Among others, 2019 initiatives include the following projects and efforts tentatively scheduled for discussion by or updates to council during the year:

- Comprehensive Housing Strategy Implementation,
- The Citywide Retail Study,
- Redesign of the Flexible Rebate Incentive Program,
- Subcommunity Planning, and
- Community Benefit/Height
- Use Table revisions



*Peer Community Benchmarking* - Benchmarking is ongoing. Staff recommends formal outreach to Colorado's and Boulder Benchmark Peer Communities with certified Opportunity Zones to share findings, information and strategies toward achieving community goals and mitigating negative impacts, if any, attributable to the Program.

*Monitoring Community Impacts* - Tracking community impacts, both intended positive or unintended negative, is recommended. To ensure effectiveness in this regard, staff might annually track a set of metrics related to census tract 122.03. Reported information might include:

- Housing units and mix (affordable, market, etc.) including housing units created or lost/year
- Number of development projects/year
- Business retention (by size and/or sector)
- Retail square footage creation and mix/year – metric to be further defined by findings arising out of Citywide Retail Study

*Dedicated webpage* - Finally, staff has enhanced the city's [Opportunity Zone dedicated webpage](#) providing much of the information included in this memo and other resources helpful to the community and information for potentially investing funds. This webpage will be routinely updated as the federal government provides additional Program guidance, benchmarking provides relevant information, Program impact monitoring is updated, and as council might otherwise suggest.

## **ATTACHMENTS**

Attachment A- Proposed Ordinance 8308

Attachment B - Boulder Valley Comprehensive Plan Policies

Attachment C – Responses to Council Questions

Attachment D – City request for response and OEDIT letter responsive to Opportunity Zone questions



ORDINANCE 8308

AN EMERGENCY ORDINANCE TEMPORARILY  
SUSPENDING ACCEPTING BUILDING PERMITS, SITE  
REVIEW APPLICATIONS, AND OTHER DEVELOPMENT  
APPLICATIONS THAT WILL RESULT IN ADDING FLOOR  
AREA TO LAND WITHIN THE CENSUS TRACT 122.03  
OPPORTUNITY ZONE, GENERALLY BOUNDED ON THE  
WEST BY 28TH STREET, ON THE SOUTH BY ARAPAHOE  
AVENUE, ON THE EAST BY 55TH STREET/AIRPORT ROAD  
AND ON THE NORTH BY HIGHWAY 119/INDEPENDENCE  
ROAD UNTIL JUNE 22, 2020; AND SETTING FORTH  
RELATED DETAILS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,  
COLORADO:

Section 1. The City Council finds and recites the following facts leading to the  
temporary suspension of accepting building permits, site review and use review applications for  
additional floor area for the office, medical, or financial uses that are described in Table 6-1 “Use  
Table,” in Section 9-6-1, “Schedule of Permitted Uses of Land,” B.R.C. 1981, or the addition of  
any new dwelling units in the Planning Area in the Opportunity Zone located in federal Census  
Tract 122.03:

- a. This Ordinance applies to approximately 2.5 square miles of land that is generally  
bounded on the west by 28<sup>th</sup> Street, on the south by Arapahoe Avenue, on the east by  
55<sup>th</sup> Street/Airport Road and on the north by Highway 119/Independence Road and  
more particularly described on the map attached to this Ordinance as **Exhibit A** (the  
“Planning Area”).
- b. The Planning Area is federal Census Tract 122.03. The state of Colorado, with input  
from the city, nominated the Planning Area for Opportunity Zone designation on  
March 23, 2018. Thereafter, the Planning Area was certified by the federal  
government as an Opportunity Zone.
- c. Investors in Opportunity Zones, through Opportunity Funds, will receive favorable  
tax relief as an incentive to invest in business and real estate within Opportunity  
Zones.

- d. It is anticipated that the Opportunity Fund designation may lead to accelerated investment in the Planning Area.
- e. A focus of the 2015 Boulder Valley Comprehensive Plan (BVCP) update was to develop land use related policy changes to reduce future imbalances by recommending additional housing in commercial and industrial areas (and corresponding regulatory changes) and reductions of nonresidential land use potential in the Boulder Valley Regional Center. (2015 BVCP, p. 17)
- f. The BVCP provides that the city will continue to be a major employment center and will seek opportunities to improve the balance of jobs and housing while maintaining a healthy economy. This will be accomplished by encouraging new housing and mixed-use neighborhoods in areas close to where people work, encouraging transit-oriented development in appropriate locations, preserving appropriate levels of service commercial uses, converting commercial and industrial uses to residential uses in appropriate locations, improving regional transportation alternatives and mitigating the impacts of traffic congestion. (2015 BVCP, Policy 1.10)
- g. The BVCP describes, among other things, the need for a review of the Boulder Valley Regional Center and 28<sup>th</sup> Street to ensure that this area establishes a proper mix of uses, including increasing housing capacity, reducing the current non-residential capacity, while maintaining retail potential. (2015 BVCP, Policy 2.18)
- h. The BVCP describes, among other things, the need for a review of its efforts to pursue regulatory changes to better allow for housing and retail infill in its light industrial areas. Planning efforts include finding appropriate places for housing infill in areas zoned Industrial-General. (2015 BVCP, Policy 2.21)
- i. The Planning Area includes land that is in the following zoning districts: Business Regional-1, Business Commercial-1 & 2, Business Main Street, Business Transitional-1 & 2, Mixed Use-4, Industrial General, Industrial Manufacturing, Industrial Main Street, Industrial Service-1 & 2, Agricultural, Enclave, Public, Residential High-3, 4, & 6, Residential Medium-1 and Mobile Home.
- j. The city has started a project to examine the permitted uses of lands in its zoning districts. The goals include aligning the permitted uses with the BVCP, identifying community-desired land uses and better enable such uses in identified residential, commercial, and industrial districts, simplifying the use tables, and creating more predictability and certainty in the city's use standards.
- k. Large portions of the Planning Area are within the Crossroads Subcommunity and the East Boulder Subcommunity. Most of the Planning Area does not have a subcommunity plan, area plans or subarea plans.
- l. In order to be prepared for the potential of additional investment in the Planning Area, the city needs to complete a review of planning and zoning regulations to

- 1 ensure that investment in the Planning Area will be consistent with the community  
2 values, including without limitation, the BVCP.
- 3 m. The council intends to lift requirements of this Ordinance after each zoning district in  
4 the Planning Area has been reviewed under the Use Table Review project or other  
5 zoning or land use analysis or has had adequate planning and zoning developed  
6 through subcommunity or area planning. (2015 BVCP, Chapter V)
- 7 n. The Diagonal Plaza is a neighborhood center that has been identified in previous  
8 planning efforts as an area that needs revitalization. The BVCP provides that the city  
9 will use a variety of tools and strategies in area planning and in the creation of  
10 public/private partnerships that lead to successful redevelopment and minimize  
11 displacement and loss of service and retail uses. (2015 BVCP, Policy 2.19 and 5.01)  
12 The city does not wish to prevent any efforts to revitalize Diagonal Plaza.
- 13 o. The Transit Village Area Plan (TVAP) was adopted in 2007 and presently guides  
14 development in that area. The plan includes a two-phase implementation approach.  
15 Presently, the area is actively being developed in the first phase. The city does not  
16 wish to prevent any efforts to develop in the Phase 1 area. (2007 TVAP, p. 7)
- 17 p. Given the anticipated additional investment in the Planning Area, the City Council  
18 concludes that it is necessary to review its existing planning and zoning districts to  
19 ensure that any development or redevelopment is done in a manner that is consistent  
20 with the BVCP and the goals and policies of the city.
- 21 q. The council finds that it is in the best interest of the public health, safety, and welfare  
22 to consider whether existing zoning standards will result in development consistent  
23 with the goals and policies of the BVCP.

24 Section 2. The following provisions of the Boulder Revised Code, 1981, are hereby  
25 suspended as to applications on December 18, 2018 after 5:00 p.m. until June 22, 2020 at 8:00  
26 a.m. Any complete application submitted before 5:00 p.m. on December 18, 2018 shall be  
27 deemed to have been accepted. The city manager shall not accept any applications that will  
28 result in additional floor area for the office, medical, or financial uses that are described in Table  
6-1 "Use Table," in Section 9-6-1, "Schedule of Permitted Uses of Land," B.R.C., 1981, or the  
creation of any new dwelling units in the Planning Area:

- a. Building permits under Title 10, "Structures," B.R.C., 1981;  
b. Site review requests under the provisions of Section 9-2-14, B.R.C., 1981; and  
c. Use review requests under the provisions of Section 9-2-15, B.R.C., 1981.

1        Section 3. Notwithstanding any standard in this Ordinance to the contrary, the following  
2 provisions of the Boulder Revised Code, 1981, are expressly permitted during the term of this  
3 Ordinance:

- 4        a. The creation of any new dwelling units which includes all inclusionary housing units  
5        on the development site that meet the requirements of Chapter 9-13, "Inclusionary  
6        Housing," and C.R.S. § 31-12-301, *et seq.*
- 7        b. Any development for which a valid application for site review, use review, or  
8        building permit application has been approved or an application made prior to  
9        December 18, 2018 at 5:00 p.m. Site review and use review applications that also  
10       refer to similar approvals, by previous names described in Section 9-1-3, B.R.C.,  
11       1981.
- 12       c. Development within the 2007 TVAP area described as Phase 1, an area generally  
13       bounded on the west by 30<sup>th</sup> Street, on the south by Pearl Parkway, on the east by the  
14       Burlington Northern Rail Road Tracks and on the north by Valmont Avenue. (2007  
15       TVAP, p. 7)
- 16       d. Development within the Neighborhood Center referred to as "Diagonal Plaza" in the  
17       BVCP, generally bounded on the east by 28<sup>th</sup> Street, on the south by private property  
18       abutting the southern parking lot line, on the east by 30<sup>th</sup> Street, and on the north by  
19       Highway 119. (2015 BVCP, p. 37)

20       Section 4. Complete site review and use review applications that have been submitted to  
21 the city prior to December 18, 2018 will be permitted to continue through the process under the  
22 regulations in place at the time such application is made. Such applicants shall be required to  
23 pursue such development approvals and meet all requirements and deadlines set by the city  
24 manager and the Boulder Revised Code. Pending developments may apply for and receive  
25 building permits that are necessary to construct the approved development.

26       Section 5. This Ordinance is temporary in duration and intended to be replaced by  
27 subsequent legislative enactment regulating the items listed in this Ordinance, by June 22, 2020.  
28 To the extent that the provisions of Section 9-1-5 "Amendments and Effect of Pending  
Amendments," B.R.C., 1981, apply to the adoption of this Ordinance, such provisions are  
temporarily suspended.

1        Section 6. The immediate passage of this Ordinance is necessary for the preservation of  
2 the public peace, health, or property. The council declares this to be an emergency measure due  
3 to the need to prevent community benefit incompatible development, to pause to consider next  
4 steps, and to consider development of zoning regulations that implement the BVCP and other  
5 polices of the city within the Planning Area. Therefore, this Ordinance is hereby declared to be  
6 an emergency measure, and as such shall be in full force and effect upon its passage.  
7

8  
9        Section 7. If any section, paragraph, clause, or provision of this Ordinance shall for any  
10 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining  
11 provisions of this Ordinance.  
12

13        Section 8. This Ordinance is necessary to protect the public health, safety, and welfare of  
14 the residents of the city, and covers matters of local concern.  
15

16        Section 9. The City Council deems it appropriate that this Ordinance be published by  
17 title only and orders that copies of this ordinance be made available in the office of the city clerk  
18 for public inspection and acquisition.  
19  
20  
21  
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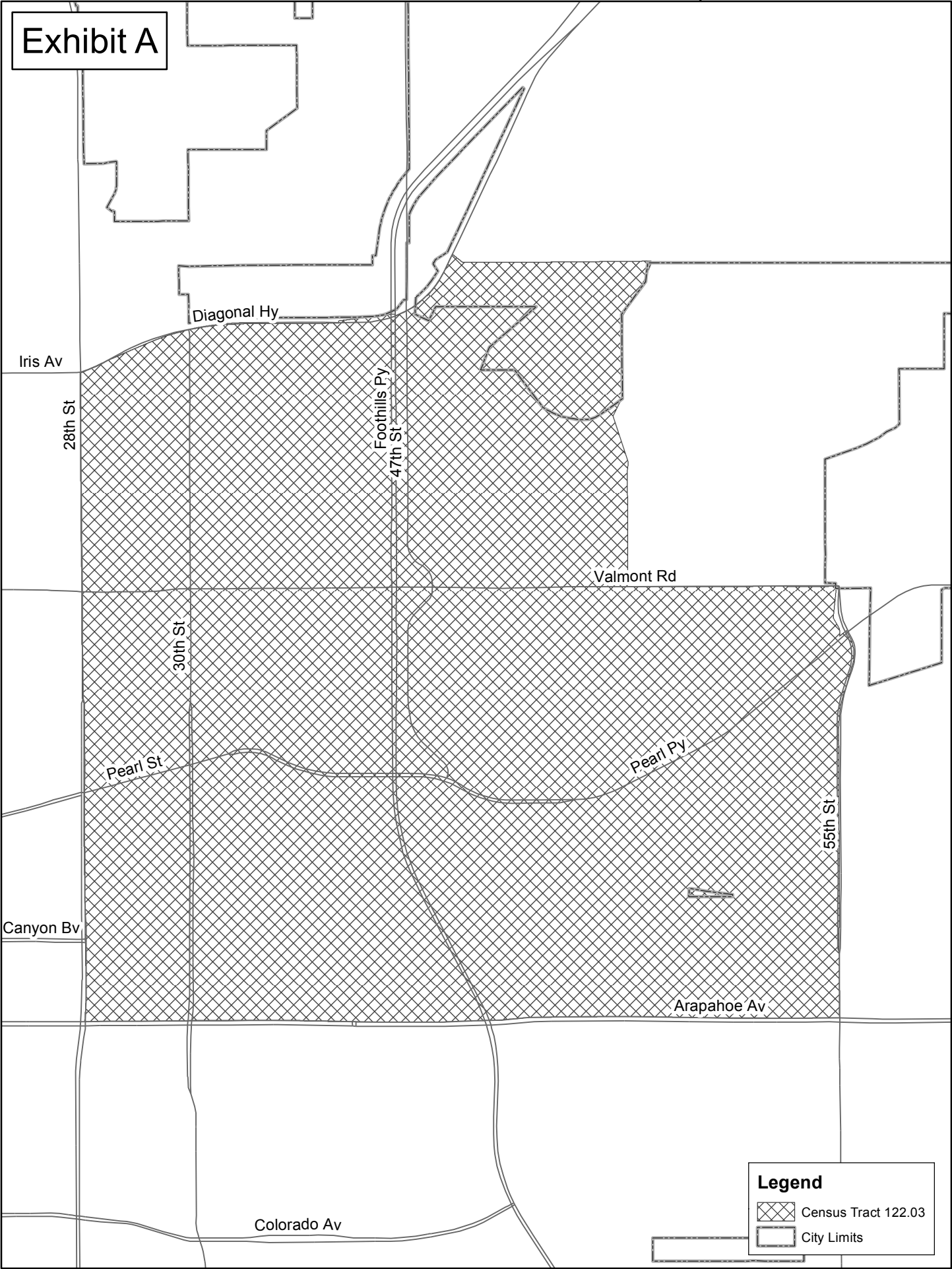
1 READ ON THE FIRST READING, PASSED, ADOPTED AS AN EMERGENCY  
2 MEASURE BY TWO-THIRDS COUNCIL MEMBERS PRESENT, AND ORDERED  
3 PUBLISHED BY TITLE ONLY this 18<sup>th</sup> day of December 2018.  
4  
5

6 \_\_\_\_\_  
7 Suzanne Jones,  
8 Mayor

9 Attest:

10 \_\_\_\_\_  
11 City Clerk,  
12 Lynnette Beck  
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Exhibit A





## Locations for Mixed Use

### 2.16 Mixed Use & Higher-Density Development

The city will encourage well-designed mixed-use and higher-density development that incorporates a substantial amount of affordable housing in appropriate locations, including in some commercial centers and industrial areas and in proximity to multimodal corridors and transit centers. The city will provide incentives and remove regulatory barriers to encourage mixed-use development where and when appropriate. This could include public-private partnerships for planning, design or development, new zoning districts, and the review and revision of floor area ratio, open space and parking requirements.

### 2.17 Variety of Centers

The city and county support a variety of regional and neighborhood centers where people congregate for a variety of activities such as working, shopping, going to school or day care, accessing human services and recreating. Some centers should be located within walking distance of neighborhoods and business areas and designed to be compatible with surrounding land uses and intensity and the context and character of neighborhoods and business areas. Regional centers should serve a larger role and be located near transit. Good multimodal connections to

and from centers and accessibility for people of all ages and abilities will be encouraged.

### 2.18 Boulder Valley Regional Center & 28th Street

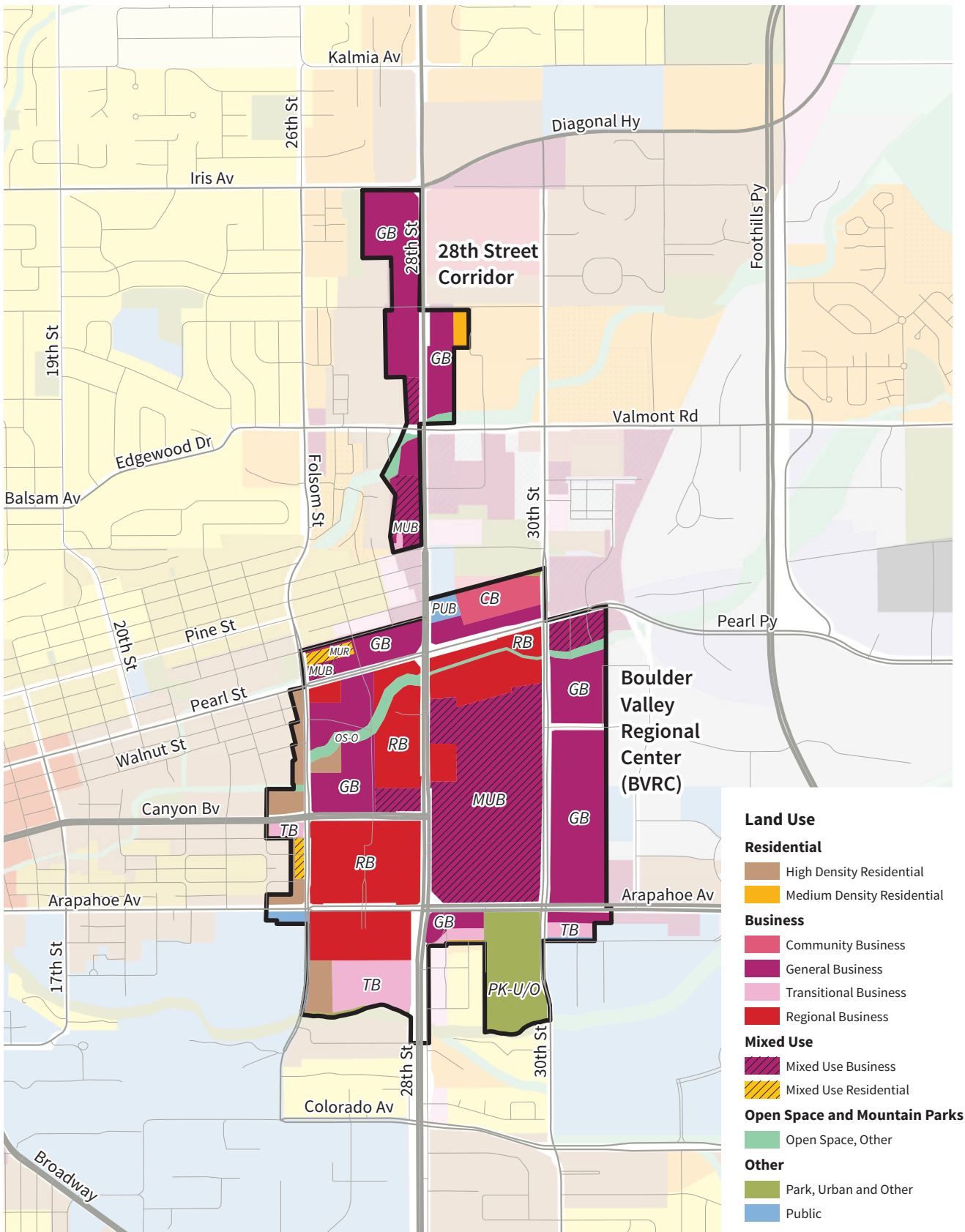
The city will preserve and enhance the BVRC as a high-intensity regional commercial center while encouraging the addition of a variety of housing types. With its co-location of retail, daily amenities, transportation amenities and housing, the BVRC should provide the opportunity for exemplary walkable neighborhoods. Mixed-use development should exemplify the components of the sustainable urban form definition and include a mix of amenities and activities, including cultural and recreational. The city will pursue regulatory changes to increase housing capacity and reduce the current non-residential capacity in the BVRC while maintaining retail potential. This will be accomplished through analysis to balance the needs of redevelopment in certain areas with strategies that minimize business displacement and with ongoing community outreach. The guiding principles noted after Figure 3-4 will apply to development in the BVRC and along 28th Street north of BVRC (from Spruce Street to Iris Avenue) on properties with a Regional or General Business land use designation. The city will study adjacent areas during the Land Use Code update.

*Note: Refer to Regional Business (RB) and General (GB) land use categories in Chapter IV-Land Use Map Descriptions.*



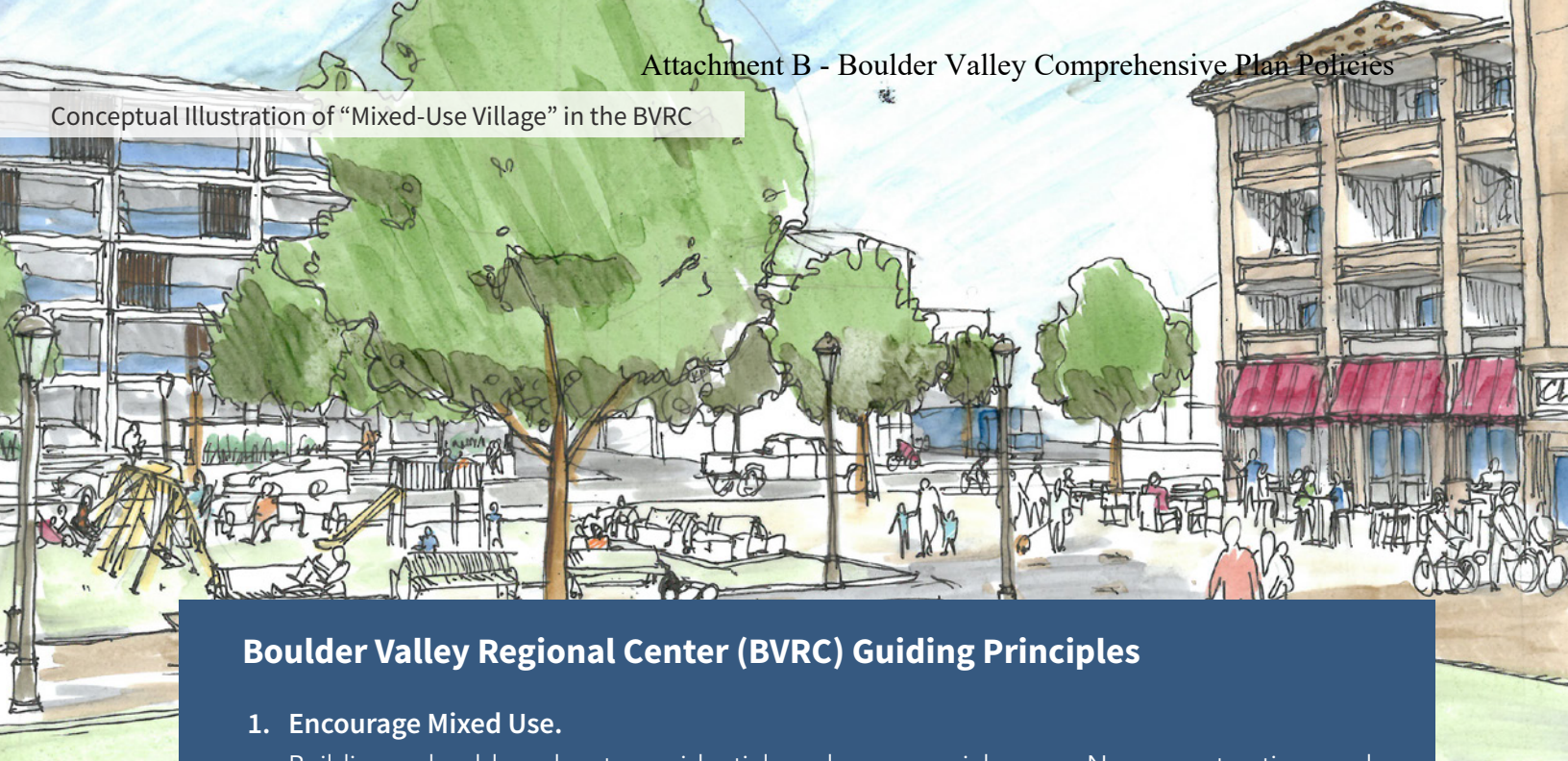
Conceptual Illustration of a Mixed-Use Corner along 28th Street

**Figure 3-4:** Boulder Valley Regional Center & 28th Street Corridor





## Conceptual Illustration of “Mixed-Use Village” in the BVRC



## Boulder Valley Regional Center (BVRC) Guiding Principles

### 1. Encourage Mixed Use.

Buildings should co-locate residential and commercial uses. New construction and redevelopment of parcels in this area should include both vertical and horizontal mixed-use, including first floor retail with residential above as flats and live-work units.

### 2. Ensure appropriate scale and transitions to neighboring residential uses.

The BVRC should become a place of mixed-use villages. The intensity and heights may be higher than neighborhood centers, with buildings potentially up to four or five stories, provided that housing and usable public spaces are included. 28th Street from Spruce Street to Iris Avenue is intended as a more modest intensity area than the BVRC, with buildings up to three or four stories unless additional area or corridor planning takes place. Building footprints should allow for a fine-grained connected street pattern, not superblocks. Transition zones from the higher-density BVRC to medium-density neighboring uses should encourage residential uses that appropriately transition between differing densities, such as townhomes.

### 3. Encourage infill in appropriate places.

Where possible, infill should be encouraged, such as on underutilized surface parking lots.

### 4. Function as a regional multimodal hub.

Capitalize on the existing and planned transportation connections. Address ways to get around for users of all transportation modes by including sheltered seating, shared bicycles, bike cages and repair stations. Access improved connections to and from the regional mobility hub.

### 5. Encourage parking management strategies.

Encourage parking management strategies, such as shared parking, in neighborhood centers.

### 6. Ensure comfort and safety.

Include human-scaled lighting, furnishings, signs and way-finding that feel welcoming, safe and comfortable for users of all ages and abilities. Provide unimpeded connections within the center between parking, transit, retail and residential uses.

*See also Enhanced Design Policy 2.41 and the Sustainable Urban Form Definition.*

## 2.19 Neighborhood Centers

Neighborhood centers often contain the economic, social and cultural opportunities that allow neighborhoods to thrive and for people to come together. The city will encourage neighborhood centers to provide pedestrian-friendly and welcoming environments with a mix of land uses. The city acknowledges and respects the diversity of character and needs of its neighborhood centers and will pursue area planning efforts to support evolution of these centers to become mixed-use places and strive to accomplish the guiding principles noted below.

*Note: Refer to Community Business (CB) land use category in Chapter IV-Land Use Map Descriptions.*

### Neighborhood Centers Guiding Principles

#### 1. Meet every day needs of neighboring communities.

Include a mix of locally serving retail (e.g., retail anchors, such as grocery stores and personal services such as hair salons or small local markets) and other activities, such as smaller-scale office uses to meet every day needs.

#### 2. Ensure appropriate scale transitions to neighboring residential uses.

Be at a scale and intensity lower than downtown and the regional centers, ensuring compatibility of buildings with adjacent residential uses decreasing intensity of activity around edges or "transition zones" near neighborhoods. These transition zones should encourage a diversity of low- and medium-density residential uses, such as attached single-family housing, row homes and a variety of flats.

#### 3. Encourage a richness of transportation amenities.

Neighborhood centers should include attractive pedestrian routes and conveniences such as sheltered seating, shared bicycles, bike cages and repair stations, among others, and have access to greenways, when practical.

#### 4. Encourage parking management strategies.

Encourage parking management strategies, such as shared parking, in neighborhood centers.

#### 5. Ensure comfort and safety.

Include human-scaled lighting, furnishings, signs and way-finding that feel welcoming, safe and comfortable for users of all ages and abilities. Provide unimpeded connections within neighborhood centers between parking, transit, retail and residential uses.

*See also Enhanced Design Policy 2.41 and the Sustainable Urban Form Definition.*



Conceptual Illustration of a Neighborhood Center near a Major Corridor



## 2.21 Light Industrial Areas

The city supports its light industrial areas, which contain a variety of uses, including technical offices, research and light manufacturing. The city will preserve existing industrial areas as places for industry and innovation and will pursue regulatory changes to better allow for housing and retail infill. The city will encourage redevelopment and infill to contribute to placemaking and better achieve sustainable urban form as defined in this chapter. Housing should occur in a logical pattern and in proximity to existing and planned amenities, including retail services and transit. Analysis will guide appropriate places for housing infill within areas zoned Industrial General (IG) (not those zoned for manufacturing or service uses) that minimize the potential mutual impacts of residential and industrial uses in proximity to one another.

*Note: Refer to Light Industrial (LI) land use category in Chapter IV-Land Use Map Descriptions.*

### Light Industrial Area Guiding Principles

#### 1. Preserve established businesses and the opportunity for industrial businesses.

The primary role of the industrial areas for research and light manufacturing should be maintained through existing standards. Housing infill should play a subordinate role and not displace established businesses or the opportunity for industrial businesses.

#### 2. Encourage housing infill in appropriate places.

Housing infill should be encouraged in appropriate places (e.g., at the intersection of collector/arterial streets, near transit and on underutilized surface parking lots) and along open space and/or greenway or trail connections. Housing should be located near other residential uses or retail services.

#### 3. Offer a mix of uses.

Encourage the development of a mix of uses that is compatible with housing (e.g., coffee shops, restaurants) to serve the daily needs of employees and residents, in particular at the intersection of collector/arterial streets.

#### 4. Encourage a richness of transportation amenities.

The multimodal system in industrial areas should be improved with convenient and pleasant ways to get around on foot, by bike and with local connections to regional transit.

#### 5. Pursue parking management strategies.

Encourage parking management strategies, such as shared parking.

*See also Enhanced Design Policy 2.41 and the Sustainable Urban Form Definition.*

Conceptual Illustration of Live/Work and Retail at the Intersection of a Collector/Arterial with an Existing Industrial Use



**ATTACHMENT C**  
**Responses to Council Inquiries regarding Opportunity Zones**

**A. Opportunity Zone Program notice and eligibility/certification of census tract 122.03**

When and how did city staff become aware of the Opportunity Zone Program? Who was involved in the state nomination process leading up to certification of census tract 122.03 as a federal Opportunity Zones? What was the timeline?

Staff in the city's Community Vitality (CV) department became aware of the Opportunity Zone Program on February 22. A deadline for responsive feedback to the State of Colorado was established as March 5 which deadline was met by the same CV staffer providing information on one of the twelve eligible census tracts for which the state determined initial eligibility. Specifics related to the process, considerations, timeline and participants in the certification of census tract 122.03 was provided by staff via a November 29 Hotline post found [here](#). The city's response to OEDIT's solicitation for input was submitted on March 5 and can be found [here](#).

As further described and illustrated in the post, staff's review of the Opportunity Zone Program and response to OEDIT's solicitation considered prior community priority placed on opportunities to support potential public private partnership possibilities and encourage investment in housing and affordable commercial as well as focus on opportunities for redevelopment of Diagonal Crossing area. Staff also noted concerns for the limited timeframe, the inability to remove a census tract if selected for certification, the city's ownership and then-current process at Alpine-Balsam and the potential interests of Gunbarrel residents related to those tracts. Finally, staff's review resulted in reduction of response scope from 12 eligible tracts to one tract, census tract 122.03, which was the focus of the city's response to OEDIT on March 5.

What characteristics and factors are considered in determining census tract eligibility and how does census tract 122.03 meet that criteria?

Census tract eligibility under the Opportunity Zone Program is addressed in the attached letter from OEDIT (Attachment D). Twelve census tracts in the city were determined to meet the eligibility criteria. The city provided input on only one census tract, tract 122.03. Additional information concerning the specific characteristics of that census tract are provided in this memo (Section I(a)).

Please describe the public input process(es) utilized in determining eligibility and ultimate certification of an Opportunity Zone in Boulder, including any notice or information sent to council members and the public at large describing the process of selecting the area and communicating it to the state.

See response to Item 1 above. Staff is not aware of any other notice or information sent to the city, council or the public at large.

What feedback or input did staff provide to the state concerning possible certification of an Opportunity Zone in Boulder?

See response to Item above.

Can Boulder now decide to get out of the Opportunity Zone program? Can the census tract be amended?

Federally certified Opportunity Zones cannot be modified or removed from the Program for the duration of the Program (10 years).

## **B. Creation of Opportunity Funds and uses/investments**

What timelines are investors operating under? Are there incentives to act within specified windows? If so, what are the incentives and timelines?

The Opportunity Zone Program incentivizes and provides tax relief for qualified Opportunity Funds investing in real estate projects or businesses within certified Opportunity Zones. Investments in a qualified Opportunity Fund must be made within 180 days of the sale of the property generating the capital gain. The qualified Opportunity Fund must have 90 percent of its assets invested in Opportunity Zones within six months of the initiation of the fund and at the end of each year.

Investors are allowed to defer capital gains tax from the time that they invest in the qualified Opportunity Fund. However, the investor has to pay all capital gains tax both on the deferred amount and on any gain from the investment when he or she liquidates the investment in the fund. If the investor remains in the fund for five years, capital gains tax is reduced by 10 percent. There is an additional five percent reduction if the investor remains in the fund for seven years. If the investor elects to remain for ten years all capital gains tax is avoided, including that from the prior investment and from any gain through the qualified Opportunity Fund. More information on the creation and use of qualified Opportunity Funds can be found [here](#).



Who derives the most benefits from OZs? Who derives the least?

Opportunity Zones were created by the Investing in Opportunity Act of 2017. Arguably, those potential investors with significant capital gains exposure who invest in qualified Opportunity Funds and hold investments over a period of ten years will yield the greatest benefit. This is in addition to those property and business owners directly benefiting from those investments. Perhaps those who will benefit the least from the Program are those persons or businesses affected by any Program unintended negative impacts.

How will OZ financing interact with Low Income Housing Tax Credits (LIHTC) and any other state or federal affordable housing programs?

This will be clearer once final regulations are in place. It appears now that such programs may operate independently. Opportunity Zone Program funding through federally qualified Opportunity Funds may be combined with other programs including, but not limited to, Low Income Housing Tax Credits. This is something staff will be seeking greater information on in the weeks to come.

Can communities have a say as to which Opportunity Funds provide financing for redevelopment in their communities? Will lists of these funds be made available?

To date, the IRS has not provided any guidance as to local authority requiring publication of Opportunity Fund investments in any zone. Currently, there are no plans or requirements to provide lists of qualified Opportunity Funds. The transaction will be between the qualified Opportunity Fund and the developer.

Can local governments identify and ensure that qualified investors operate according to conditions set locally (other than zoning and regulatory) such as scoring investments on social impact, leveraging of philanthropy, and financing structure that makes social *and* financial sense?

Reporting and measurement has not been a topic of federal guidance so far. This does not prevent the city from capturing certain base data and monitoring impacts (positive or negative) over time. Tracking such data and providing publicly available updates may motivate desired outcomes and prove informative to potential investors. This topic is more thoroughly addressed in the memo(see Memo Section IV).

**C. Local zoning applicability, potential Boulder community impacts and alignment with community goals/priorities**

Is it possible for a community to set conditions specific to redevelopment financed by OZ capital funds? If so, what can or cannot be done?

Unless preempted by the federal government, there is no limit on local land use authority within the framework of federal and state law. The city could use its zoning and land use powers to guide redevelopment for specific types of development, uses, etc.

Are there any limitations as to what zoning and regulatory powers may be applied to achieve desired community outcomes? Can these powers be limited to only the Opportunity Zone?

There are no limits. The city could conceivably create a special zone district for the census tract designated as an Opportunity Zone or amend the existing zoning to focus on uses and types of development desired in the area.

Are there currently projects in the Opportunity Zone area that have made submittals for planning approval or been under discussion with City planning or other staff (such as the Economic Vitality staff)?

There are a number of projects within Boulder's OZ that are under construction or under review. The most notable project under construction is the S'PARK development (comprised of multiple buildings and a mix of uses) near Valmont and Wilderness Place within the Transit Village.

Other recently approved / projects under review include:

- The Commons II, a mixed-use development at 3200 Bluff St. (the former Air Gas site) within the Transit Village subarea
- The Reve, a mixed-use development located at the south east corner of 30<sup>th</sup> & Pearl,
- Shake Shack restaurant located at 1680 29<sup>th</sup> St. (within the 29<sup>th</sup> St. Mall)
- The expansion and renovation of Larry Miller Toyota at 2465 48<sup>th</sup> Ct.
- A Storquest self-storage facility located at 4790 Pearl St.

Note that there are a number of smaller projects underway as well such as easement dedications and vacations, pre application reviews, etc.

The March 29 Heads Up mentions that OZ designation could provide funding for affordable commercial. How does OZ designation enable this?

By reducing the cost of capital, there could be some reduction in the cost of construction of a commercial project. Generally, a developer must represent in

loan documents the rent that the completed building will earn. Qualified Opportunity Fund financing could allow for lower rents. In addition, with projects like 30th and Pearl, it is possible that with additional capital available, the city will have leverage to negotiate commercial affordability.

In addition and based on current guidance from the IRS, a fund could also invest in “new businesses” or “startups”. Exclusions for certain types of businesses apply – for example – golf courses, country clubs, liquor stores and gaming facilities/casinos.

#### **D. Other Topics**

Since census tract 122.03 was certified as a federal Opportunity Zone, how has Program implementation processes changed or evolved? What additional information has been released?

The Department of the Treasury adopted all of the Governor's recommendations, including census tract 122.03. On October 19, the IRS issued proposed regulations for implementation. There is no date for comments yet, but a public hearing has been scheduled for January. To city staff's knowledge, no other formal federal guidance on the Program has been published.

Has the city been in touch with other municipalities to share information? If so, what has been learned?

Yes. Community Vitality staff has reached out to Longmont in the past and plans to maintain regular contact with Longmont, Lafayette and other peer communities to share learnings as the Program evolves and is implemented locally.

How will vested rights play in to this whole process regarding our planning process? Will the zoning that currently is on the ground be allowed if an applicant submits his application now?

By right development is according to current zoning and described in section II(b) of the memo (including a zoning overlay map of census tract 122.03. It should be noted that funds have not yet been certified and that the IRS is still in the process of finalizing rules concerning Opportunity Fund creation and use.

What is the boundary of the Opportunity Zone?

The boundary and a map of the certified Opportunity Zone in Boulder (census tract 122.03) is included in section I(b) of the memo and is available on the city's webpage.

What are the tax implications to the city for this?

Applicable Local taxes (as well as local zoning and regulatory authority) are unaffected by the Opportunity Zone Program.

Will council need to put in place a moratorium so we can be sure we get what we want with respect to zoning and land use?

If council is interested in focusing any near-term redevelopment in the Opportunity Zone to encourage particular forms of development, council could direct staff to initiate code changes such as those described in the recent BVCP update, or initiation of land use map and rezonings for phase 2 of the Transit Village Area Plan. Additionally, council could direct staff to amend the current Commercial Rebate incentive programs to more intently incentivize investment in small, minority or women-owned business. Such changes will require additional staff time and/or budget resources.

Council might also consider a moratorium related to development within the zone. A moratorium may restrict negative impacts by limiting certain types of allowable development or uses within the census tract, such as office or industrial. Depending on the scope of a moratorium, it might also restrict other improvements intended to contribute to community desired outcomes such as affordable commercial, retail access or investments in public infrastructure.

Would it be feasible to form a coalition of municipalities interested in similar outcomes for their respective communities in order to lobby for changes?

Yes.

What is the New Market Enterprise Zone Program and does Boulder have a zone in the Program?

The New Markets Tax Credit Program (NMTCP) was established by Congress in 2000 as a tax relief program funded through the US Treasury Department to fund private investments in businesses and real estate projects in low income communities. The NMTCP is implemented via equity investments in specialized financial institutions called Community Development Entities. These funds are largely implemented through a competitive award process. In Boulder, 12 census tracts qualify based on poverty level and median family income. NMTCP funding has invested in various housing projects and in efforts to enhance job creation and training for low income communities. Unlike the Opportunity Zone Program, the 12 census tracts identified as eligible under this program are considered “eligible” under which projects or initiatives might apply to be selected under a competitive process based on the activity pursued whether housing development, commercial or start-up based, job creation related or otherwise focused.

### What about Affordable Housing Projects in the Opportunity Zone?

Boulder Housing Partners (BHP) believes that Opportunity Zone status may provide financial benefit at 30Pearl but we do not yet know the impact. For the affordable development, BHP may receive a small increase in tax credit pricing due to the location in the Opportunity Zone. For the market rate parcels, the benefit will not be known until the city takes the parcels to market. Depending on the constraints associated with the sale, buyers or investors may or may not be able to realize the deferred capital gain benefit. The benefit will be easier to capture if the market rate parcels are sold and multi-family rental units are a permissible use. BHP intends to procure debt and equity partners for the affordable development in spring 2019. Once letters of interest have been received from BHP, we will be able to determine if and how much Opportunity Zone status provided a benefit to the affordable development.

### What is the breakdown of land area by zoning district in the opportunity zone?

	<u>Square Feet</u>
Entire Opportunity Zone	71,756,146
City Limits Portion	68,603,579

Zoning District	Square Feet	% of Total
A	1,342,463	2.0%
BC-1	2,618,982	3.8%
BC-2	1,070,625	1.6%
BCS	299,756	0.4%
BMS	502,062	0.7%
BR-1	5,898,219	8.6%
BT-1	1,669,126	2.4%
BT-2	254,400	0.4%
E	19,373	0.0%
IG	20,760,132	30.3%
IM	1,936,979	2.8%
IMS	439,711	0.6%
IS-1	2,375,490	3.5%
IS-2	2,746,818	4.0%
MH	2,898,474	4.2%
MU-4	1,438,701	2.1%
P	10,675,476	15.6%
RH-3	480,232	0.7%
RH-4	3,773,756	5.5%
RH-6	206,902	0.3%
RM-1	7,195,903	10.5%



Yvette Bowden, Director  
Community Vitality, Parks & Recreation  
City of Boulder  
1777 Broadway  
Boulder CO 80302

December 6, 2018

Dear Yvette,

This letter is a response to the emailed list of questions you sent on December 3, 2018 regarding the Federal Opportunity Zone tax incentive. Questions and responses are provided below. Please let me know if you have any follow up questions.

- I. **Census tract selection and certification process under the Opportunity Zone Program**
- a. What was the state's process in soliciting public input concerning census tract eligibility and selection for inclusion in the Opportunity Zone Program?

*OEDIT used a balanced approach to develop potential zone evaluation criteria based on: need/economic distress; opportunity or ability to attract and absorb private equity investment; and statewide geographic equity.*

*The evaluation effort began with reviewing eligibility data as defined in federal law and supplied by the US Treasury Department. Additional data was gathered to understand need and opportunity. An index showing both need and opportunity was created and published on a dedicated OEDIT web page to share information with the public and stakeholders and gather input. OEDIT focused on transparency in sharing data and in evaluating and proposing US census tracts (CT) as Opportunity Zones.*

*Outreach and human intelligence ultimately informed which CTs were nominated. The following were key steps take to promote public feedback on zone nominations:*

- Email/letter from the OEDIT Executive Director was sent to key a stakeholder list consisting of 384 people including economic developers, County Commissioners, and municipal officials. A similar communication was sent to state legislators.*
- OEDIT added a public input submission form to our dedicated Opportunity Zone web page to gather written feedback from stakeholders and members of the public across Colorado*
- OEDIT enhanced our dedicated web page with links to national resources, notices about educational programs conducted by OEDIT (webinars) and contact information for OEDIT staff and local economic developers.*
- OEDIT relied on close coordination with 19 Enterprise Zone Administrators representing each region of the state. These leaders served as OEDIT's partners for understanding need and opportunity at the local level and soliciting local feedback. These regional economic development leaders conducted outreach*



*informing their constituents of the Opportunity Zone incentive. They brought a regional perspective to identify the best CT candidates for nomination within their jurisdictions and provided written and verbal feedback to OEDIT.*

- *OEDIT contacted organizations of stakeholders including: Club 20, Progressive 15, Action 22, Colorado Counties Inc., Colorado Municipal League and had conversations with their leadership and solicited their help in informing their members about this federal tax incentive program. These groups also provided feedback to us about our nomination process.*
- *OEDIT hosted multiple webinars to explain the Opportunity Zone incentive and solicit public feedback. These events were publicized in a letter from our executive director sent to our mailing list and posted on our website. One webinar had 40 live attendees, and was recorded and posted to our website.*
- *Presentations were made to the Associated Governments of Northwest Colorado and the Northeast Council of Governments at their request.*
- *At the onset of the CT evaluation process OEDIT coordinated with partner agencies including the Department of Local Affairs (DOLA) - Divisions of Local Government/State Demographer & Housing, Colorado Department of Labor and Employment - Labor Market Information and the Colorado Housing and Finance Authority to gather data and input.*
- *DOLA sent out an email to their full mailing list of local government officials across Colorado calling for input and engagement on the Opportunity Zone selection process.*
- *OEDIT staff worked with national thought leaders including Economic Innovation Group, Council of Development Financing Authorities, Enterprise Community Foundation, and the Rockefeller Foundation during this process.*
- *To gain a better understanding of the applicability of the tax incentive, OEDIT staff engaged in additional conversations with impact investors, non-profit foundations, venture capitalists renewable energy developers, local officials, and other stakeholders.*

## **II. Creation and use of Opportunity Funds and Fund resources**

- a. What will be the process for becoming a Qualified Opportunity Fund under the Opportunity Zone Program and have funds already be certified? If not, when might that occur?

*To create a Qualified Opportunity Fund, investors must organize a corporation or partnership for the purpose of investing in qualified opportunity zone property. The Fund then self-declares itself to be a Qualified Opportunity Fund, and that it meets all necessary requirements, by attaching IRS Form 8996 (still in draft form) to its tax return. Funds are already setting themselves up, but technically, no fund can be certified until filing its 2018 tax return (likely in April 2019).*

- b. What information will have to be provided for the establishment of a Qualified Opportunity Fund? Will any information on the creation of such Funds be public?

*Currently, the only information required to establish a Qualified Opportunity Fund is the information on IRS Form 8996(which is still in draft form). This information will be shared with the IRS but not reported publicly as it is part of a tax filing.*

- c. Please confirm that Opportunity Zone program funding can be utilized in addition to other programs (like Block grants or Enterprise funds, for example).



*In general, I am not aware of anything in the Opportunity Zone legislation that precludes qualified Opportunity Zone investments from being used in addition to other federal and state programs. Other programs may have limitations on how and whether equity can be used that may constrain the potential for layering different incentives, but we do not yet have specific examples of programs that definitely will not work with opportunity zones. A lawyer should be consulted to ensure compliance on any particular project.*

**III. Development and Redevelopment Related Questions**

- a. When would projects (development or redevelopment, in particular) have to be completed under the Opportunity Zone Program?

*Initial Opportunity Zone investments can be made up until the end of 2026, and 2047 is the final date to sell out of an Opportunity Fund position and still receive the benefits. (Note: this is based on Treasury's draft guidance and has not been finalized yet).*

*There is still some uncertainty around what the timing requirements are for making the required "substantial improvements" to a property under the Opportunity Zone federal law. The law as currently written says the property can be improved "during any 30-month period beginning after the date of acquisition of such property" which would suggest that Opportunity Zone redevelopment would not technically have to be complete until 2047 in certain situations. However, this interpretation may change based on additional Treasury guidance. A lawyer should be consulted to ensure compliance on any particular project.*

*Note also, in the draft guidance released by Treasury in October 2018, substantial improvement is defined as doubling the cost basis of the property (excluding the land value) in the hands of the Qualified Opportunity Fund.*

- b. Is it correct to understand that real estate investments made by Opportunity Funds would have to be held for 10 years? Must entities sell the property at the end of that period?

*In order to receive tax-free appreciation on a real estate investment, which is generally considered to be the most significant benefit of the Opportunity Zone federal tax incentive, the investment must be held for at least 10 years. However, if the investment is sold after a shorter period of time, there is still potential to receive deferral and reduction of the initial capital gains tax liability. Entities do not have to immediately sell after 10 years - based on recent Treasury guidance, they will have until 2047 to sell out of an Opportunity Zone position and still receive the favorable tax treatment. A lawyer should be consulted to ensure compliance on any particular project.*

*Note, there is an open question around whether Treasury will allow funds to sell out of one OZ property and re-invest in a new OZ property without triggering a tax event.*

- c. Can Opportunity Funds be used for public infrastructure?

*In general, Opportunity Funds must make an equity investment in a for-profit entity, so it is difficult for Opportunity Funds to directly invest in public infrastructure. However, stakeholders are currently thinking through investment structures that would allow for this type of investment to support public infrastructure, such as making an initial investment in a for-profit entity that develops and operates the infrastructure and later sells it back to the public agency after 10 years. A lawyer should be consulted to ensure compliance on any particular project.*

IV. Other Questions

- a. Has any information been made available concerning Opportunity Fund investments in businesses (especially small business) as compared to real estate?

*In general, the information Treasury has offered on Opportunity Fund investments in businesses is much less detailed and much less clear than for investments in real estate. We are expecting additional guidance from Treasury on this matter in late 2018 or early 2019.*

- b. What links or other information might aid in keeping the city and its residents informed about the Program?

*Choosecolorado.com/oz is the state's website of information, which also includes a mailing list that individuals can sign up for. Other helpful links include the following:*

- [How Cities Can Maximize Opportunity Zones \(Nowak Metro Finance Lab\)](#)
- [Resources for Communities](#) (OEDIT and DOLA)
- [Opportunity Zones: Policy Strategies & Opportunities](#) (Enterprise Community Foundation)
- [Enterprise Tools](#) (Enterprise Community Foundation)
- [How States Can Maximize Opportunity Zones](#) (New Localism Advisors)
- [Opportunity360 Data Tool](#) (Enterprise Community Foundation)
- [Equitable Investment in Opportunity Zones](#) (PolicyLink)

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