CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: June 15, 2021

AGENDA TITLE
Consideration of the following ordinances related to the Community Benefit Phase 2 project:

1. Introduction, first reading and consideration of a motion to order published by title only Ordinance 8469, which proposes to amend Title 9, "Land Use Code," by implementing Phase 2 of the Community Benefit project by adding below market rate non-residential uses as options associated with requests for additional height or floor area in specified areas and setting forth details in relation thereto, and

2. Introduction, first reading and consideration of a motion to order published by title only Ordinance 8471, which proposes to amend Title 9, "Land Use Code," by extending the Appendix J, "Areas Where Height Modifications May be Considered" map expiration date from August 31, 2021 to the proposed effective date of Ordinance 8469 on Jan. 1, 2022.

REQUESTING DEPARTMENT / PRESENTERS
<u>Planning & Development Services</u>
Jacob Lindsey, Director
Charles Ferro, Development Review Manager
Karl Guiler, Senior Planner / Code Amendment Specialist

EXECUTIVE SUMMARY
The purpose of this item is for City Council to consider on first reading draft Ordinance 8469 that proposes to amend Title 9, "Land Use Code," by implementing Phase 2 of the Community Benefit project by adding below market rate non-residential uses as options associated with requests for additional height or floor area in specified areas.

Staff is also including an optional draft Ordinance 8471, which would extend the Appendix J, "Areas Where Height Modifications May be Considered" map expiration date from the current expiration date recently approved by council (August 31, 2021) to the proposed effective date of Ordinance 8469 on Jan. 1, 2022. This second ordinance is optional and could be adopted if council does not want the Appendix J map to expire until the Phase 2 options within Ordinance 8469 go into effect. If the Appendix J map expires on Aug. 31, 2021 as currently set, the Phase 1 permanently affordable housing option for community benefit would be the only option allowed citywide until the Jan. 1, 2022 when the Phase 2 below market rate space options would become effective. Staff is recommending that City Council pass both ordinances on first reading and the adoption of the latter ordinance can be considered on second reading on July 13, 2021.

On March 2, 2021, staff provided an update to City Council on the Community Benefit project since the last discussion at an August 2020 study session. The Community Benefit project is exploring whether additional community benefits beyond permanently affordable housing (as adopted during the first phase) should be allowed for projects that request additional height up to the 55-foot maximum in the city or additional floor area than typically allowed. The packet from the March 2nd meeting can be referenced here.

Included within this memorandum is a summary of the proposed code changes within the draft ordinance in **Attachment A.** The staff recommendation is informed by the Keyser Marston Associates (KMA) analysis which is found in **Attachment B** along with a recently prepared addendum to the analysis found in **Attachment C**. Further, the Department of Community Vitality has prepared an Information Packet which discusses the city's existing programmatic efforts to help provide affordable commercial space in the city. The May 18, 2021 information packet can be found here. **Attachment D** contains public comments and **Attachment E** contains the optional draft Ordinance 8471 discussed above.

KEY ISSUES

1. **Does City Council support the proposed process and requirements as enumerated in the Community Benefit Phase 2 ordinance? Does City Council recommend any modifications to better meet the goals and objectives of the project?**

2. **Does City Council agree that there should be limited eligibility criteria for a developer to pay cash in lieu fees to an affordable commercial fund instead of providing below market rate space on-site, and that consideration of a staff recommendation whether or not to approve the in-lieu request should be considered by the Planning Board as part of its Site Review?**

3. **Should the optional Ordinance 8471 that extends the Appendix J map expiration date to the effective date of Ordinance 8469 on Jan. 1, 2022 be adopted or should**

the Appendix J map be allowed to expire on Aug. 31, 2021 as previously approved by City Council?

STAFF RECOMMENDATION

Suggested Motion Language:
Staff requests council consideration of this matter and action in the form of the following motions:

1. *Motion to introduce and order published by title only Ordinance 8469, which proposes to amend Title 9, "Land Use Code," by implementing Phase 2 of the Community Benefit project by adding below market rate non-residential uses as options associated with requests for additional height or floor area in specified areas and setting forth details in relation thereto, and*

2. *Motion to introduce and order published by title only Ordinance 8471, which proposes to amend Title 9, "Land Use Code," by extending the Appendix J, "Areas Where Height Modifications May be Considered" map expiration date from August 31, 2021 to the proposed effective date of Ordinance 8469 on Jan. 1, 2022.*

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic –The Community Benefit Phase 2 project is intended to create more affordable spaces for small business, non-profits, arts and cultural uses and human service uses.
- Environmental – None identified.
- Social: The Community Benefit program is intended to create opportunities for more business owners, artists and non-profits, which are consistent with Boulder's goals of a diverse and inclusive economy.

OTHER IMPACTS

- Fiscal – No impacts.
- Staff time – The code amendment has been processed within normal staff work plans.

BOARD AND COMMISSION FEEDBACK

Planning Board is reviewed the ordinance on June 3, 2021 and on a vote 2 to 5 voted not to recommend approval of Ordinance 8469. The board voted unanimously for staff to prepare an ordinance that would extend the Appendix J map to the end of the year.

The board discussed the ordinance extensively and did not agree that the ordinance should be approved since there was fundamental disagreement about the proposed one time in lieu fee contributions to an affordable commercial fund finding that fees should be collected in perpetuity (e.g., an evergreen fund). Further, the board felt that the category for "small businesses" should be further narrowed to businesses that would provide notable community benefits (e.g., women and minority owned business etc.) and had concerns that there were no criteria related to the location of below market rate spaces in buildings. The board also expressed concern for how such projects could exacerbate the jobs: housing imbalance and also had concerns about allowing the proposed density modifications for permanently affordable housing and open space reductions to incentivize projects finding that more targeted outreach was necessary. The board also found the ordinance too complex. The motions below provide more insight into the board's sentiment:

On a motion by **J. Gerstle** seconded by **L. Montoya** the Planning Board voted 7-0 to have staff prepare an Ordinance that extends the Appendix J map expiration date to the effective date of Jan. 1, 2022.

On a motion by **S. Silver** seconded by **J. Gerstle** the Planning Board voted 7-0 that when Appendix J sunsets, new code language will exclude lower density residential and other zones from the community benefit program where requests for additional height and floor area would not be expected or appropriate considering the lower intensity context. The zones that would be excluded from the program are Rural - Residential (RR), Residential - Estate (RE), Residential – Low (RL), Residential – Mixed (RMX), Business – Transitional (BT), Mobile Home (MH) and Agriculture (A) zones.

On a motion by **D. Ensign** seconded by **P. Vitale** the Planning Board voted 2-5 (**S. Silver**, **L. Montoya**, **L. Smith**, **J. Boone**, **J. Gerstle** opposed) to recommend that City Council adopt Ordinance 8469, which proposes to amend Title 9, "Land Use Code," by implementing Phase 2 of the Community Benefit project by adding below market rate non-residential uses as options associated with requests for additional height or floor area in specified areas and setting forth details in relation thereto.

On a motion by **S. Silver** seconded by **J. Gerstle** the Planning Board voted 5-2 (**L. Smith**, **D. Ensign** opposed) to highlight Planning Board's concerns on the proposed Phase 2 Community Benefit Ordinance. Planning Board supports the idea of a Community Benefit focused on affordable commercial space in exchange for additional height and floor area. However, we had concerns with the proposal brought to us as Ordinance 8469 including:

1. The complexity of the proposal.
2. A lack of adequate data on several issues: potential outcomes for the city in terms of actual affordable space created; additional market rate commercial space created; an analysis of the cost benefit for both the city and a developer; consequences for the funds available for affordable housing.
3. A desire to see alternative ideas pursued such as an evergreen fund that would capture the value of built space over time. This could be an alternative to cash-in-lieu and exit ramp fees.
4. The absence of a criteria to assure appropriate onsite location of affordable space.
5. The need for a holistic approach to discount rent from a gross perspective rather than a net perspective.

6. A lack of community input on proposed density and intensity changes.
7. A desire to narrow the scope of eligible organizations to best advance the community needs including our racial equity goals.
8. Concern that the additional market rate commercial space generated by this program would further exacerbate the jobs housing imbalance.

To address the concerns expressed about the small business category being too broad and impacts to the jobs: housing balance, staff has amended the ordinance to limit the small business category to not include office uses. Staff is also exploring other amendments based on the board discussion and will present any other recommended changes, if applicable, at time of second reading.

PUBLIC FEEDBACK

There have been ongoing opportunities for public feedback on the Community Benefit project since it started in 2018 through in person and virtual open house meetings, focus groups with the development community and neighborhoods, specific meetings with stakeholders, segments on Channel 8 news and Be Heard Boulder questionnaires. This link to the August 25, 2020 study session contains a comprehensive history of the project and summaries of feedback obtained through the course of the project. Stakeholders and interested persons have been notified of the status of the project and the Planning Newsletter has also included updates.

Since March 2021 staff has continued to work with focus groups and stakeholders to get input on the changes. Staff has also provided notice through the Planning & Development Services Newsletter and held "office hours" for people to ask questions on the proposal. Staff has reached out to PLAN Boulder, Better Boulder, the Human Services Alliance (HSA), the Chamber of Commerce, the arts community as well as some focus groups to solicit feedback. Comments are summarized below. As changes would largely impact the business community, both the Departments of Planning & Development Service and Community Vitality have reached out to the business community on the proposed changes and has heard similar feedback as summarized below:

Business community feedback

In general, industry representatives acknowledged the need for retained and/or additional affordable spaces in Boulder, appreciated the opportunity to provide feedback, and expressed support for the intent of an affordable commercial option under the Community Benefit program. Attendees expressed a desire for greater predictability in the city's regulatory processes and preferred administrative review over quasi-judicial body determination of issues such as project eligibility, location suitability and defined hardship allowing for in-lieu options. There was also a desire for in-lieu option flexibility and for greater appreciation of the impact of 'permanency' on the financial viability of redevelopment projects.

In general, there was less enthusiasm for use of restrictive covenant as the sole means of program implementation, as such arrangements impact project financing at and beyond construction and may complicate leasing with market rate tenant locations within a project. There was also concern expressed for the expense of any customization of spaces to meet specific needs or desires of nonprofits, social services, and arts and cultural organizations or specific small business types. There was little concern expressed related to the draft definitions of qualifying small businesses or hardship. For more information on public feedback, please see the Community Vitally Information Packet dated May 18, 2021 at this link.

Planning & Development Services has also been discussing the proposed changes with focus groups composed of neighborhood representatives and architects etc. as discussed below:

Focus Group Feedback

There are two focused groups that have been engaged in this process. One group is composed of community members interested in the project and the other is composed of largely architects, development consultants, a representative of Boulder Housing Partners and a member of the public. Both groups have been supportive of the concept of adding below market rent spaces as a community benefit option, but differed on the topic of cash in lieu.

Some on the community member group were less supportive of a cash in lieu option whereas the latter group felt that Community Vitality implementation of a new cash in lieu program for affordable spaces would be more beneficial than the complication of requiring and monitoring on-site below market rate spaces as a burden on both the city and property owners. Some community members felt that in lieu contributions should be focused on assisting existing buildings and businesses that already have affordable commercial uses that could be driven out of the city due to escalating cost. Some expressed support for mixed-use projects while others cautioned against allowing too many modifications to height limits, open space and density requirements as they could result in poor quality projects. There were also concerns expressed that the code should have even stronger requirements to obtain or preserve affordable retail rather than having broader definition that includes small businesses, which could include uses that may not be neighborhood serving.

The group composed of architects and development consultants were not supportive of Planning Board having discretion on whether or not an applicant can pay cash in lieu for below market rate spaces noting that this would be unpredictable and against one of the main tenets of the project. This is a key issue discussed within this memorandum. The group of architects etc. was supportive of some of the density modifications proposed for permanently affordable uses, but felt that the proposed changes should be even more flexible (e.g., 100% reduction in open space vs. 50%, and that more density bonuses should be offered for small dwelling units). The group also supported an option for off-site provision of below market rate spaces instead of requiring on-site and supported a full repeal of the Appendix J eligibility map.

<u>Other Stakeholder feedback</u>

Arts Community- Feedback from the arts community has largely been supportive as the group is in need of more affordable spaces in the city. Many support the project, but feel that the city needs to take an increased role in facilitating discussions between the arts community and developers to partner on projects that benefit the community. Further, the program should go beyond new regulations and have the city actively working towards the creation of new arts focused districts.

Human Services Alliance (HSA)- The HSA has been supportive of the program and like the arts community is struggling to find affordable spaces in the city. The group has been briefed on how the proposed ordinance would work and in general members have expressed that the size of spaces and restricted rents specified in the code language would be helpful to their membership in obtaining more affordable spaces in Boulder in which to operate.

PLAN Boulder- PLAN Boulder has supported the concept of adding the new option for below market rate space, but finds that if cash in lieu is used, that the prices be set too high to encourage on-site provision of below market rate space. The group was open to introducing the new regulations as a pilot. The group expressed less support for an outright repealing of the Appendix J eligibility map and recommended that it should be more of a phased reopening of the city as the new regulations are implementation.

Recent comments received on the project, including letters from the Chamber of Commerce, PLAN Boulder, and the Arts Commission, are found in **Attachment D**.

BACKGROUND

The Community Benefit project commenced in 2018 following moving forward with specific Boulder Valley Comprehensive Plan (BVCP) implementation measures that were agreed upon by council in late 2017 related to Community Benefit. The foundational information of the project as well as the guiding BVCP policies are listed below for reference:

Community Benefit code change project

Project Why Statement

A community benefits program has been discussed as one tool to ensure that new growth and development contribute positively to the community's quality of life. While higher quality of development is often attained through the Site Review process, in recent years community sentiment has expressed that more specific community benefits in exchange for additional height, intensity or density should be required.

Project Purpose Statement

Consistent with Boulder Valley Comprehensive Plan (BVCP) policies developed and adopted in 2017 (see below), update the land use code to create regulations and incentives for obtaining certain community benefits when considering height modifications requests and/or additional floor area or density requests.

Problem/Issue Statement

Under code standards prior to October 2019 (described below), applicants could request height modifications to build above the zoning district height limit (typically 35-feet or 38-feet) through the Site Review process without any specific requirements for Community Benefit. Further, prior to the adoption of Ordinance 8028 and Ordinance 8172, requests for height modifications could be made anywhere in the city. Such requests could be granted by the Planning Board if the Site Review criteria were met. *The building height, mass, scale, orientation, architecture and configuration are compatible with the existing character of the area or the character established by adopted design guidelines or plans for the area;*

There are some in the community that have found that height modification requests should require additional design requirements that improve the appearance and compatibility of taller buildings and/or include benefit to the community in exchange for the additional intensity granted. This sentiment is reflected in the following Boulder Valley Comprehensive Plan (BVCP) policies relative to community benefit, building height and permanently affordable housing list in this section. Goals and objectives for the project are:

Community Benefit Goals and Objectives

- *Determine the type and amount of community benefits that would be provided to achieve increased intensity, building height or zone district changes.*
- *Identify incentives to address the community economic, social and environmental objectives of the comprehensive plan.*
- *Clearly specify the required triggers for community benefit and identify how (or if) the benefits would be maintained in perpetuity.*
- *Determine additional design standards for projects requesting a height modification.*
- *Identify other aspects of the Site Review criteria to further city goals and create more predictability in projects.*

Guiding BVCP Policies

1.11 Enhanced Community Benefit: For land use or zoning district changes that result in increases in the density or intensity of development beyond what is permitted by the underlying zoning or for added height that increases intensity, the city will develop regulations and incentives so that the new development provides benefits to the community beyond those otherwise required by the underlying zoning. Any incentives are intended to address the community economic, social and environmental objectives of the comprehensive plan. Community objectives include without limitation affordable housing, affordable commercial space, spaces for the arts, community gathering space, public art, land for parks, open space, environmental protection or restoration, outdoor spaces and other identified social needs and services. Community objectives also may be identified through other planning or policymaking efforts of the city.

2.35 Building Height. The city will review and update site review regulations to provide clear guidance on height and intensity of land uses and to address relationship of building height to aesthetics and view protection. The city will consider additional height (up to the City Charter 55-foot height limit) as an incentive in exchange for community benefits that further other community objectives such as the provision of permanently affordable housing (as described in Policy 1.11).

> **7.11 Permanently Affordable Housing for Additional Intensity.** The city will develop regulations and policies to ensure that when additional intensity is provided through changes to zoning, a larger proportion of the additional development potential for the residential use will be permanently affordable housing for low, moderate and middle-income households.

Phase 1 of the Community Benefit project with its focus on permanently affordable housing was adopted by City Council in October 2019 and when into effect for a limited area (see Appendix J eligibility map) on Jan. 1, 2020. Following this, staff has moved forward with the Phase 2 portion with its focus on below market rate commercial space.

On March 2, 2021, staff provided an update to City Council on the Community Benefit project since the last discussion at an August 2020 study session. The packet from the March 2nd meeting can be referenced here. The packet contains staff's proposal for a new community benefit option of below market rate non-residential uses (e.g., non-profit space, small businesses, arts and cultural uses, human service uses) and the process, a zoning analysis related to the "Appendix J" height modification eligibility map, an update on the city's review criteria for development projects, and an economic analysis prepared by a consultant on the feasibility of the program.

City Council has largely been supportive of the direction of the project and has expressed a desire to make it to be feasible while avoiding loopholes that may diminish the value of the program. Council has not been opposed to a cash in lieu option, but has requested that the program be weighted towards provision of on-site below market rate space over cash in lieu contributions. A majority of council also indicated that if there is confidence in the the program, repealing or allowing the Appendix J map to expire may be acceptable at the time of adoption of the new regulations, thereby opening up program eligibility citywide.

Repealing or allowing the map to expire would mean that the applicability of the program would become citywide as opposed to only applying in limited areas currently specified on the map. The Keyser Marston Associates (KMA) analysis indicated that broader application of the program would make the program more feasible and more likely for the city to gain more community benefit (see **Attachment B**). An addendum to KMA's analysis is also included in **Attachment C** and was meant to further inform the staff recommendation on the scope of the project including how to determine the minimum amount of below market space, how to calculate any cash in lieu contributions, and how to address restricted rents over time.

City Council recently approved an ordinance that would extend the expiration date of the Appendix J map to August 31, 2021. The ordinance also added Ball Aerospace and Diagonal Plaza as areas eligible for the community benefit program. Planning Board recommended approval of this ordinance, but did not include Diagonal Plaza. Staff has included a key issue regarding Appendix J within this memorandum.

ANALYSIS

Phase 2 of the Community Benefit project, which focuses on below market rate non-residential space as an option for requests for additional height (i.e., height modifications), density and floor area (i.e., land use intensity modifications) in specified zoning districts, is proposed within the attached ordinance (**Attachment A**). The details of the proposed ordinance are summarized below.

1. Does City Council support the proposed process and requirements as enumerated in the Community Benefit Phase 2 ordinance? Does City Council recommend any modifications to better meet the goals and objectives of the project?

Staff finds that the proposed ordinance would be consistent with the original goals and objectives for the project (listed below) and recommends that City Council adopt the ordinance on second reading. A discussion of the components of the ordinance and how it meets these goals and objectives follows.

Community Benefit Goals and Objectives

- *Determine the type and amount of community benefits that would be provided to achieve increased intensity, building height or zone district changes.*

- *Identify incentives to address the community economic, social and environmental objectives of the comprehensive plan.*

- *Clearly specify the required triggers for community benefit and identify how (or if) the benefits would be maintained in perpetuity.*

The two additional objectives below are being addressed through the related code change on updating the Site Review criteria, which is anticipated to be brought back to Planning Board and City Council later this year.

- *Determine additional design standards for projects requesting a height modification.*

- *Identify other aspects of the Site Review criteria to further city goals and create more predictability in projects.*

Proposed Ordinance 8469

The proposed ordinance has been drafted based on direction from City Council throughout the course of the project and is informed by the economic analysis from Keyser Marston Associates (KMA) and community feedback. The ordinance is meant to strike a balance between the city obtaining more community benefit in development projects that include requests for additional height, density and/or floor area (as specified per zone in the code) and be feasible such that developers opt to use the program. Phase 1 of the project focused on permanently affordable housing and Phase 2 has focused on below market rate non-residential uses as a new option.

All non-residential projects will continue to pay the city's impact fees, including the impact fee for affordable housing (often referred to as "linkage fee") which constitutes by far the largest portion of the city's impact fees and is earmarked for affordable housing purposes, on the entirety of a proposed building's floor area, including any bonus floor area granted through an additional height request. Phase 2 will not change this. How the current proposal would differ from the Phase 1 requirements is that, instead of a 43% increase in the affordable housing impact fee rate for any bonus floor area as adopted in Phase 1, the community benefit for any commercial projects requesting additional height would shift to an on-site below market rate non-residential requirement as part of Phase 2. The community benefit requirement for residential projects would remain the same, and mixed-use projects would require either affordable housing or below market rate commercial community benefits, depending on the primary use of the building above the ground floor.

Below is an overview of the components of the ordinance:

Site Review criteria of 9-2-14(h), B.R.C. 1981- The new code language has been added to the Site Review criteria's "Land Use Intensity Modification" section which already includes limited scenarios where additional density or floor area may be requested and where language implementing Phase 1 of the Community Benefit was included. Height modifications and requests for additional floor area or density will continue to require Planning Board approval at a public hearing.

- **Height and Floor Area Bonus:**
  - **Implementation of Phase 2**: Adds to the existing Phase 1 community benefit criteria for permanently affordable housing uses with specific qualifying non-residential uses subject to deed restrictions on rent as a reduced percentage of market rate. The existing section for an increased affordable housing impact fee for bonus floor area in non-residential projects (referenced above) would be replaced by an on-site requirement for qualifying non-residential community benefit uses as discussed below. To determine whether the Phase 1 or Phase 2 requirements apply, staff has applied the following threshold per a recommendation from KMA: A project would be considered a non-residential project subject to the new Phase 2 requirements if it includes more than 50% of its floor area above the ground floor as non-residential. Conversely, a project would be considered a residential project subject to the Phase 1 requirements (e.g., an increased number of units that must be permanently affordable or pay an increased in lieu fee to the Affordable Housing Fund) that includes more than 50% of its floor area above the ground floor as residential.

  - **Process**: All height modifications or requests for additional floor area (discussed under 'Density Modifications' below) would be subject to Planning Board review and approval of a Site Review application at a public hearing. Planning Board would also review any requests to not provide on-site below market non-residential uses as associated with a Site Review application, but rather pay in-lieu fees which would help expand and formalize the city's broader Affordable Commercial Program. As discussed below, the Planning Board would determine whether specific eligibility criteria have been met for applicants to be eligible to pay in lieu fees rather than provide the below market rate non-residential use on-site.

The applicant would have to demonstrate that the criteria are met and staff would provide a recommendation to the board as part of the analysis. Planning Board's purview would be on whether or not the proposal's design, configuration, height etc. meet the Site Review criteria and if applicable, whether the eligibility criteria for in lieu fees (discussed below) would be met. The board would not select or review the specific types of qualifying uses or tenants chosen for the spaces. Compliance with the standards on qualifying community benefit uses would be subject to city staff review and monitoring over time. Staff recognizes that uses may change over time and that there should be flexibility to allow such changes. Requiring every use change as an amendment to a Site Review would add a significant burden on property owners, businesses and staff and would not be consistent with the goals of the project for greater predictability.

- **Qualifying Non-Residential Community Benefit Uses**: A new requirement for on-site non-residential uses as community benefit uses is proposed. The qualifying uses that would be eligible for deed-restricted reduced rent are:

  - ✓ Small businesses – defined as having 2 to 49 employees and no more than $2.5 million in gross annual revenue (*does not include office uses*);
  - ✓ Businesses meeting the affordable and inclusive objectives of the Citywide Retail Strategy (*may include offices if consistent with this definition*);
  - ✓ Non-profit organizations serving the needs of Boulder County residents, employees or visitors (*may include offices if consistent with this definition*);
  - ✓ Non-profit organizations serving people experiencing health or socio-economic disparities (*may include offices if consistent with this definition*), and
  - ✓ Arts and cultural uses including but not limited to visual arts spaces such as studios, galleries, coops, maker spaces, performing art spaces, video, film or digital arts spaces.

  Staff has found that these definitions would be consistent with [BVCP policies on Community Benefit, Economy, and Housing including but not limit to Section 5 of the BVCP] on addressing the rising cost of commercial space. The uses are also consistent with the objectives of the Citywide Retail Strategy. Key policies to consider are:

- BVCP Policy 1.11, Enhanced Community Benefit
- BVCP Policy 2.35, Building Height
- BVCP Policy 5.06, Affordable Business Space & Diverse Employment Base
- BVCP Policy 5.10, Role of Arts, Cultural, Historic & Parks & Recreation Amenities
- BVCP Policy 7.12, Permanently Affordable Housing for Additional Intensity
- BVCP Policy 8.01, Providing for a Broad Spectrum of Human Needs

- **Minimum floor area of qualifying uses and rent requirements:** As recommended by KMA in their economic analysis to ensure feasibility of the program and equivalency to the Phase 1 requirements, a minimum floor area requirement for the community benefit uses is proposed as a percentage of the total "bonus floor area", which is any floor area within a fourth or fifth story subject to a height modification, but also includes any floor area (irrespective of what story it is on) that is above any zoning district floor area ratio (FAR) limit and subject to a land use intensity modification. Non-residential or predominantly non-residential mixed-use projects would be subject to a minimum floor area requirement of five (5) percent of the floor area of the bonus floor area as deed restricted space at a discounted rental rate of no more than 50 percent of the market rate OR seven (7) percent of the bonus floor area if restricted to no more than 75 percent of the market rental rate.

  The below market rate discount would be applied to the base rent and not to any additional occupancy costs such as property taxes, utilities, and common area maintenance fees that are customarily paid by commercial tenants. The code would require that the rates for these additional costs be, proportionally, no greater than those charged to the tenants occupying market rate spaces within the same building.

- **Establishment, Modifications, Monitoring or Termination of Community Benefit uses:** To enable flexibility in the administering, monitoring, and potential change out or termination of community benefit uses, an administrative review process is proposed that would occur after Planning Board approval of the Site Review application. Any approved Site Review would include conditions requiring a minimum amount of floor space with deed restricted rent (as a percentage of the market rate) and lease restriction to qualifying community benefit uses in perpetuity. Following Site Review approval, the administrative review process would be used to:

  - Establish the use concurrent with or prior to other uses in the building; and

- Create and record a restrictive covenant that would ensure that the community benefit space be operated in perpetuity and with a qualifying community benefit use, the minimum floor area, rent restrictions, and other programming requirements; and
- Require the applicants to report back to the city on the ongoing compliance of the use with the covenant every three years; or
- Report to the city if a community benefit use has ceased operation and that they are seeking a new tenant; or
- Enable changes from one community benefit use to another consistent with the staff level administrative review process outlined above whereby the proposed uses would be evaluated by city staff, including for instance referrals to the Office of Arts and Culture or Community Vitality, for consistency with the code language; or
- Terminate a community benefit use, if deemed necessary. This has been referred to as the “off ramp” option. In scenarios where a property owner, after marketing the space for at least three years, cannot successfully secure an eligible community benefit use tenant for the space, then code criteria is proposed that would require the applicant to adequately demonstrate that they have conducted the necessary due diligence to fill the space without success. Another scenario under consideration for eligibility to terminate the community benefit use is if a tenant no longer meets the community benefit use eligibility criteria of a maximum of 49 employees and $2.5 million in annual gross revenues by virtue of their business growing or becoming more financially successful. In either case, the applicant, if they meet the termination criteria, could seek to pay an in-lieu contribution and leave the program. This is discussed further below.

- **Penalties**: City Council expressed the desire to add penalties in the event a community benefit use is discontinued in a space and the space is left vacant. In some cases, a property owner may elect to just “sit” on the space. To avoid this and incentivize the owners to find new qualifying tenants, discontinuance of the use for more than three years would constitute a violation of the code, and each day the use is discontinued after those three years would constitute a separatee violation, subject to city enforcement and penalties. If the owner continued to have challenges in filling the space, the “off ramp” option below would also be available.

- **Eligibility criteria for in lieu fees at time of initial Site Review application**: To strongly encourage the provision of on-site below market rate non-residential space, City Council requested that the code amendments require eligibility criteria for projects to be able to request to opt out of providing the space on-site. In response, staff is proposing limited scenarios where it may not be feasible or appropriate to provide below market space on-site. Examples of eligibility criteria to allow in lieu contributions are incompatibility between the primary use of the site and the below market rate space, restrictions on mixing uses which impact funding, conditions about the site that would likely make the below market rate space unsuccessful or the size of the space would be too small to be marketable etc. Compliance with the eligibility criteria would have to be demonstrated to the Planning Board, or, if a site review decision is called up, to City Council.

The proposed criteria are found in the section entitled "cash in lieu contribution". This is discussed in Key Issue #2 below. If found to meet the criteria, the in-lieu fee contribution would go into the Affordable Commercial Program, which aims to retain small and independent businesses, nonprofits, social services and arts and cultural organizations in Boulder. These uses are all affected by rising costs of commercial space and housing in the city. The below-market rate program, including in-lieu-fee contributions, is intended to help retain and support businesses and organizations that provide direct and needed services to residents and local business or that contribute to the city's economic vitality and quality of life. Additional details on the city's Affordable Commercial Program are provided in the May 18, 2021 information packet found here.

- **The "Off Ramp" in lieu contribution option**: If the property owner demonstrates to the city manager that the property owner has acted in good faith and conducted the necessary due diligence to comply with community benefit use requirement but nevertheless remains unsuccessful in leasing the space to a qualifying community benefit use, the property owner could request to pay the full amount of the "in lieu" contribution based on the total bonus floor area to terminate the community benefit use. Rather than draw down the in-lieu fee contribution over time, the full amount would be required to disincentivizing "waiting out the clock" by leaving the space vacant until the entire fee contribution was amortized.

  If the community benefit use termination request is approved, the deed restriction on the space would be extinguished and the applicant would then be allowed to charge market rate rent for the space. The in-lieu contribution collected would be used to foster the creation or subsidization of below market rate non-residential space elsewhere in the city.

- **Addition of MU-2 zone for floor area bonus**: Adds MU-2 as a zone where floor area of up to 1.1 FAR may be requested associated with a height bonus if the community benefit requirements are met. Zones already included in this option are BMS, MU-1, IS, and IMS. Descriptions of these zones can be found in the Land Use Code within Chapter 5, "Modular Zone System," B.R.C. 1981.

- **Adjustment of Scope**: If Appendix J, which limits the scope of where height modifications could be requested in the city, is repealed (making all properties in the city eligible for requesting height modifications etc.), staff recommends new code language that limits the scope to exclude lower density residential and other zones from the community benefit program where requests for additional height and floor area would not be expected or appropriate considering the lower intensity context. The zones that would be excluded from the program are Rural - Residential (RR), Residential - Estate (RE), Residential – Low (RL), Residential – Mixed (RMX), Business – Transitional (BT), Mobile Home (MH) and Agriculture (A) zones. Descriptions of these zones can be found in the Land Use Code within Chapter 5, "Modular Zone System," B.R.C. 1981. Review of that chapter would also be useful for the discussion below. See ***Figure 1***, as follows, for a map of the zoning districts where the Community Benefit program would not apply. Also see Key Issue #3.

Density modifications: One of the goals of the project is "*Identify incentives to address the community economic, social and environmental objectives of the comprehensive plan."* In efforts to encourage opportunities for more permanently affordable housing and additional housing units in general to offset the jobs: housing imbalance, staff is proposing the following density modifications within the land use intensity modifications that already exists in the code. See ***Figure 2,*** as follows, for a map of the zones where the changes are proposed. In general, the changes are located in areas anticipated by the BVCP for more housing and mixed and along mixed-use corridor.

- **BR-1, RH-5 and BC-2 zoning districts**: A new density modification has been added that would allow permanently affordable units to not count against the density limitation of the BR-1, RH-5 and BC-2 zoning districts. These zones are all identical in that they allow one dwelling unit per every 1,600 square feet of lot area. Staff has heard from development community that this density limitation discourages the provision of housing in zones where additional housing is appropriate and also tends to encourage larger units. This change will incentivize more permanently affordable units and smaller units in areas where additional density is envisioned by the Boulder Valley Comprehensive Plan (BVCP). Such areas are the Boulder Valley Regional Center (BVRC), in student residential areas along Broadway and east of 28th Street and neighborhood centers of the BC zones. Development projects will still require consistency with the Site Review criteria as well as parking and other development standards that would ensure that the proposed intensity, design and configuration will be consistent with the surroundings.

- **BC-1 zoning district**: A new density modification has been added that would allow a reduction in open space requirements by 50 percent in the BC-1 zone for permanently affordable units. This would apply in the Diagonal Plaza area and along the north 28th Street corridor. While this modification and the one above for BC-2 encourage permanently affordable housing in the city's neighborhood centers, a use review requirement for any project that does not meet the ground

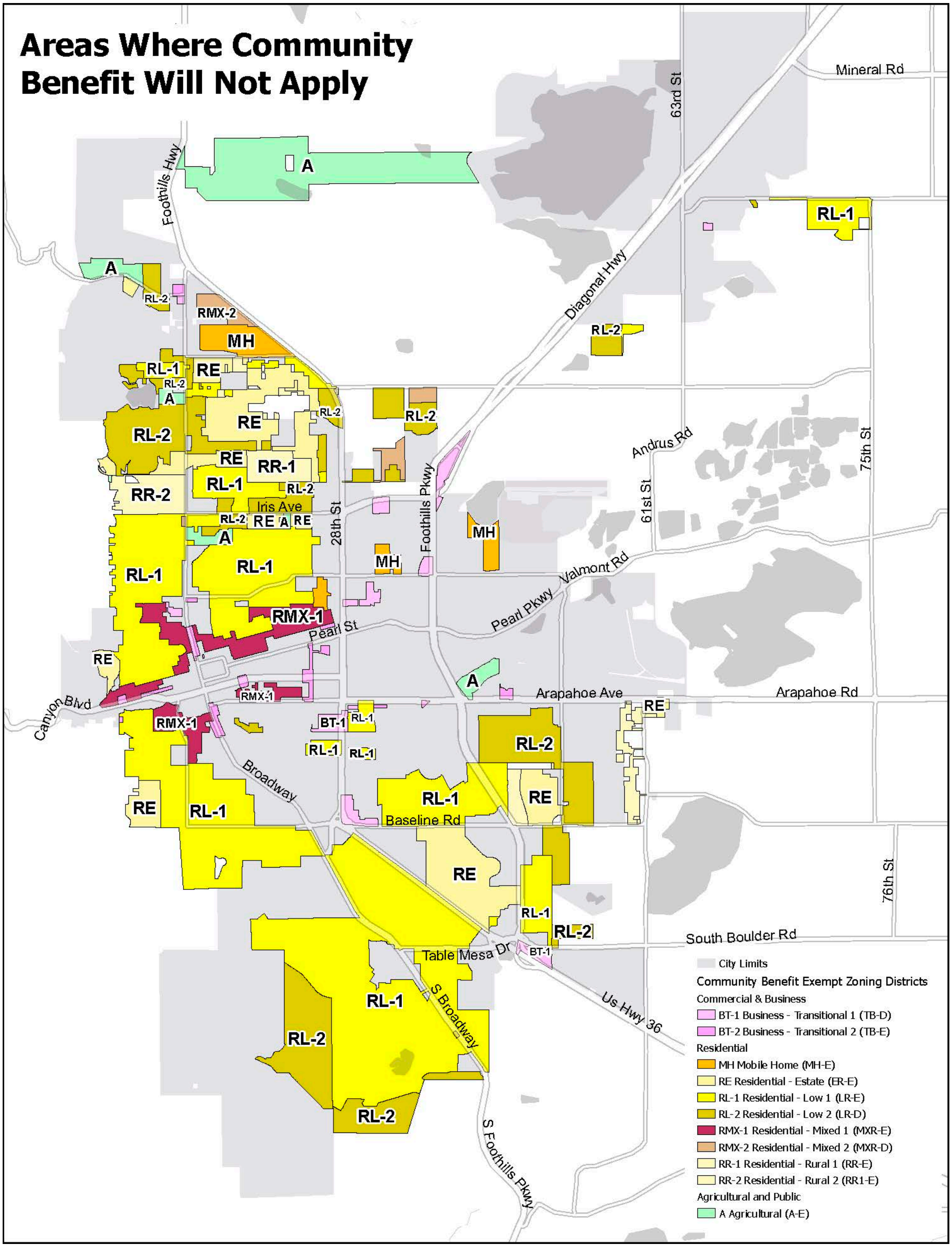

Figure 1- Proposed areas where Community Benefit will not apply.

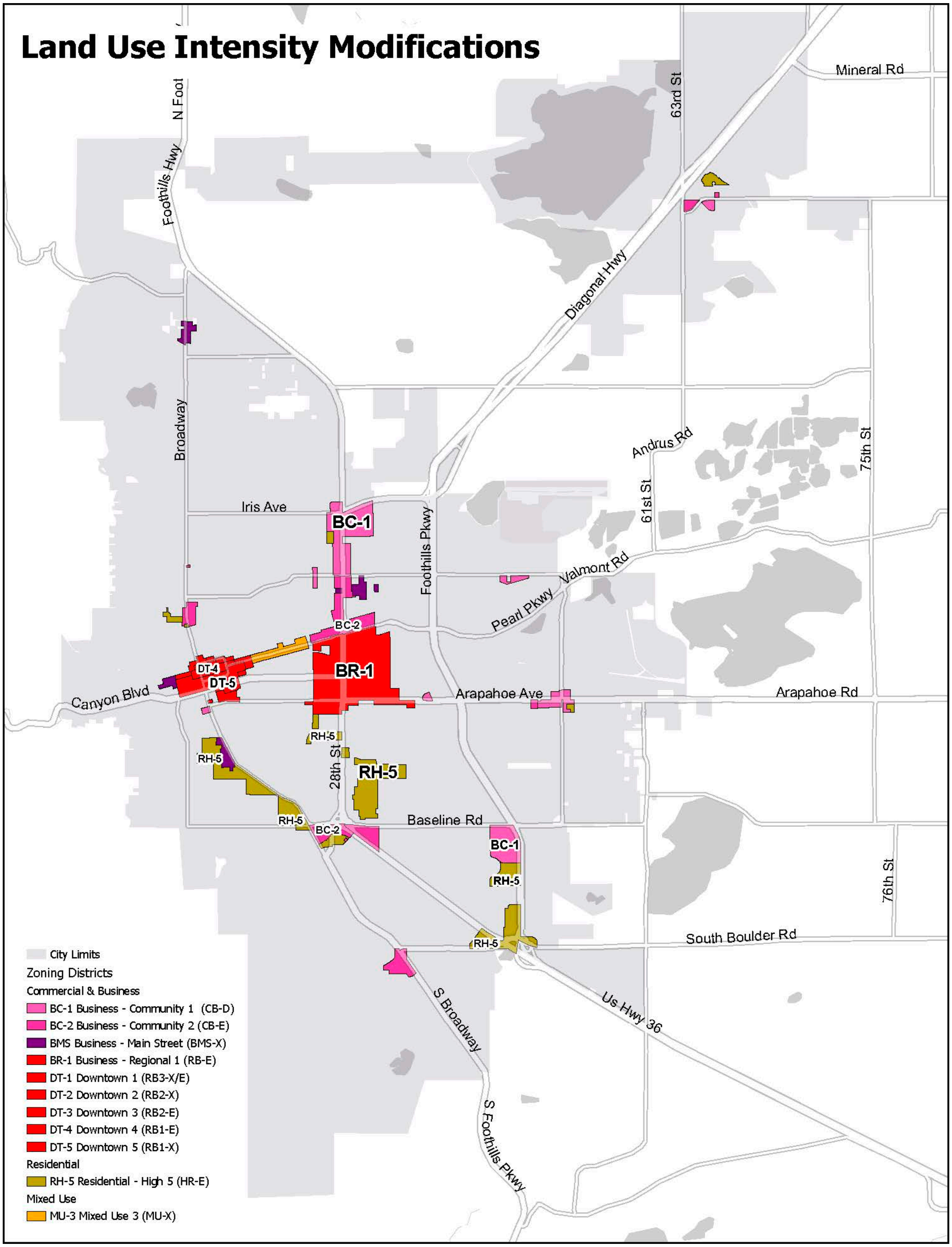

Figure 2- Zoning districts where land use intensity modifications are proposed.

floor commercial/retail space requirements for the BC zones would still apply if a project did not provide ground floor commercial/retail space. For a project to be approved with residential or other restricted uses on the ground floor, the following criterion from Section 9-6-11, "Conditional Use and Use Review Standards - Business Community Areas Designated in Appendix N," B.R.C. 1981, would have to be met:

> *In addition to meeting the use review criteria, the applicant shall demonstrate that the use on the ground floor or with a combined floor area larger than ten percent of the total floor area, as applicable, will not adversely affect the intended function and character of the area as a neighborhood serving business area where retail-type stores predominate. In determining whether this criterion is met, the reviewing authority shall consider the location and design of the proposed use and the existing and approved uses on the lot or parcel and in the area.*

- **DT, BMS, and MU-3 zones**: The DT, BMS and MU-3 zones are the most pedestrian oriented of zones in Boulder and have a "Main Street" typology of buildings built up to the street with wide sidewalks and trees in grates etc. Oftentimes, the city's requirements for up to 20 percent open space on a narrow downtown or West Pearl property results in this "Main Street" design pattern being interrupted by less useable open space. For instance, to meet the open space requirements, developers have pushed buildings back from the sidewalk to have open space along the streetscape or provided less than optimal open space along an alley given the constraints on these sites, which results in a less than ideal design solution and open spaces that are largely meant to meet the code despite not being functional.

  A new modification is proposed that would allow requests to reduce the open space by up to 50 percent if it is necessary to avoid siting of open space that is inconsistent with the urban context of neighboring buildings or the character established in adopted design guidelines or plans for the area, such as along a property line next to zero-setback buildings or along alleys. These zones already largely benefit from public open space like the downtown pedestrian mall and the Boulder Creek corridor or other nearby open spaces or parks. An existing modification to reduce open space by up to 100 percent already exists for the DT zones and is proposed to be removed since it currently requires the applicant to demonstrate that the owner of the site has paid into a community fund for the Pearl Street Mall and other nearby open spaces. This has proved to be difficult to track and administer and thus, is proposed to be replaced by the criterion above.

- **BR-1 zone**: An existing section of the Site Review criteria that allows bonuses for up to 4.0 FAR (Floor Area Ratio) is proposed to be removed. The requests for over 2.0 FAR is rare and oftentimes, the setback, open space, landscaping and circulation requirements limit buildings to not much more than the 2.0 FAR permitted without the modification. Staff has not found any examples of projects that built to a 3.0 or 4.0 FAR. Further, the criteria to obtain more floor area are redundant to the existing open space criteria and do not necessarily result in enhanced design above what the Site Review criteria already require. The vast majority of projects in BR-1 are possible at around 2.0 FAR and if a developer wanted to go beyond the 2.0 FAR, they could meet the Community Benefit requirements. As an alternative, staff is proposing that the modification be changed to simply allow requests for up to a 3.0 FAR if the bonus floor area meets the community benefit standards of Phase 1 or Phase 2.

Staff finds that these modifications would be consistent with BVCP Policy 1.11, Enhanced Community Benefit and BVCP Policy 7.12, Permanently Affordable Housing for Additional Intensity.

- **Height Modification exemption for projects with Permanently Affordable housing and building required to be raised to above the Flood Protection Elevation**: Lastly, staff is proposing changes to the current exemptions for projects to request height modifications outside the mapped areas of Appendix J and that are not subject to the community benefit requirements. Current exemptions, found within Section 9-2-14(b)(1)(e), B.R.C. 1981, are any project with more than 40% of its floor area as permanently affordable housing, industrial manufacturing spaces that are not over three stories or height modifications that are requested for building no taller than the maximum number of stories (typically three stories) that is necessary due to topography.

  The proposed changes are to add a new exemption on projects that must be raised to meet flood protection regulations (up to 5 additional feet may be request if no taller than the maximum number of stories permitted without Site Review). The proposed changes would also tighten up the permanently affordable housing standard to require that at least 40% of the units be permanently affordable in addition to meeting the minimum 40% of the floor area of a building; this would require provision of permanently affordable units that exceed the inclusionary housing requirements for the development and to not a height modification where permanently affordable units in the building satisfy inclusionary housing requirements for dwelling units located in another building. Finally, the proposed changes would delete the reference to Appendix J should the map be repealed or allowed to expire. As stated earlier in the memorandum, staff is proposing that if the Appendix J map is repealed or allowed to expire that the community benefit program not be permitted in zones where additional height in the form of four or five stories would not be anticipated due to context and compatibility. The zones proposed for exclusion are: Rural - Residential (RR), Residential - Estate (RE), Residential -Low (RL), Residential - Mixed (RMX), Business - Transitional (BT), Mobile Home (MH) and Agricultural (A) zoning districts. Descriptions of these zones can be found in the Land Use Code within Chapter 5, "Modular Zone System," B.R.C. 1981.

- **Administrative Rules**: The city's long established Inclusionary Housing (IH) program includes rules that guide the city manager's role in administering the details of the program. As the city's Affordable Commercial program and these proposed regulations are new territory, the IH program serves as a useful guide. Staff is therefore proposing to create a similar authority in the city manager to adopt administrative regulations which are anticipated to create more detailed standards for lease, cash-in-lieu-contributions, market rate determinations etc., to help implement and administer the program, similar to the city's IH program.

Conclusion

In addition to finding the proposed ordinance consistent with the BVCP as discussed in this memorandum, staff is recommending approval of Ordinance 8469 as it would meet the original goals and objectives of the project. The original goals and objectives are listed below for reference:

- *Determine the type and amount of community benefits that would be provided to achieve increased intensity, building height or zone district changes.*

- *Identify incentives to address the community economic, social and environmental objectives of the comprehensive plan.*

- *Clearly specify the required triggers for community benefit and identify how (or if) the benefits would be maintained in perpetuity.*

The goals and objectives will be achieved by specifying the qualifying community benefit uses for below market rate space (e.g., small businesses, non-profits, arts and cultural uses etc.) in addition to permanently affordable housing and the amount required based on the bonus floor area subject to a reduced and restricted percentage of the market rate (i.e., 50% or 75% of market rate). Further, the ordinance proposes the amounts in a manner that has been determined to be attractive to developers based on the economic analyses found in **Attachment B** and **Attachment C** and is further incented by limited zone district changes to allow for additional floor area in exchange for community benefit and density modifications to encourage the provision of permanently affordable housing – one of the prime objectives of the comprehensive plan. The proposed code language also includes clear thresholds for how to implement either Phase 1 (permanently affordable housing) and Phase 2 (below market rate space) and creates the process and requirements necessary to monitor such uses over time through the administrative review process where restrictive covenants would apply to the community benefit uses similar to how deed restrictions apply to permanently affordable housing.

2. **Does City Council agree that there should be limited eligibility criteria for a developer to pay cash in lieu fees to an affordable commercial fund instead of providing below market rate space on-site, and that consideration of a staff recommendation whether or not to approve the in-lieu request should be considered by the Planning Board as part of its Site Review?**

As stated earlier in this memorandum, the development community has expressed concern with a discretionary Planning Board decision on whether a project meets the eligibility criteria to pay cash in lieu. Feedback received has indicated a preference to have city staff determine whether the criteria are met, without additional Planning Board consideration, much like how the Inclusionary Housing (IH) program is administered. As this position conflicts with the staff proposal, staff has raised this as a key issue.

Based on City Council's support of cash in lieu being an option to providing on-site below market rate space and council's requests that the program be weighted towards provision of on-site below market rate space over cash in lieu, staff has found it appropriate to develop eligibility criteria for specific circumstances where in lieu would make sense. Further, based on council's guidance on this topic, staff finds that it would be appropriate to have Planning Board determine whether criteria for a cash-in-lieu contribution are met. Since projects proposing additional height require a Site Review decision by the Planning Board and a public hearing, requests to pay a cash-in-lieu contribution would be brought before the board with a staff recommendation.

While staff understands that this may impact the code change project's goal of greater predictability in projects through updates to the Site Review criteria, staff is hopeful that the eligibility criteria will only apply to a smaller number of projects and that most that take advantage of the Phase 2 options would be incented to provide the below market rate spaces on site.

3. Should the optional Ordinance 8471 that extends the Appendix J map expiration date to the effective date of Ordinance 8469 on Jan. 1, 2022 be adopted or should the Appendix J map be allowed to expire on Aug. 31, 2021 as previously approved by City Council?

City Council recently adopted the Ordinance 8453 on April 20, 2021, which extended the map that specifies limited areas where height modification can be considered. The City Council memo from April 20th can be reviewed here.

To enable staff time to develop the administrative rules for the Below Market Rate Space Fund and update city application materials to implement Phase 2 regulations, staff is recommending an effective date of Jan. 1, 2022 for Ordinance 8469. With the Appendix J map set to expire on Aug. 31, 2021, this would expand the Community Benefit program to a city-wide application on Sept. 1, 2021 before Phase 2 goes into effect.
To address concerns about the program applying city side prior to the effective date of Phase 2, staff is also including an optional draft Ordinance 8471 (see **Attachment E**), which would extend the Appendix J, "Areas Where Height Modifications May be Considered" map expiration date from the current expiration date recently approved by council (August 31, 2021) to the proposed effective date of Ordinance 8469 on Jan. 1, 2022. This second ordinance is optional and could be adopted if council does not want the Appendix J map to expire until the Phase 2 options within Ordinance 8469 go into effect. <u>If the Appendix J map expires on Aug. 31, 2021 as currently set, the Phase 1 permanently affordable housing option for community benefit would be the only option</u>

allowed citywide until the Jan. 1, 2022 when the Phase 2 below market rate space options would become effective. All such requests would require Planning Board approval at a public hearing and would be subject to the Site Review criteria for design and compatibility with surroundings etc.

Staff is recommending that City Council pass both ordinances on first reading and the adoption of the latter ordinance can be considered on second reading on July 13, 2021.

ATTACHMENTS

Attachment A- Draft Ordinance 8469
Attachment B- Keyser Marston Associates (KMA) analysis dated February 2021
Attachment C- KMA addendum to the analysis dated May 4, 2021
Attachment D- Public comments
Attachment E- Optional Draft Ordinance 8471

ORDINANCE 8469

AN ORDINANCE AMENDING TITLE 9, "LAND USE CODE," B.R.C. 1981, TO REVISE COMMUNITY BENEFIT REQUIREMENTS FOR NON-RESIDENTIAL AND MIXED-USE PROJECTS SEEKING HEIGHT MODIFICATIONS IN A SITE REVIEW PROCESS AND SETTING FORTH RELATED DETAILS.

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

Section 1. Section 4-20-43, "Development Application Fees", B.R.C. 1981, is amended as follows:

…

(b) Land use regulation fees:

…

(11) An applicant for an attached accessory dwelling unit permit shall pay $420

(12) An applicant for a detached accessory dwelling unit shall pay $420

(13) An applicant for a limited accessory unit shall pay $420

(14) An applicant for an amendment to an approved accessory unit shall pay $420

(15) An applicant for selling from a moveable structure, vacant lot, or a parking lot (includes Christmas tree sales) shall pay the following fees:

Initial application $252

Application renewal 84

(~~15~~16) An applicant for a wireless communications facility shall pay the following fees:

New, modification to, or collocation of wireless communications facility, and eligible facilities request, for each facility that is part of the application $2,440

Small cell facility in public right-of-way, up to two facilities as part of the application $2,440

Small cell facility in public right-of-way, applications with more than two facilities shall pay $2,440 plus $100 each for any additional facilities that are part of the application.

(~~16~~17) An applicant for a group home facility shall pay $505

(~~17~~18) An applicant for a review for development under Section 9-7-12, "Two Detached Dwellings on a Single Lot," B.R.C. 1981, shall pay $560

(~~18~~19) An applicant for an administrative parking reduction shall pay $605

(~~19~~20) An applicant for an administrative parking deferral shall pay $337

(~~20~~21) An applicant for an administrative solar exception shall pay $252

(~~21~~22) An applicant for a conditional use in a BC zoning district pursuant to Section 9-6-10, "Specific Use Standards for Business Community Areas Designated in Appendix N," B.R.C. 1981 $274

(~~22~~23) An applicant for vacation of a public street or alley shall pay $4,000 for a vacation feasibility study and $5,230 for a vacation processing fee. An applicant for vacation of a public easement shall pay $505

(~~23~~24) An applicant for an administrative setback variance shall pay $252

(~~24~~25) An applicant for a minor modification to an approved discretionary review plan shall pay the following fees:

Standard $757

Simple 168

(~~25~~26) An applicant for a conditional height review shall pay $252

(~~26~~27) An applicant for temporary outdoor entertainment shall pay the following fees:

Initial application $252

Application renewal 84

(~~27~~28) An applicant for a miscellaneous plan review (additional plan review required by changes, additions, or revisions to approved plans) or other services associated with development review shall pay $131 per hour of staff time required, with a minimum charge of one hour.

(29~~8~~) Development related fees:

An applicant requesting a zoning verification letter shall pay $136

An applicant for a development extension/staff approval review shall pay $136

An applicant for a development extension/planning board approval shall pay an administrative fee of $1,580 plus $131/hour for staff time required.

An applicant requesting to rescind a development agreement shall pay $547

An applicant for an administrative relief/transportation/parking shall pay $274

An applicant for an administrative relief/nonconforming use substitution shall pay $274

An applicant for an administrative relief/landscaping review shall pay $274

An applicant requesting initial property addressing shall pay $32 plus $16/unit

An applicant requesting a change of address shall pay $274

An applicant requesting a street name change/city council approval shall pay an administrative fee of $1,580 plus $131/hour for staff time required.

An applicant for an administrative review associated with a community benefit below-market rate space shall pay $274.

Boulder Valley Comprehensive Plan fees:

An applicant for a land use designation change outside the annual update process shall pay $630

(~~29~~30) An applicant for approval of a form-based code review or an amendment to a form-based code review shall pay the following fees:

Form-Based Code Review $8,885

Form-Based Code Review Amendment $2,100

Administrative Form-Based Code Review $757

Minor Modification to a Form-Based Code Review (standard) $757

Minor Modification to a Form-Based Code Review (simple) $168

(31~~0~~) An application fee paid under this section may be refunded, but only if an unambiguous written request to withdraw the application and refund the fee is received in the city office where the application was presented within five days of the date on which the application was received at that office.

…

Section 2. Section 9-2-1, “Types of Review”, B.R.C. 1981, is amended as follows:

(a) Purpose: This section identifies the numerous types of administrative and development review processes and procedures. The review process for each of the major review types is summarized in Table 2-1 of this section.

(b) Summary Chart:

TABLE 2-1: REVIEW PROCESSES SUMMARY CHART

I. ADMINISTRATIVE REVIEWS	***II. ADMINISTRATIVE REVIEWS - CONDITIONAL USES as noted in Table 6-1 "Use Table"***	***III. DEVELOPMENT REVIEW AND BOARD ACTION***
Affordable housing design review pursuant to Section 9-13-4, B.R.C. 1981 Building permits Amendment to approved accessory unit Change of address Change of street name Reviews associated with community benefit below-market rate space per Section 9-2-14(h)(2)(J), B.R.C. 1981 Demolition, moving, and removal of buildings with no historic or architectural significance, per Section 9-11-23, "Review of Permits for Demolition, On-Site Relocation, and Off-Site Relocation of Buildings Not Designated," B.R.C. 1981 Easement vacation Extension of development approval/staff level Landmark alteration certificates (staff review per Section 9-11-14, "Staff Review of Application for Landmark Alteration Certificate," B.R.C. 1981)	Accessory Units (~~Dwelling~~ Detached, ~~Owners~~ Attached, Limited) Wireless Communications Facilities Attached Dwelling Units and Efficiency Living Units in the University Hill General Improvement District Bed and Breakfasts ~~Cooperative Housing Units~~ Daycare Centers Detached Dwelling Units with Two Kitchens Fuel Service Stations Group Home Facilities Industrial Service Center Manufacturing Uses with Off-Site Impacts Medical or Dental Clinics or Offices or Addiction Recovery Facilities in the Industrial General Zoning District near the Boulder Community Health Foothills Campus	Annexation/initial zoning BOZA variances Concept plans Demolition, moving, and removal of buildings with potential historic or architectural significance, per Section 9-11-23, "Review of Permits for Demolition, On-Site Relocation, and Off-Site Relocation of Buildings Not Designated," B.R.C. 1981 Form-based code review Landmark alteration certificates other than those that may be approved by staff per Section 9-11-14, "Staff Review of Application for Landmark Alteration Certificate," B.R.C. 1981 Lot line adjustments Lot line elimination Minor Subdivisions Out of city utility permit Rezoning Site review

Landscape standards variance Minor modification to approved site plan Minor modification to approved form-based code review Noise barriers along major streets per Paragraph 9-9-15(c)(7), B.R.C. 1981 Nonconforming use (extension, change of use (incl. parking)) Parking deferral per Subsection 9-9-6(e), B.R.C. 1981 Parking reduction of up to fifty percent per Subsection 9-9-6(f), B.R.C. 1981 Parking reductions and modifications for bicycle parking per Paragraph 9-9-6(g)(6), B.R.C. 1981 Parking stall variances Public utility Rescission of development approval Revocable permit Right-of-way lease Setback variance	Offices, Computer Design and Development, Data Processing, Telecommunications, Medical or Dental Clinics and Offices, or Addiction Recovery Facilities in the Service Commercial Zoning Districts Offices, Computer Design and Development Facilities, Medical or Dental Clinics and Offices, Addiction Recovery Facilities, and Medical and Dental Laboratories in the BMS, BR and BT Zoning Districts, Not within the University Hill General Improvement District, if the total Floor Area of such Uses on the Lot or Parcel Exceeds 20,000 square feet Recycling Facilities Residential Care, Custodial Care, and Congregate Care Facilities Residential Development in Industrial Zoning Districts Residential Uses in the MU-3 Zoning District Fronting Pearl Street Restaurants, Brewpubs, and Taverns	Subdivisions Use review Vacations of street, alley, or access easement

	Sales or Rental of Vehicles on Lots Located 500 Feet or Less from a Residential Zoning District	
Site access variance Solar exception Zoning verification	Shelters (Day, Emergency, Overnight, temporary) Temporary Sales Transitional Housing Certain Uses in BC Areas designated in Appendix N	

Section 3. Section 9-2-14, "Site Review", B.R.C. 1981, is amended as follows:

(a) Purpose:

(1) The purpose of site review is to allow flexibility and encourage innovation in land use development. Review criteria are established to promote the most appropriate use of land, improve the character and quality of new development, to facilitate the adequate and economical provision of streets and utilities, to preserve the natural and scenic features of open space, to assure consistency with the purposes and policies of the Boulder Valley Comprehensive Plan and other adopted plans of the community, to ensure compatibility with existing structures and established districts, to assure that the height of new buildings is in general proportion to the height of existing, approved, and known to be planned or projected buildings in the immediate area, to assure that the project incorporates, through site design, elements which provide for the safety and convenience of the pedestrian, to assure that the project is designed in an environmentally sensitive manner, to assure that the building is of a bulk appropriate to

the area and the amenities provided and of a scale appropriate to pedestrians~~, and to set requirements for additional height, density, and intensity that provide additional benefits to the community beyond the underlying zoning~~.

(2) Special review criteria are established for buildings exceeding by-right heights and density and intensity standards to achieve important goals and policies of the Boulder Valley Comprehensive Plan. These goals and policies include the creation of affordable housing and below-market rate commercial spaces, spaces for the arts, and spaces for nonprofit organizations and businesses providing direct services to the community. The rising costs of housing and commercial spaces in the community create a housing shortage for low, moderate, and middle income housing and is impacting the ability of small businesses, cultural uses, businesses and non-profits that are providing direct services to the residents and local businesses to locate or remain within the city, impacting the public health, safety, and welfare. Housing opportunities for people of all income levels and opportunities for these businesses and uses to locate and remain within the city are vital for the economic vitality, a diverse work force and employment base, the effective provision of human services, diversity, social equity and quality of life in the city.

(b) Scope: The following development review thresholds apply to any development that is eligible or that otherwise may be required to complete the site review process:

(1) Development Review Thresholds:

…

(E) Height Modifications: A development which exceeds the permitted height requirements of Section 9-7-5, "Building Height," or 9-7-6, "Building Height, Conditional," B.R.C. 1981, is required to complete a site review and is not subject to the minimum threshold requirements. No standard other than height may be modified under the site review unless the project is also eligible for site review. A development that exceeds the permitted height requirements of Section 9-7-5 or 9-7-6, B.R.C. 1981, must meet any one of the following circumstances in addition to the site review criteria:

(i) The height modification is to allow a roof that has a pitch of 2:12 or greater in a building with three or fewer stories and the proposed height does not exceed the maximum height permitted in the zoning district by more than ten feet.

(ii) The building is in the Industrial General, Industrial Service, or Industrial Manufacturing Zoning District and has two or fewer stories or the height is necessary for a manufacturing, testing, or other industrial process or equipment.

(iii) The height modification is to allow up to the greater of two stories or the maximum number of stories permitted in Section 9-7-1, B.R.C. 1981, in a building and the height modification is necessary because of the topography of the site.

(iv) The height modification is to allow up to the greater of two stories or the maximum number of stories permitted but no more than five feet above the maximum building height specified in Section 9-7-1, B.R.C. 1981, in a building where the height modification is necessary because the building has to be elevated to meet the required flood protection elevation.

(~~iv~~v) At least forty percent of dwelling units in the building meet the requirements for permanently affordable units in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981; at least forty percent of the floor area of the building is used for dwelling units that meet the requirements for permanently affordable units in Chapter 9-13, "~~Inclusionary Housing~~," B.R.C. 1981;~~.~~ all floor area above the first floor of the building is used for dwelling units; and the permanently affordable units in the building are not used to satisfy inclusionary housing requirements under Chapter 9-13, B.R.C. 1981, for dwelling units located in any other building.

(~~v~~vi) The height modification is to allow an emergency operations antenna.

(vii) The building or use meets the requirements of Subparagraph 9-2-14(h)(2)(J), B.R.C. 1981, and is not in the RR, RE, RL, RMX, BT, MH or A zoning district. ~~is located in an area designated in Appendix J, "Areas Where Height Modifications May Be Considered," and meets the requirements of Paragraph 9-2-14(h)(2)(K), "Additional Criteria for Height Bonuses and Land Use Intensity Modifications for Properties Designated Within Appendix J," B.R.C. 1981.~~~~[1]~~

TABLE 2-2: SITE REVIEW THRESHOLD TABLE

Zoning District Abbreviation	***Use***	***Form***	***Intensity***	***Minimum Size for Site Review***	***Concept Plan and Site Review Required***	***~~Former Zoning District Abbreviation~~***

~~[1]The limitation of this Subparagraph (vi) to a building or use located in an area designated in Appendix J expires on August 31, 2021 per Ordinance No. 8471.~~ The limitation of this Subparagraph (vi) to a building or use located in an area designated in Appendix J expires on December 31, 2021 per Ordinance No. 8471

A	A	a	1	2 acres	-	~~(A-E)~~
BC-1	B3	f	15	1 acre	3 acres or 50,000 square feet of floor area	~~(CB-D)~~
BC-2	B3	f	19	1 acre	2 acres or 25,000 square feet of floor area or any site in BVRC	~~(CB-E)~~
BCS	B4	m	28	1 acre	3 acres or 50,000 square feet of floor area	~~(CS-E)~~
BMS	B2	o	17	0	3 acres or 50,000 square feet of floor area	~~(BMS-X)~~
BR-1	B5	f	23	0	3 acres or 50,000 square feet of floor area	~~(RB-E)~~
BR-2	B5	f	16	0	3 acres or 50,000 square feet of floor area	~~(RB-D)~~
BT-1	B1	f	15	1 acre	2 acres or 30,000 square feet of floor area	~~(TB-D)~~
BT-2	B1	e	21	0	2 acres or 30,000 square feet of floor area	~~(TB-E)~~
DT-1	D3	p	25	0	1 acre or 50,000 square	~~(RB3-X/E)~~

					feet of floor area	
DT-2	D3	p	26	0	1 acre or 50,000 square feet of floor area	~~(RB2-X)~~
DT-3	D3	p	27	0	1 acre or 50,000 square feet of floor area	~~(RB2-E)~~
DT-4	D1	q	27	0	1 acre or 50,000 square feet of floor area	~~(RB1-E)~~
DT-5	D2	p	27	0	1 acre or 50,000 square feet of floor area	~~(RB1-X)~~
IG	I2	f	22	2 acres	5 acres or 100,000 square feet of floor area	~~(IG-E/D)~~
IM	I3	f	20	2 acres	5 acres or 100,000 square feet of floor area	~~(IM-E/D)~~
IMS	I4	r	18	0	3 acres or 50,000 square feet of floor area	~~(IMS-X)~~
IS-1	I1	f	11	2 acres	5 acres or 100,000 square feet of floor area	~~(IS-E)~~
IS-2	I1	f	10	2 acres	5 acres or 100,000 square	~~(IS-D)~~

					feet of floor area	
MH	MH	s	-	5 or more units are permitted on the property	-	~~(MH-E)~~
MU-1	M2	i	18	0	1 acre or 20 dwelling units	~~(MU-D)~~
MU-2	M3	r	18	0	3 acres or 50,000 square feet of floor area	~~(RMS-X)~~
MU-3	M1	n	24	5 or more units are permitted on the property	1 acre or 20 dwelling units or 20,000 square feet of nonresidential floor area	~~(MU-X)~~
MU-4	M4	o	24.5	0	3 acres or 50,000 square feet of floor area	-
P	P	c	5	2 acres	5 acres or 100,000 square feet of floor area	~~(P-E)~~
RE	R1	b	3	5 or more units are permitted on the property	-	~~(ER-E)~~
RH-1	R6	j	12	0	2 acres or 20 dwelling units	~~(HR-X)~~
RH-2	R6	c	12.5	0	2 acres or 20 dwelling units	~~(HZ-E)~~

RH-3	R7	l	14	5 or more units are permitted on the property	2 acres or 20 dwelling units	~~(HR1-X)~~
RH-4	R6	h	15	5 or more units are permitted on the property	2 acres or 20 dwelling units	~~(HR-D)~~
RH-5	R6	c	19	5 or more units are permitted on the property	2 acres or 20 dwelling units	~~(HR-E)~~
RH-6	R8	j	17.5	5 or more units are permitted on the property	3 acres or 20 dwelling units	-
RH-7	R7	i	14	5 or more units are permitted on the property	2 acres or 20 dwelling units	-
RL-1	R1	d	4	5 or more units are permitted on the property	3 acres or 18 dwelling units	~~(LR-E)~~
RL-2	R2	g	6	5 or more units are permitted on the property	3 acres or 18 dwelling units	~~(LR-D)~~
RM-1	R3	g	9	5 or more units are permitted	2 acres or 20 dwelling units	~~(MR-D)~~

				on the property		
RM-2	R2	d	13	5 or more units are permitted on the property	2 acres or 20 dwelling units	~~(MR-E)~~
RM-3	R3	j	13	5 or more units are permitted on the property	2 acres or 20 dwelling units	~~(MR-X)~~
RMX-1	R4	d	7	5 or more units are permitted on the property	2 acres or 20 dwelling units	~~(MXR-E)~~
RMX-2	R5	k	8	0	2 acres or 20 dwelling units	~~(MXR-D)~~
RR-1	R1	a	2	5 or more units are permitted on the property	-	~~(RR-E)~~
RR-2	R1	b	2	5 or more units are permitted on the property	-	~~(RR1-E)~~

…

(c) Modifications to Development Standards: The following development standards of B.R.C. 1981 may be modified under the site review process set forth in this section:

…

(17) Land use intensity modifications pursuant to Paragraphs 9-2-14(h)(2)(I) ~~and (h)(2)(J)~~.

…

(e)

…

(8) Plans and a written statement demonstrating that the development meets the requirements for a height bonus specified in Subparagraph 9-2-14(h)(2)(J), B.R.C. 1981.

…

(g) Review and Recommendation: The city manager will review and decide in application for a site review in accordance with the provisions of Section 9-2-6, "Development Review Application," B.R.C. 1981, except for an application involving the following, which the city manager will refer with a recommendation to the planning board for its action:

(1) A reduction in off-street parking of more than fifty percent subject to compliance with the standards of Subsection 9-9-6(f), B.R.C. 1981.

(2) Any ~~reduction of the open space or lot area requirements~~ land use intensity modification allowed by Subparagraph (h)(2)(I) of this section.

(3) An application for any principal or accessory building above the permitted height for ~~principal~~ such buildings set forth in Section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981.

(4) An increase in density in the RH-1, RH-2 and RH-3 districts consistent with Section 9-8-3, "Density in the RH-1, RH-2, RH-3 and RH-7 Districts," B.R.C. 1981.

(h) Criteria for Review: No site review application shall be approved unless the approving agency finds that:

(1) Boulder Valley Comprehensive Plan:

…

(2) Site Design: Projects should preserve and enhance the community's unique sense of place through creative design that respects historic character, relationship to the natural environment, multi-modal transportation connectivity and its physical setting. Projects should utilize site design techniques which are consistent with the purpose of site review in Subsection (a) of this section and enhance the quality of the project. In determining whether this subsection is met, the approving agency will consider the following factors:

…

(I) Land Use Intensity Modifications: Modifications to the minimum open space per dwelling unit, minimum open space on lots, maximum height, and minimum lot area per dwelling unit standards may be requested if the requirements of this subparagraph are met:

(i) Land Use Intensity and Density Modification for Permanently Affordable Units in the BR-1, RH-5 and BC-2 Zoning Districts: The minimum lot area per dwelling unit standards in Chapter 9-8, “Intensity Standards,” B.R.C. 1981, for the BR-1, RH-5 and BC-2 zoning districts are waived for permanently affordable units.

(ii) ~~General~~ Land Use Intensity and Density Modifications with Open Space Reduction:

a. ~~The density of a project may be increased in the BR-1 district through a reduction of the lot area requirement or in the Downtown (DT), BR-2 or MU-3 districts through a reduction in the open space requirements.~~

In the BC-1 zoning district: The minimum open space per dwelling unit standards in Chapter 9-8, “Intensity Standards,” B.R.C. 1981, for the BC-1 zoning district may be reduced by fifty percent for any permanently affordable units meeting the requirements in Chapter 9-13, “Inclusionary Housing,” B.R.C. 1981.

b. In the DT, BMS, BR-2, and MU-3 zoning districts: If the following criteria are met, ~~T~~the open space requirements in Chapter 9-8, “Intensity Standards,” B.R.C. 1981, may be reduced by up to fifty percent in all ~~Downtown (~~DT~~)~~ districts and the BR-2, BMS and MU-3 districts as specified below: ~~may be reduced by up to one hundred percent.~~

~~c. The open space per lot requirements for the total amount of open space required on the lot in the BR-2 district may be reduced by up to fifty percent.~~

~~d. Land use intensity may be increased up to twenty-five percent in the BR-1 district through a reduction of the lot area requirement.~~

~~(ii) Additional Criteria for General Land Use Intensity Modifications: A land use intensity increase pursuant to Subparagraph (i) above will be permitted up to the maximum amount set forth below if the approving agency finds that the criteria in Paragraph (h)(1) through Subparagraph (h)(2)(H) of this section and following criteria have been met:~~

~~a. Open Space Needs Met: The needs of the project's occupants and visitors for high quality and functional useable open space can be met adequately;~~

~~b. Character of Project and Area: The open space reduction does not adversely affect the character of the development or the character of the surrounding area; and~~

~~c. Open Space and Lot Area Reductions: The specific percentage reduction in open space or lot area requested by the applicant is justified by any one or combination of the following site design features not to exceed the maximum reduction set forth above:~~

~~1. Close proximity to a public mall or park for which the development is specially assessed or to which the project contributes funding of capital improvements beyond that required by the parks and recreation component of the development excise tax set forth in Chapter 3-8, "Development Excise Tax," B.R.C. 1981: maximum one hundred percent reduction in all Downtown (DT) districts and ten percent in the BR-1 district;~~

~~2. Architectural treatment that results in reducing the apparent bulk and mass of the structure or structures and site planning which increases the openness of the site: maximum five percent reduction;~~

~~3. A common park, recreation or playground area functionally useable and accessible by the development's occupants for active recreational purposes and sized for the number of inhabitants of the development, maximum five percent~~

~~reduction; or developed facilities within the project designed to meet the active recreational needs of the occupants: maximum five percent reduction;~~

~~4. Permanent dedication of the development to use by a unique residential population whose needs for conventional open space are reduced: maximum five percent reduction;~~

1. In the DT, BMS or MU-3 zoning districts: The reduction in open space is necessary to avoid siting of open space that is inconsistent with the urban context of neighboring buildings or the character established in adopted design guidelines or plans for the area, such as along a property line next to zero-setback buildings or along alleys: maximum fifty percent reduction.

2. In the BR-2 zoning district:

~~5.~~ A. The reduction in open space is part of a development with a mix of residential and nonresidential uses ~~within a BR-2 zoning district~~ that, due to the ratio of residential to nonresidential uses and because of the size, type and mix of dwelling units, ~~the~~ has a reduced need for open space ~~is reduced~~: maximum fifteen percent reduction; and

~~6.~~ B. The reduction in open space is part of a development with a mix of residential and nonresidential uses ~~within a BR-2 zoning district~~ that provides high quality urban design elements that will meet the needs of anticipated residents, occupants, tenants, and visitors of the property or will accommodate public gatherings, important activities or events in the life of the community and its people, that may include, without limitation, recreational or cultural amenities, intimate spaces that foster social interaction, street furniture, landscaping and hard surface treatments for the open space: maximum twenty-five percent reduction.

(iii) Land Use Intensity and Density Modifications with Height Bonus: ~~In an area designated in Appendix J, "Areas Where Height Modifications May Be Considered,"~~ In zoning districts other than RR, RE, RL, RMX, BT, MH, and A and as part of a height bonus approved under Subparagraph 9-2-14(h)(2)(~~K~~J), the density and floor area of a building may be increased above the maximum allowed in Chapter 9-8, "Intensity Standards," B.R.C. 1981, as follows, provided the building meets the requirements for a height bonus under Subparagraph 9-2-14(h)(2)(~~K~~J), B.R.C. 1981:

a. In the BMS zoning district outside a general improvement district providing off-street parking, and in the IMS, IS, ~~and~~ MU-1, and MU-2 zoning districts, the base floor area ratio (FAR) in Table 8-2, Section 9-8-2, "Floor Area Ratio Requirements," B.R.C. 1981, may be increased by up to 0.5 FAR.

b. In the BR-1 zoning district, the allowed number of dwelling units per acre in Table 8-1, Section 9-8-1, "Schedule of Intensity Standards," B.R.C. 1981, may be increased by up to fifty percent~~.~~ and the maximum allowable floor area ratio (FAR) may be increased up to a maximum of 3.0 FAR.

~~(J) Additional Criteria for Floor Area Ratio Increase for Buildings in the BR-1 District:~~

~~(i) Process: For buildings in the BR-1 district, the floor area ratio ("FAR") permitted under Table 8-2, Section 9-8-2, "Floor Area Ratio~~

~~Requirements," B.R.C. 1981, may be increased by the city manager under the criteria set forth in this subparagraph.~~

~~(ii) Maximum FAR Increase: The maximum FAR increase allowed for buildings thirty-five feet and over in height in the BR-1 district shall be from 2:1 to 4:1.~~

~~(iii) Criteria for the BR-1 District: The FAR may be increased in the BR-1 district to the extent allowed in Subparagraph (h)(2)(J)(ii) of this section if the approving agency finds that the following criteria are met:~~

~~a. Site and building design provide open space exceeding the required useable open space by at least ten percent: an increase in FAR not to exceed 0.25:1.~~

~~b. Site and building design provide private outdoor space for each office unit equal to at least ten percent of the lot area for buildings twenty-five feet and under and at least twenty percent of the lot area for buildings above twenty-five feet: an increase in FAR not to exceed 0.25:1.~~

~~c. Site and building design provide a street front facade and an alley facade at a pedestrian scale, including, without limitation, features such as awnings and windows, well-defined building entrances and other building details: an increase in FAR not to exceed 0.25:1.~~

~~d. For a building containing residential and nonresidential uses in which neither use comprises less than twenty-five percent of the total square footage: an increase in FAR not to exceed 1:1.~~

~~e. The unused portion of the allowed FAR of historic buildings designated as landmarks under Chapter 9-11, "Historic Preservation," B.R.C. 1981, may be transferred to other sites in the same zoning district. However, the increase in FAR of a proposed building to which FAR is transferred under this subparagraph may not exceed an increase of 0.5:1.~~

~~f. For a building which provides one full level of parking below grade, an increase in FAR not to exceed 0.5:1 may be granted.~~

(~~K~~J) Additional Criteria for Height Bonuses and Land Use Intensity Modifications ~~for Properties Designated within Appendix J~~: A building proposed with a fourth or fifth story or addition thereto that exceeds the permitted height requirements of Section 9-7-5, "Building Height," or 9-7-6, "Building Height, Conditional," B.R.C. 1981, together with any additional floor area or residential density approved under Subparagraph (h)(2)(I)(iii), may be approved if it meets the requirements of this Subparagraph (h)(2)(~~K~~J). ~~For purposes of this Subparagraph (h)(2)(K), bonus floor area shall mean floor area that is on a fourth or fifth story and is partially or fully above the permitted height and any floor area that is the result of an increase in density or floor area described in Subparagraph (h)(2)(I)(iii).~~ The approving authority may approve a height up to fifty-five feet if ~~the building is in an area designated in Appendix J, "Areas Where Height Modifications May Be Considered," and~~ one of the following criteria is met:

(i) Residential Developments: If the building is exclusively used for dwelling units or if fifty percent, or more, of the floor area above the ground floor is for dwelling units that are subject to the inclusionary housing requirements of Chapter 9-13, “Inclusionary Housing,” B.R.C. 1981, the building shall exceed ~~If the development is residential, it will exceed~~ the requirements of Subparagraph 9-13-3(a)(1)(A), B.R.C. 1981, as follows:

a. For bonus units, the inclusionary housing requirement shall be increased as follows: Instead of twenty-five percent, at least thirty-six percent of the total number of bonus units shall be permanently affordable units. If the building is a for-sale development, at least fifty percent of all the permanently affordable units required for the building shall be built in the building; this fifty percent on-site requirement may not be satisfied through an alternative means of compliance. A minimum of one bonus unit shall be assumed to be provided in the building if any bonus floor area is in the building.

~~b. For purposes of this Subparagraph (i), bonus units shall mean a number of units that is determined as follows: A percentage of all the units in the building that equals in number the percentage of bonus floor area in the building. For example, if twenty percent of the building's floor area is bonus floor area and the building has one hundred units, twenty percent of those one hundred units are bonus units, resulting in twenty bonus units.~~

~~c~~b. The city manager shall review the development's compliance with this increased inclusionary housing requirement pursuant to the standards and review procedures of Chapter 9-13, "Inclusionary Housing," B.R.C. 1981.

(ii) Non-Residential Developments~~.~~: If the building does not include any dwelling units or if less than fifty percent of the floor area above the ground floor is used for dwelling units that are subject to the inclusionary housing requirements of Chapter 9-13," Inclusionary Housing," B.R.C. 1981, the building shall include below-market rate space meeting the requirements of this subparagraph (h)(2)(J)(ii):

a. Qualifying Community Benefit Uses: The below-market rate space shall exclusively be used for one or more of the following qualifying community benefit uses; these uses shall be a principal use in the building:

1. A business with no less than two and no more than 49 employees and no more than two and one half million dollars in maximum annual revenue provided that the business is not categorized as office administrative; office, professional; office technical; or office, other in Section 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981. In calculating the number of employees and revenue, all employees of the business and the total revenue of the business shall be counted, including the employees and revenue of all business locations of a multiple-location business;

2. A business providing inclusive or affordable goods or services targeted to meet the needs of lower-income residents or minorities

or of other community members whose retail needs have been identified as unmet within the city in the adopted Citywide Retail Strategy;

3. One or more of the following art or cultural uses, provided the use is operated with a community focus:

   A. Visual arts spaces, including studios, galleries, co-ops, maker spaces, and education spaces;

   B. Performing arts spaces, including studies, practice spaces, education spaces, and venues, for example, a community dance hall, concert hall, or performing arts theater; and

   C. Video, film, or digital arts spaces, including studios, education spaces, interactive experiences, or venues, such as an art cinema or immersive arts venue;

4. A nonprofit organization that has and maintains tax-exempt status under Section 501(c)(3) of the United States Internal Revenue Code and has a mission that will directly serve the needs of the Boulder County residents, employees, or visitors; or

5. A daycare center that serves families eligible for the city's child care subsidy.

b. Compliance: No person shall rent, lease, occupy, or use a below-market rate space created pursuant to this subparagraph (h)(2)(J)(ii) except for a use meeting the requirements of this subparagraph.

c. Administrative Review: Compliance of the below-market rate space and use thereof with the standards of this subparagraph (h)(2)(J)(ii) shall be reviewed by the city manager in accordance with the procedures established in Section 9-2-2," Administrative Review Procedures," B.R.C. 1981. Requests to establish or change a qualifying community benefit use in the below-market rate space and requests to terminate the below market rate space shall be subject to an administrative review application. No use in a below-market rate space shall be established or changed and no below-market rate space shall be terminated unless approved by the city manager in an administrative review.

d. Special Requirements for Qualifying Community Benefit Uses:

1. For uses listed under (h)(2)(J)(ii)a.4. and 5. above, the qualifying community benefit use must have a functional board of directors or other functioning system of management and must have operated for at least three consecutive years with a positive statement of financial position or other evidence of financial sustainability.

2. For all uses listed in subparagraph (h)(2)(J)(ii)a., any business, facility, or organization operating in the below-market rate space shall be a legitimate, operating business, facility, or organization that renders services or sells products, has clients or customers, and operates and is open on most business days.

e. Floor Area Requirements: The below-market rate space in the building shall have a minimum floor area of seven percent of the size of the bonus floor area, with a below-market rent that does not exceed 75 percent of the market rate rent, or a minimum floor area of five percent of the size of the bonus floor area with a below-market rent that does not exceed 50 percent of the market rate rent.

f. Rent Requirements: The maximum rent for the below-market rate space shall be restricted as a percentage of the market rate rent. In calculating the market rate rent and maximum below-market rent, the calculation shall not include tenant improvement costs or operating costs for the below-market rate space, including property taxes, insurance and association fees, maintenance, utilities, property management and janitorial services. For purposes of this section, market rate rent shall mean the citywide average rent for comparable commercial space within the City of Boulder. The city manager shall determine citywide average rent for comparable commercial space within the City of Boulder based on market data obtained from CoStar or a similarly reliable commercial real estate market data source. The city manager may establish standards further defining market rate rent. The tenant of a below-market rate space may be responsible for tenant improvements and actual tenant improvement costs and charged operating costs associated with the below-market rate space. Operating costs may be charged as actually incurred and shall not be marked up.

The below-market rate tenant shall not be charged disproportionately higher or additional operating or improvement costs compared to the operating and improvement costs charged to market rate tenants of the building.

g. Lease Requirements: The minimum lease term offered to a tenant for a below-market rate space shall be three years. The city manager may establish requirements for establishing and ensuring continued tenant eligibility, standards for financial capacity of tenants, standards for adjustments to the below-market rate rent, lease terms, lease renewals, standards for defaults, penalties for charging more than the maximum allowed rent, and other lease standards to ensure the intent of the below-market rate space requirement under this section is accomplished.

h. Marketing: The applicant shall diligently market and publicly advertise the below-market rate space prior to the initial leasing of the space and to find a new tenant for the space, so that businesses and other organizations who may qualify to lease the space are likely to become informed of the availability of the space.

i. Timing: The initial qualifying community benefit use in the below-market rate space shall be established concurrently with or prior to other uses of the building. The city manager may modify this requirement if the applicant demonstrates that it exercised reasonable diligence in marketing the below-market rate space to businesses and other organizations who may qualify to lease the space, so they are likely to become informed of the availability of the space.

j. Improvements: The below-market rate space shall be finished and improved by the owner to the same level of completion and quality as market rate space in the building and shall receive a certificate of occupancy for the space no later than the time frame approved pursuant to Section 9-2-12, "Development Progress Required," B.R.C. 1981, to achieve substantial completion of the project or, if the project is approved to be developed in stages, the project stage the space is part of.

k. Continued Operation: Qualifying community benefit uses in the building shall be maintained for the life of the building unless termination of the below-market rate space is approved pursuant to the standards in subparagraph (h)(2)(J)(ii)o. The uses shall not be discontinued for tenant turnover or any other reason for more than three years. Discontinuance of the use for more than three years is a violation of this title, and each day after that that the use remains discontinued constitutes a separate offense remediable through the provisions of Chapter 9-15, "Enforcement," B.R.C. 1981. Within ten days of discontinuance of a qualifying use, the owner shall notify the city manager in writing of the first day when the use was discontinued.

l. Reporting Requirement: Starting on the date three years after issuance of a certificate of occupancy for the below-market rate space, and every three years thereafter, the owner shall file a written report with the city manager describing the operational status of each qualifying community benefit use in the building, including without limitation operator identities, rents charged, and each lease's term. In each report, the owner shall certify compliance of the use of the below-market rate space with the requirements of this subparagraph (h)(2)(J)(ii).

m. Restrictive Covenants. After the approving authority has finally approved the site review application, the owner and the city shall enter into an agreement that incorporates the requirements of the below-market rate space. The agreement shall be executed as part of an administrative review application. The agreement shall run with the land and shall be recorded upon execution by the city clerk with the office of the County Clerk and Recorder of Boulder County. The agreement shall include, without limitation, qualifying community benefit uses and the programming required to meet the standards for such uses, operation in perpetuity, the minimum floor area of the below-market rate space, rent restrictions, tenant and operator requirements, reporting requirements to the city manager, remedies for violations, and the process to amend or terminate the approved use. Any violation of the agreement is a violation of this title.

~~a.~~n. Alternative Compliance for Non-Residential Developments. The primary objective of the community benefit requirements for non-residential development is the creation of below-market- rate spaces.

Not all locations or buildings are appropriate for on-site below market space for reasons that may include the development's location, proposed uses, or legal or economic factors. This subparagraph recognizes this and provides an alternative method of compliance through a cash-in-lieu contribution into the city's fund for below-market rate commercial space.

1. Cash-in-lieu Contribution: An applicant may satisfy the on-site below-market rate space requirement by making a cash contribution into the city's below-market rate commercial space fund prior to issuance of a building permit, if the applicant demonstrates to the approving authority for the site review application that at least one of the following criteria is met:

   A. The operating characteristics of the primary use of the building will have unreasonable negative impacts on the use of an on-site below-market rate space that cannot be adequately mitigated through site design or other techniques; or

   B. On-site below-market rate space will conflict with the functionality of the primary use of the site, which may include, without limitation, security requirements associated with the primary use; or

   C. The provision of on-site below market rate space would impact the applicant's ability to secure funding for on-site permanently affordable units due to restrictions on mixing uses; or

D. The location of the building is not conducive to the sustained success of the below-market rate space. In making this determination the approving authority shall consider, without limitation, visibility of the building, accessibility to potential customers and users, and whether the use would be isolated from other uses that otherwise would contribute to the success of the space; or

E. The required below- market rate space size is smaller than 800 square feet and the applicant demonstrates that the space is too small to be marketable or useable; or

F. Another factor results in adverse impacts if below-market rate space is provided on site, and, on balance, the impacts outweigh the benefits of on-site below-market commercial space. In making this determination, the approving authority may consider, without limitation, the location of building and reasonable operating expectations of the applicant.

2. Calculation: The city manager will calculate the cash-in-lieu contribution annually. The city manager may consider the cost of creating, operating, and maintaining on-site below-market rate space and the amount that would incentivize on-site creation, operation and maintenance of such space when determining the cash-in-lieu contribution. The manager may modify the cash-in-

lieu contribution each year to adjust for changes to the cost of creating and maintaining on-site below-market rate space.

3. Below-market Rate Space Fund: The city manager will establish a fund for the receipt and management of below-market rate space cash-in-lieu contributions. Monies received into that fund will be utilized solely for the construction, purchase, and maintenance of below-market rate space and for the costs of administering programs consistent with the purpose of the below-market rate space requirements of this section.

o. Termination. The city manager will approve termination of the on-site below-market rate space requirement established for a building under this section, provided the property owner pays a cash-in-lieu contribution into the city’s below-market rate space fund, calculated by the city manager consistent with the cash-in-lieu standards of this section and applicable at the time of termination, and the property owner demonstrates, no earlier than three years after the establishment of a qualifying community benefit use, that either 1. or 2. below apply. The city manager shall review an application for termination in accordance with the procedures established in Section 9-2-2,” Administrative Review Procedures,” B.R.C. 1981. If the owner has paid a fine for a violation under subparagraph (h)(2)(J)(ii)(k), the in-lieu contribution shall be reduced by the sum of such fines paid:

1. Unmarketable community benefit spaces: The applicant demonstrates that there have been challenges marketing the space, keeping the space filled, or operating the space resulting in the owner' s inability to find a replacement qualifying community benefit use for the below-market rate space after one use is discontinued for more than three years despite the owner's diligent marketing efforts, or
2. Ineligible community benefit spaces: The applicant demonstrates that the current use in the community benefit space has grown to become so successful that an increase in the number of employees or amount of revenue, or both, renders the use no longer a qualifying community benefit use, the use has operated for no less than three years, and the owner and tenant both agree to continue the use in the space.

~~For non-residential developments, the applicant shall pay the affordable housing portion of the capital facility impact fee in Section 4-20-62, B.R.C. 1981, at a rate of 1.43 above the base requirement for the bonus floor area. In a building with several types of non-residential uses, the bonus floor area of each type identified under Section 4-20-62, B.R.C. 1981, shall be a percentage of the bonus floor area that equals in number the percentage of the total floor area in the building of such use type. For nonresidential uses with a fee that is calculated per room or bed under Section 4-20-62, B.R.C. 1981, the increased rate for the affordable~~

~~housing portion of the fee shall apply to bonus rooms or bonus beds as applicable under that section; the number of bonus rooms or bonus beds shall be determined consistent with the methodology for bonus units in Subparagraph (i)b. above.~~

~~(iii) Mixed Use. If the development is a residential mixed-use development, the requirements of Subsections (i) and (ii) above shall apply to the bonus floor area according to the percentage of the total building floor area of each use.~~

(i~~v~~ii) Alternative Community Benefit. Pursuant to the standard in this Subparagraph (i~~v~~ii), the approving authority of the site review application may approve an alternative method of compliance to provide additional benefits to the community and qualify for a height bonus together with any additional floor area or density that may be approved under Subparagraph (h)(2)(I). The approving authority of the site review application will approve the alternative method of compliance if the applicant proposes the alternative method of compliance and demonstrates that the proposed method:

1. ~~w~~Will improve the facilities or services delivered by the city, including without limitation any police, fire, library, human services, parks and recreation, or other municipal office, ~~or~~ land, or service, or

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2. Will provide an arts, cultural, human services, housing, or other benefit that is a community benefit objective in the Boulder Valley Comprehensive Plan, and

3. ~~i~~Is of a value that is equivalent to or greater than the benefits required by this Subparagraph (h)(2)(~~K~~J).

(iv) Administrative Rules: The city manager may adopt rules for the administration of and to assure that the purposes of the requirements of this subparagraph (h)(2)(J) are accomplished. No person shall violate any rule adopted by the city manager under this subparagraph.

(~~L~~K) Additional Criteria for Parking Reductions: The off-street parking requirements of Section 9-9-6, "Parking Standards," B.R.C. 1981, may be modified as follows:

(i) Process: The city manager may grant a parking reduction not to exceed fifty percent of the required parking. The planning board or city council may grant a reduction exceeding fifty percent.

(ii) Criteria: Upon submission of documentation by the applicant of how the project meets the following criteria, the approving agency may approve proposed modifications to the parking requirements of Section 9-9-6, "Parking Standards," B.R.C. 1981 (see Tables 9-1, 9-2, 9-3 and 9-4), if it finds that:

…

(~~M~~L) Additional Criteria for Off-Site Parking: The parking required under Section 9-9-6, "Parking Standards," B.R.C. 1981, may be located on a separate lot if the following conditions are met:

(i) The lots are held in common ownership;

(ii) The separate lot is in the same zoning district and located within three hundred feet of the lot that it serves; and

(iii) The property used for off-site parking under this subparagraph continues under common ownership or control.

(i.) . . .

Section 4. Section 9-8-2, "Floor Area Ratio Requirements", B.R.C. 1981, is amended as follows:

…

(d) Calculating Floor Area Ratios and Floor Area Ratio Additions: The floor area ratio shall be calculated based on all buildings on a lot according to the definitions in Chapter 9-16, B.R.C., 1981, "Floor Area," "Floor Area Ratio," "Uninhabitable Space," and "Basement". In addition to the floor area ratio limitations set forth in Table 8-1, Intensity Standards, B.R.C. 1981, floor area ratio additions may be added above the base floor area ratio and certain floor areas may be excluded from the floor area calculations as set forth in Table 8-2 of this section.

TABLE 8-2: FLOOR AREA RATIO ADDITIONS

	DT-1	***DT-2***	***DT-3***	***DT-4***	***DT-5***	***MU-1***	***MU-2***	***MU-3***	***BT-2***	***BMS***	***IS-½***	***IG***	***IM***	***IMS***	***BR-1[(c)]***
Base FAR	1.0	1.5	1.7	1.7	1.7	0.6	0.6	1.0	0.5	0.67 [(a)]	0.5	0.5	0.4	0.6	-
Maximum total FAR additions (FAR) [(d)]	1.0	0.5	1.0	0.5	1.0	0.07	-	-	-	0.33	-	-	-	-	-
FAR additional components:															
1) Residential floor area (FAR)	0.5	0.5	0.5	0.5	1.0 [(b)]	-	-	-	-	-	-	Not counted	Not counted	-	-
2) Residential floor area if at least 35% of units are permanently affordable and at least 50% of total floor area is residential (FAR)	-	-	-	-	-	0.07	-	-	-	-	-	-	-	-	-
3) Residential floor area for a project NOT located in a general improvement district that provides	-	-	-	-	-	-	-	-	-	0.33	-	-	-	-	-

	DT-1	*DT-2*	*DT-3*	*DT-4*	*DT-5*	*MU-1*	*MU-2*	*MU-3*	*BT-2*	*BMS*	*IS-½*	*IG*	*IM*	*IMS*	*BR-1[(c)]*
off-street parking															
4) Floor area used as off-street parking and circulation that is above grade and provided entirely within the structure	0.5	0.5	0.5	0	0.5	Not counted	Not counted	Not counted	-	Not counted	Not counted	Not counted	Not counted	Not counted	-
5) Below grade area used for occupancy	Not counted	Not counted	Not counted	Not counted	Not counted	-	-	-	Not counted	Not counted	-	-	-	-	-
6) Nonresidential floor area (FAR) (see Paragraph 9-8-2(e)(3) and Section 4-20-62, Table 4)	-	-	-	-	1.0 [(b)]	-	-	-	-	-	-	-	-	-	-
Maximum allowable FAR (sum of base plus all available additions)	2.0 + row 5	2.0 + row 5	2.7 + row 5	2.2 + row 5	2.7 + row 5	0.67 + row 4 above	0.6 + row 4 above	1.0 + row 4 above	0.5 + row 5 above	1.0 + rows 4 and 5 above	0.5 + row 4 above	0.5 + rows 1 and 4 above	0.4 + rows 1 and 4 above	0.6 + row 4 above	~~4~~3.0 [(c)]

Footnotes:

…

(c) See Subparagraph 9-2-14(h)(2)(~~J~~I)(iii), B.R.C. 1981.

…

Section 5. Section 9-15-3, "Administrative Procedures and Remedies", B.R.C. 1981, is amended as follows:

…

(b) If the city manager finds that a below-market rate space established pursuant to Section 9-2-14, "Site Review," B.R.C. 1981, was advertised, offered for rent, or rented for an amount in excess of the maximum below-market rate rent allowed to be charged under that section for the space, in addition to the actions the manager may take under subsection (a), the manager shall impose a penalty equal to the amount charged in excess of the maximum below-market rate rent allowed to be charged to the tenant during the term of the lease, plus interest at a rate of twelve percent per annum, and shall pay such funds collected to the tenant who was charged in excess of the maximum below-market rent.

(~~b~~c) Prior to the hearing, the city manager may issue an order that no person shall perform any work on any structure or land, except to correct any violation found by the manager to exist with respect to such structure or land.

(~~c~~d) If notice is given to the city manager at least forty-eight hours before the time and date set forth in the notice of hearing on any violation that the violation has been corrected, the manager will reinspect the structure or land. If the manager finds that the violation has been corrected, the manager may cancel the hearing.

(~~d~~e) No person shall fail to comply with any action taken by the manager under this section.

Section 6. Section 9-16-1, “General Definitions”, B.R.C. 1981, is amended as follows:

(a) The definitions contained in Chapter 1-2, "Definitions," B.R.C. 1981, apply to this title unless a term is defined differently in this chapter.

…

(c) The following terms as used in this title have the following meanings unless the context clearly indicates otherwise:

…

Below-market rate space means a space in a building that is pledged to be rented in perpetuity to maximum rents specified in Subparagraph 9-2-14(h)(2)(J)(ii), B.R.C. 1981.

Below-market rate space fund means a fund to which contributions collected pursuant to Subparagraph 9-2-14(h)(2)(J)(ii), B.R.C. 1981, shall be deposited and from which monies collected shall be utilized solely for the construction, purchase, and maintenance of below-market rate space and for the costs of administering programs consistent with the purpose of the below-market rate space requirements Subparagraph 9-2-14(h)(2)(J)(ii), B.R.C. 1981.

…

Bonus floor area means floor area that is on a fourth or fifth story and is partially or fully above the permitted height and any floor area irrespective of stories that is the result of an increase in density or floor area described in Subparagraph 9-2-14(h)(2)(I)(iii).

Bonus units means a number of units that is determined as follows: In a building with dwelling units and no other principal uses, a percentage of all the units in a building that equals in number the percentage of floor area in the building that is bonus floor area. For example, if twenty percent of the building's floor area is bonus floor area and the building has one hundred units, twenty percent of those one hundred units are bonus units, resulting in twenty bonus units. In a building with dwelling units and other principal uses, bonus units means the total units in the building multiplied by a percentage factor calculated as bonus floor area divided by total residential floor area. For example, if there are one hundred units in a building that has 20,000 square feet of bonus floor area and 100,000 square feet of total residential floor area, there are twenty bonus units (20 bonus units = 100 units X 20,000 SF / 100,000 SF).

…

Qualifying community benefit use means a use listed in Subparagraph 9-2-14(h)(2)(J)(ii)a., "Qualifying Community Benefit Uses," B.R.C. 1981.

…

Section 7. Council deletes Appendix J to Title 9, "Areas Where Height Modifications May be Considered," and reserves Appendix J as follows: Appendix J: *reserved.*

Section 8. This ordinance shall become effective on January 1, 2022. It shall be applied to applications filed under Title 9, "Land Use Code," B.R.C. 1981, submitted on or after the effective date. Applications under Title 9, B.R.C. 1981, submitted before the effective date shall be considered under the standards in effect at the time of the application.

Section 9. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 10. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 15th day of June 2021.

Sam Weaver,
Mayor

Attest:

Elesha Johnson,
City Clerk

READ ON SECOND READING, PASSED AND ADOPTED this 13th day of July 2021.

Sam Weaver,
Mayor

Attest:

Elesha Johnson,
City Clerk

KEYSER MARSTON ASSOCIATES

DRAFT

ECONOMIC ANALYSIS IN SUPPORT OF PHASE 2 COMMUNITY BENEFIT PROJECT

Prepared for:
City of Boulder

Prepared by:
Keyser Marston Associates, Inc.

February 2021

TABLE OF CONTENTS

Page

List of Tables

1.0 INTRODUCTION AND SUMMARY OF FINDINGS

1.1 Study Overview

Keyser Marston Associates, Inc. (KMA) has prepared the following economic analysis to inform Phase 2 of the City of Boulder Community Benefit project. Phase 2 of the Community Benefit project would expand the options for providing community benefits in connection with a height or density bonus to include below market rate nonresidential space for small businesses and nonprofits, the arts community, and human and social services. These additional options build on the current community benefit option, established in Phase 1 of the Community Benefit project, to provide affordable housing through an increased Inclusionary Housing (IH) percentage, within residential projects, or an increased commercial linkage fee payment, within commercial projects. The purpose of this economic analysis is to help inform establishment of the new community benefit options at a level that reflects City priorities, including that alternatives to the current affordable housing option provide an equivalent or greater community benefit.

1.2 Compliance Cost Analysis

Approach

In the fall of 2019, KMA prepared an economic analysis that informed the Phase 1 Community Benefit project. The prior analysis estimated the incremental land value created by modifications to height or density standards in Appendix J zoning districts based on pro forma financial modeling of prototypical base and bonus projects. KMA then identified the additional inclusionary housing or commercial linkage fee requirement that could be supported while maintaining an incentive for the developer to undertake the higher-density and more complex project that provides community benefits.

The subject analysis provides guidance for establishing a Phase 2 community benefit option that would result in a compliance cost[1] no less than the existing option to provide additional inclusionary housing or commercial linkage fee payment. The analysis compares the net compliance costs of the existing and proposed community benefit options and estimates the amount of floor area that would need to be dedicated to small businesses, the arts, or human services to be in balance with the Phase 1 community benefit option.

This analysis does not reassess the incremental value generated by prototypical bonus projects in light of current market conditions but rather maintains the pro forma assumptions developed for the Phase 1 economic analysis. This approach allows for a consistent baseline that is used

[1] Compliance cost refers to the net cost associated with complying with a requirement. In the case of a cash payment, the compliance cost is equal to the amount of the cash payment. In the case of provision of affordable commercial space, the compliance cost is equal to the cost of developing the affordable commercial space minus the amount of private investment (debt and equity) that is supported by the affordable commercial rents.

to compare the cost of new and existing community benefit options. Another reason for holding pro forma assumptions constant is that current economic conditions, shaped by the ongoing pandemic, are not necessarily representative of future conditions post-pandemic when projects seeking height modifications under the program would be breaking ground.

Compliance Costs of Phase 2 Community Benefit Option

KMA evaluated the compliance costs of the Phase 2 community benefit requirement at two potential rent levels for nonresidential community benefit space, set at 50% and 75% of market rate rents, using the average citywide asking rent for Class A and B retail as a benchmark. To determine the net compliance cost of providing nonresidential community benefit space, we compared the magnitude of private investment supported by the lease income of the community benefit space to development costs for ground floor nonresidential space. The focus on ground floor space is consistent with draft code language and developer preferences expressed in stakeholder interviews.

Development costs are modeled assuming land acquisition costs are borne by the market rate components of the project and not allocated to the community benefit space. Although some developers may allocate a pro rata share of land costs to the community benefit space in their pro forma modeling, depending on project-specific circumstances, in other situations land costs may not be allocated to the community benefit space, particularly if the space would have been more challenging to lease or if community benefit uses provide an amenity that enhances the project's overall market appeal. Excluding land costs helps ensure that the analysis is representative of projects most likely to utilize the new option of providing nonresidential community benefit space and that the existing affordable housing option remains a competitive alternative that a share of developers will likely select.

Table 1-1 summarizes the estimated net cost per square foot to provide nonresidential community benefit space, which is estimated to range from $173 to $262 per square foot of nonresidential community benefit space. The compliance cost findings are applicable across the three end use categories of small businesses, the arts, and human services because the cost to deliver ground floor space is likely to be similar for all use categories, assuming a comparable improvement level is required for the space and a uniform rent discount is applied.

Table 1-1: Estimated Phase 2 Compliance Cost PSF of Nonresidential Community Benefit Space

Item	50% Mkt.: $1.15/SF	75% Mkt.: $1.70/SF
Development Cost, Excluding Land and Financing	$456/SF	$456/SF
(less) Warranted Private Investment	($202/SF)	($294/SF)
Net Compliance Cost, Before Land	***$262/SF***	***$173/SF***

Source: KMA estimate

Supported Phase 2 Community Benefit Requirement

KMA estimated the amount of floor area dedicated to Phase 2 community benefit uses, expressed as a percentage of bonus floor area, that is roughly equal to the cost of the Phase 1 community benefits option of providing additional inclusionary housing or commercial linkage fee payment.

Error! Reference source not found. Table 1-2 summarizes the supported Phase 2 requirement at two different rent levels for land uses most likely to take advantage of the height / FAR bonus.[2] If lease rates are set at 75% of market rents, the maximum Phase 2 community benefit requirement is estimated to be 9% for residential bonus projects, 7% for office bonus projects, and 2% for hotel bonus projects. Requiring a steeper rent discount reduces the amount of nonresidential community benefit space supported. Residential bonus projects can support a 6% onsite requirement assuming rents are set at 50% of market versus the 9% onsite requirement supported if rents are set at 75% of market.

Table 1-2: Supported Nonresidential Community Benefit Space as Percentage of Bonus Floor Area

Building Type	50% Mkt.: $1.15/SF	75% Mkt.: $1.70/SF
Rental Residential	5.8%	8.7%
For-Sale Residential	6.0%	9.2%
Office	4.9%	7.5%
Hotel	1.3%	1.9%

Source: KMA estimate

1.3 Recommended Phase 2 Community Benefit Requirement

Recommended Minimum Phase 2 Community Benefit Percentage of Bonus Floor Area

KMA prepared recommendations for the Phase 2 community benefit requirement at two rent levels, providing the option of either maximizing the amount of floor area set aside for community benefits or the rent discount provided to tenants. While the City could choose to vary the rent standards and associated floor area requirements by use category, applying a uniform standard for small business, arts, and human services space would facilitate changes between use categories if the City desires to provide this flexibility. Recommended Phase 2 requirements are presented in Table 1-3 and summarized as follows:

- *Residential Bonus Projects* — The requirement for nonresidential community benefit space in residential projects is recommended to be 6% of bonus floor area with rents set at 50% of the market average or 9% of bonus floor area with rents set at 75% of the

[2] In this report as well as the Phase 1 report, KMA did not evaluate community benefits supported by retail projects because retail is likely to be an ancillary use within a larger mixed-use project.

market average, reflecting the findings for for-sale residential projects, rounded to the nearest percentage. While the analysis showed rental residential supporting a slightly lower requirement than for-sale residential, the same onsite community benefit requirement is recommended in both cases, consistent with the Phase 1 community benefit option, which applies a 36% inclusionary housing requirement to the bonus floor area of all residential bonus projects.

- *Commercial Bonus Projects* — The requirement for nonresidential community benefit space in commercial projects, including office and hotel, is recommended to be 5% of bonus floor area with rents set at 50% of the market average, or 7% of bonus floor area with rents set at 75% of the market average, reflecting findings for office projects, rounded to the nearest percentage. While the analysis showed that hotel development supports a lower community benefit requirement than office, we recommend setting the same standard for both office and hotel uses. Setting the Phase 2 options for hotels to be equivalent to the existing affordable housing option would result in a small requirement (1% to 2% of bonus floor area).

Consistent with the existing Phase 1 option, the Phase 2 requirement for mixed-use projects with ground floor commercial should be set according to the predominant, upper floor use, which is the more likely driver of the request for additional height or floor area.

Table 1-3: Recommended Phase 2 Community Benefit Requirement as Percentage of Bonus Floor Area

Land Use	50% Mkt.: $1.15/SF	75% Mkt.: $1.70/SF
Rental Residential	6%	9%
For-Sale Residential	6%	9%
Office	5%	7%
Hotel	5%	7%

Projects that satisfy either the existing or proposed community benefit option would be eligible to receive a modification to height and/or floor area standards prescribed by the base zoning.

The bonus floor area enabled by the modification generates incremental land value that enhances the project's financial return. KMA's 2019 pro forma analysis of prototypical bonus projects outside of downtown estimated the incremental land value created by height and floor area modifications to be approximately $35 per square foot of bonus floor area for commercial projects and nearly $50 per square foot of bonus floor area for residential projects, before deducting community benefits and other Site Review costs.

The existing Phase 1 and recommended Phase 2 community benefit requirements both reflect use of a portion of the incremental value created by the bonus floor area for community benefits while leaving the balance as an economic incentive for projects to utilize the program instead of building to base zoning without providing community benefits. Table 1-4 compares the compliance cost per square foot of bonus floor area for the existing Phase 1 community benefit requirement and the recommended Phase 2 requirement to the incremental land value supported by the bonus floor area, as estimated in the 2019 analysis of the Phase 1 Community Benefit project.

As shown, the compliance costs of Phase 1 and Phase 2 community benefit options are generally similar and are estimated to absorb no more than 40% of the incremental land value generated by the bonus floor area in prototypical projects receiving a height or floor area modification. The remaining incremental value provides an incentive for developers to pursue more complex higher density projects that include community benefits. The cost that office and residential projects would incur to comply with the recommended Phase 2 community benefit option is roughly equal to the Phase 1 compliance cost, indicating that eligible projects are likely to consider both community benefit options. Hotel projects will incur a greater cost to comply with the Phase 2 recommendation than the Phase 1 option for reasons described previously. Nevertheless, the Phase 2 recommendation for hotels could attract developer interest based on project-specific circumstances.

Table 1-4: Estimated Incremental Land Value Generated by Bonus Floor Area versus Compliance Cost of Phase 1 Community Benefit Option and Phase 2 Recommendation (PSF Bonus Floor Area)

	Incremental	Community Benefit Compliance Cost	
	Land Value(1)	Phase 1	Phase 2 Recommended (2)
Land Use	/GSF Bonus	/GSF Bonus	/GSF Bonus
Rental Residential	$49/GSF	$15/GSF	$16/GSF
For-Sale Residential	$47/GSF	$16/GSF	$16/GSF
Office	$34/GSF	$13/GSF	$13/GSF
Hotel	$36/GSF	$3/GSF	$13/GSF

Source: KMA estimate.
(1) Based on KMA's 2019 pro forma analysis of prototypical bonus projects outside of downtown, before consideration of the cost of providing community benefits.
(2) Reflects average onsite compliance cost of 50% market and 75% market rent scenarios.

Fee Offramp

In structuring the Phase 2 community benefit requirement, the City is considering a fee "offramp" for projects to unwind their obligation to provide below market nonresidential space if they are unsuccessful in attracting and retaining eligible tenants.

KMA recommends setting the fee offramp at a level equal to or greater than what would have been owed had the project selected the Phase 1 community benefit option to provide additional inclusionary housing or commercial linkage fee payment and escalating the fee offramp annually for inflation. The offramp for for-sale residential projects should reflect the full Cash-In-Lieu amount that would have been due under the Phase 1 community benefits requirement without the discount available for provision of on-site inclusionary units.

KMA advises against providing a credit toward the fee offramp based on the number of years that projects have complied with the Phase 2 community benefit option. Compliance credits would make it more attractive for property owners to withdraw from the onsite requirement, conflicting with the City's objective to create permanently affordable community benefit space. As compliance credits reduce the amount of the fee offramp over time, the value to be gained by leasing former community benefits space at market rents may eventually exceed the cost of the fee offramp. This could lead property owners to exit the program even after many years of successful compliance.

Financial Penalties

The City is also considering a monthly penalty that property owners would be charged for the time that a community benefit use is discontinued but before a property owner has permanently opted out of the onsite commitment through payment of the fee offramp.

The potential income loss from vacant nonresidential community benefit space is significant and is likely to motivate most property owners to reactivate vacant community benefit space, without the need for an additional penalty, as several development professionals we spoke with affirmed.

If the City does choose to adopt a monthly penalty for periods when nonresidential community benefit space is left vacant, we suggest waiving monthly penalties for a grace period of one to two years to allow time for property owners to voluntarily fill vacant space and allow for turnover. After the grace period, the monthly penalty should be no greater than the monthly rent subsidy that eligible tenants would have received if the space had been leased. If the property owner later elects to permanently exit the onsite community benefit agreement, the City could consider crediting the financial penalties already paid toward the amount of the fee offramp.

Tenants with Specialized Needs

Some tenant types that are proposed to be served as part of the Phase 2 program, particularly in the arts and human services categories, may be more challenging to accommodate in the below-market space created by new development, either because tenants require a steeper rent discount than what the community benefit option would mandate, or because the tenant has specialized space requirements that are atypical for ground floor commercial space. Providing an in-lieu fee option that would fund creation of permanently affordable spaces meeting those needs is one potential approach to reaching such tenants.

In-Lieu Fee

The existing Phase 1 community benefit option for residential developments requires additional inclusionary housing that may be satisfied through a cash-in-lieu payment (entirely for rental projects and partially for for-sale projects). The current standards require non-residential developments to pay an additional commercial linkage fee. If desired, the City could replace the existing linkage fee option with one directed to assisting affordable non-residential space.

1.4 Other Policy Considerations

Market Rent Definition

The Phase 2 community benefit requirement must define a clear approach for determining market rate rents and the associated rent discount that projects are to provide tenants of nonresidential community benefit space. This economic analysis evaluates the supported Phase 2 community benefit requirement assuming a triple-net lease rate set at 50% or 75% of the average citywide asking rent for Class A and B retail space in Boulder. We selected retail rents as the most representative of market conditions for ground floor space, where community benefit tenants are anticipated to be located. Retail rents are also preferred because they are almost exclusively reported on a triple-net basis, making it simpler to differentiate base rent from operating expenses.

The City can select an alternative method for setting lease rates of nonresidential community benefit space, recognizing that significant changes to lease rates may impact the supported level of community benefits. For example, rather than rely on a citywide benchmark, the City could allow developers to submit a market survey substantiating the average rents in the market area of their specific project, as was prescribed by the below market commercial agreement for the upcoming 30 Pearl development. In defining lease standards for nonresidential community benefit space, the City might also consider a cap on certain operating expenses that are passed through to tenants in a triple-net lease structure, such as repair, maintenance, and administrative charges, although we would advise against caps on expenses that property owners do not control, such as property taxes.

Building Shell Condition

The Phase 2 community benefit requirement should specify minimum standards for the condition of space to be delivered to community benefit tenants. This economic analysis assumes nonresidential community benefit space is delivered in a "vanilla shell" condition with functioning building systems, basic flooring, and a finished ceiling, and that tenants of community benefit space will fund remaining buildout costs to customize the space to their needs. The City could establish a different standard for the shell condition of community benefit space or require developers to provide an additional allowance to tenants to help with remaining buildout costs, although a higher standard would affect the amount of community benefit space that developers can feasibly provide.

Change of Use Category

The Phase 2 community benefit requirement should specify whether developers are permitted to lease nonresidential community benefit space to multiple use categories either concurrently if space permits or after a vacancy occurs, and the approval process for securing a change of use. Allowing developers to serve multiple use categories would be straightforward if the structure of the community benefit requirement is the same across the three categories. If standards for lease rates and the required amount of nonresidential community benefit space differ by use category, then additional provisions are needed to address changes of use, including a potential partial fee offramp that would apply if the change were from a use with a smaller floor area requirement to a use with a higher floor area requirement.

Modifications to Appendix J

The Phase 1 Community Benefit project is limited to areas included in the Appendix J land use map. As part of the work scope for Phase 2, City staff prepared a zoning district analysis of the suitability of height modifications in other areas of the City to help inform City Council decisions on whether to amend, remove, or maintain the current Appendix J map. Based on our review of City staff's draft zoning analysis and historical development patterns, expanding Appendix J to include more zoning districts or portions thereof has the potential to significantly increase use of community benefit options by covering more areas where development has occurred or is likely to occur in the future. Please see Section 2.3 for a comparison of development activity that has occurred in Appendix J areas versus all zoning districts identified by the draft zoning analysis.

2.0 USE CATEGORIES AND DEVELOPER INTERVIEWS

2.1 Phase 2 Community Benefit Use Categories

As an additional community benefit that projects seeking a height or density bonus may provide, Phase 2 of the Community Benefit project targets the creation of below-market nonresidential space for three categories of uses: small businesses, artists and arts organizations, and human services organizations.

The following section presents an overview of the tenant types that fall within the three use categories and their space needs. While tenant needs and characteristics vary significantly by category, City staff intend for the structure of the community benefit requirement to be similar or even identical across the three categories, for ease of implementation and possibly to facilitate leasing space to multiple use categories, either simultaneously or in succession.

Below-Market Commercial Space for Nonprofits and Small Businesses

Eligible tenants within the commercial space category will potentially include small, local businesses, businesses that sell inclusive goods or services targeted to low-income populations, and nonprofits.

The 30Pearl mixed-use development under construction in Boulder Junction includes a below-market commercial space requirement that provides a test case for how an onsite requirement might be structured citywide. The disposition and development agreement with Morgan Creek Ventures requires that half of the ground floor commercial space must be leased at below market rents to small, local businesses, minority or women owned business, or nonprofits. The developer is in the process of defining the leasing plan and the specific tenants that will be targeted. Per the agreement, rents will be set at 75% of prevailing market rents, based on a market survey of comparable properties to be updated every five years. Leases will be triple net with 100% of operating expenses passed through to tenants.

Art and Culture Space

Eligible tenants within the art and culture category will potentially include studios, workshops, and practice space, education space, art galleries, and performance venues.

Of these uses, art galleries, performance venues and possibly education space are likely to be the best suited for the ground floor commercial space that would be created by the new community benefit option. Based on staff input from the City of Boulder Office of Arts and Culture, artist studios and workshops tend to locate in industrial areas where rents are relatively affordable by Boulder standards. As a result, working artists may require a steeper rent discount than what the Phase 2 Community Benefit project ultimately prescribes. One possible solution to reach tenants requiring steeper rent discounts is to allow developers to pay an in-lieu fee that could fund creation of permanently affordable space serving these types of art and cultural uses.

Social or Human Services Space

Eligible tenants within the social and human services category will potentially include daycare centers, temporary and emergency shelters, transitional housing, healthcare facilities, and custodial and skilled care facilities.

Based on staff input from the City's Housing and Human Services Department, human services organizations in Boulder would benefit from affordable office and meeting space as well as space for direct services. Affordability is a concern for all types of space. In a survey of human services organizations conducted by the Human Services Department, organizations spend an average of 7% and up to 15% of their budgets on occupancy costs. Two-thirds of human services organizations affirmed that a 20% increase in rent would cause them to relocate, possibly out of Boulder.

Human services organizations seeking space for direct services may find it more challenging to secure space created by the new community benefit option that meets specialized requirements such as waiting and loading areas and transportation access needed to accommodate clients throughout the day. As with arts tenants, the City might consider allowing developers to pay an in-lieu fee that would fund creation of permanently affordable spaces meeting those needs.

2.2 Interviews with Development Professionals

To inform the analysis and provide context for development of the Phase 2 community benefit option, KMA conducted one-on-one interviews with members of the local development community. These developer stakeholder interviews encompassed professionals from the following organizations that are actively involved in the design and development of residential and commercial projects in Boulder:

- Boulder Housing Partners
- Caddis Architecture
- Coburn Partners
- Element Properties
- Morgan Creek LLC
- Tebo Properties

The following summarizes key themes that emerged from these discussions:

- *Phase 1 community benefit option* — Nearly all stakeholders we spoke with were familiar with the Phase 1 community benefit option, but none had analyzed the requirements for a specific project. Stakeholders cited the limited extent of the Appendix J land use map where projects may receive height incentives for providing community benefits as one reason they have yet to take advantage of the Phase 1 option, in addition to the general slowdown in development activity caused by the global pandemic. If the City decides to expand eligibility beyond the areas included in Appendix J, stakeholders emphasized the need to provide density or floor area bonuses in zoning districts where the height limit is not the primary physical constraint on development, similar to what is offered in IMS, IS, MU-1, and BR-1 zoning districts under the existing ordinance.

- *Experience with Phase 2 tenant types* — Several stakeholders reported having experience leasing space to tenants prioritized by Phase 2 of the Community Benefit project including small businesses and nonprofits, human services organizations, and arts organizations. In certain cases, stakeholders have voluntarily provided rent discounts to these types of tenants.

- *In-lieu fee versus onsite* — Most stakeholders said their default preference is to make a cash payment in-lieu of providing onsite community benefits to avoid the ongoing compliance risk. However, several stakeholders added that they might elect to provide nonresidential community benefit space based on a comparison of fee and onsite compliance costs and consideration of project-specific factors. These stakeholders expressed the belief that onsite community benefits would be viewed more favorably than a cash payment during the Site Review process. They also mentioned the possibility that community benefits could enhance the project's market appeal if the tenant provides an amenity to residents or office workers within the project. Finally, depending on the magnitude of the requirement and project-specific circumstances, onsite community benefits might be accommodated in space that would be challenging to lease at premium rents.

- *Tenant selection* — According to stakeholders, developers that provide nonresidential community benefit space onsite are likely to select tenants they view as compatible with their projects, or potentially offering an amenity. Based on a preliminary list of tenant types proposed for the Phase 2 option, daycare facilities, small business retailers, nonprofit office space, and art galleries appeared to be the tenant types most likely to attract developer interest.

- *Floor area versus rent discount* — Most stakeholders said they would prefer to dedicate less floor area to community benefit uses but offer a steeper rent discount relative to market rents than set aside more floor area at a modest discount. Stakeholders noted that a community benefit requirement weighted toward floor area would be more likely to trigger lender scrutiny since a greater share of the project's at-risk income would be conditioned on compliance with the community benefit requirement. In contrast, projects could write-off the cost of nonresidential community benefit space as with other project amenities if the requirement emphasizes steeper rent discounts across less floor area.

In supporting the case for steeper rent discounts, one stakeholder also called attention to the wide variation in market rate asking rents for nonresidential space in Boulder. Factors such as location, building age and condition, access and visibility cause market rents to vary significantly. A steeper rent discount would be more likely to provide tenants a cost savings relative to a broader spectrum of market rate commercial spaces available in Boulder.

- *Lease standards* — To help developers evaluate the option of providing community benefit space, stakeholders suggested that the City set clear expectations for community benefit leases, including how base rents will be set, limits on passthrough operating expenses, minimum standards for tenant improvements, and the term of the affordability covenant.

- *Flexibility to change between use categories* — Stakeholders supported the concept that developers and property owners should be allowed to swap between use categories to fill vacancies in nonresidential community benefit space. For example, a community benefit space initially leased to a small business might subsequently be leased to an arts organization. Stakeholders said that flexibility to change between use categories helps reduce the vacancy risk associated with community benefit space.

- *Penalties and off-ramps* — Stakeholders cautioned against assessing financial penalties based on the number of months that a community benefit space is left vacant, noting that the lost income from the community benefit space would motivate property owners to fill the vacancy without the need for an additional financial penalty. If a property owner is unable to secure a suitable tenant despite their best efforts, most stakeholders agreed that there should be an off-ramp allowing property owners to pay a reasonable fee to opt out of the onsite community benefit requirement.

2.3 Zoning District Analysis

The Phase 1 Community Benefit project is limited to areas included in the Appendix J land use map. As part of the work scope for Phase 2, City staff prepared a zoning district analysis of the suitability of permitting height modifications in other areas of the City to help inform City Council decisions on whether to amend, remove, or maintain the current Appendix J map. The draft analysis identifies 17 zoning districts where are least a portion of the district might be an appropriate area for projects to seek height modifications through the Site Review process. In 23 remaining zoning districts, height modifications are either already available through Form-Based Code (in the case of the Transit Village Area Plan) or would likely conflict with the City's land use policy objectives.

KMA reviewed historical development patterns to understand the amount of development activity that has occurred in Appendix J areas (excluding the Transit Village Area Plan) versus all zoning districts that include areas suitable for height modifications based on the draft zoning analysis. As summarized in Table 2-1, most of the development activity over the past decade occurred outside of Appendix J's boundaries. A significantly larger share of development activity has occurred in zoning districts with areas identified as suitable for height modifications by the zoning analysis. For example, over the past decade, approximately one-quarter of office development activity occurred in Appendix J areas while three-quarters of office development activity has occurred in districts identified by the zoning analysis (both within and outside of Appendix J). Based on historical development patterns, expanding Appendix J to include more zoning districts or portions thereof has the potential to cover more of the development activity occurring in the City and thus increase use of community benefit options.

Table 2-1: Development Activity in Geographies Considered for Community Benefits

		Percentage of Historic Citywide Development Activity Represented Within Eligible Areas	
	2010-2020 Deliveries(1)	**Appendix J Excl. FBC(2)**	**Staff Zoning Analysis(3)**
Apartments (Market/ Mixed Income)	2,717 du	32%	43%
Apartments (100% Affordable)	480 du	8%	36%
Attached For-Sale Resi. - ***Only Recent Sales***	n/a(1)	2%	17%
Office	1,204,000 sf	27%	72%
Hotel	781 keys	13%	81%

Source: Costar and RealQuest. See appendix tables for detail.

(1) Commercial and multifamily development activity from 2010-2020 as reported by Costar. Attached for-sale development activity only reflects homes built since 2010 and reported as sold since 2017, per RealQuest.

(2) Excluding areas where height modifications are available through Form-Based Code.

(3) Includes all development activity in zoning districts (Appendix J or elsewhere) that contain areas potentially suitable for height modifications based on the draft zoning analysis.

3.0 COST EQUIVALENCY ANALYSIS

3.1 Approach

The economic analysis that KMA prepared for Phase 1 of the Community Benefit project in 2019 estimated the incremental land value created by modifications to height or density standards in Appendix J zoning districts based on pro forma financial modeling of prototypical base and bonus projects. The analysis determined the additional inclusionary housing or commercial linkage fee obligation that would be feasible for projects seeking a height or density modification. The additional affordable housing requirement was calibrated according to the estimated share of incremental value available to support community benefits after accounting for the financial incentive that developers require to proceed with a more complex bonus project.

The intent of the following analysis is to define a Phase 2 community benefit option that developers are incentivized to use and that is balanced with the existing option of providing permanently affordable housing. The analysis determines the supported level of Phase 2 community benefits that would result in a compliance cost that is no less than the cost of the existing community benefit option. Through a comparison of the net compliance costs of the existing and proposed community benefit options, the analysis estimates the amount of floor area that would need to be dedicated to small businesses, the arts, and human services to be in balance with the existing community benefit options. The supported Phase 2 community benefit requirement is expressed as a percentage of bonus floor area at two potential rent levels, set at 50% and 75% of market rate rents. The findings are applicable across the three use categories of small businesses, arts, and human services because the cost to deliver ground floor space is likely to be similar, assuming a comparable improvement level is required for the space and a uniform rent discount.

The Phase 2 economic analysis does not reassess the incremental value generated by bonus projects to reflect current market conditions but rather maintains the pro forma assumptions developed for the prior analysis based on market conditions in mid- to late-2019. The reasons for this approach are twofold. First, the Phase 1 community benefit option took effect only one year ago, and the City does not intend to modify existing requirements at this time. Using the same pro forma assumptions for both analyses provides a consistent baseline for comparing the compliance costs of new and existing community benefit options. Second, the ongoing coronavirus pandemic has caused widespread economic disruption including to real estate markets. Current market data for newly built, comparable projects is limited and is not necessarily representative of future conditions post-pandemic when projects seeking height modifications under the program would break ground.

3.2 Net Compliance Cost of Phase 2 Community Benefit Option

The following section estimates the net cost of the Phase 2 community benefit option through a comparison of the private investment supported by the lease income of nonresidential community benefit space to the cost to develop nonresidential community benefit space.

Lease Rate Scenarios and Supported Private Investment

The cost of providing nonresidential community benefit space is driven by the discounted lease rates that projects are permitted to charge future tenants of the space. Lease rates for nonresidential community benefit space are anticipated to be set at a discount from average asking rents for nonresidential space in Boulder.

Table 3-1 presents the average asking rents for Class A and B nonresidential space in Boulder since 2017. In 2019, monthly triple net asking rents for Class A and B retail space averaged $2.27 per square foot, monthly gross asking rents for Class A and B office space averaged $2.22 per square foot, and monthly triple net asking rents for industrial space averaged $0.96 per square foot. In 2020, the coronavirus pandemic caused widespread economic disruption, leading to higher vacancy rates for all types of space. Average asking rents for retail space declined in 2020, while average asking rents for office and industrial increased, although part of the variation is likely explained by the quality and type of space that became available for lease in the past year.

Table 3-1: Average Direct Asking Rents and Vacancy of Non-Residential Space in Boulder

	Retail (Class A&B)		Office (Class A&B)		Industrial (Class A&B)	
Year	Rent (NNN)	Vacancy	Rent (Gross)	Vacancy	Rent (NNN)	Vacancy
2017	$2.01	2.1%	$2.43	7.7%	$1.10	3.6%
2018	$2.13	6.1%	$2.29	6.0%	$0.92	4.0%
2019	$2.27	6.5%	$2.22	5.5%	$0.96	2.9%
2020	$2.14	8.0%	$2.32	8.9%	$1.04	6.0%

Source: Costar

KMA evaluated the compliance costs of nonresidential community benefit space under two lease rate scenarios that vary based on the discount offered relative to market rents. Retail rents were selected as the most representative of the comparable supply of ground floor space, where most community benefit tenants are anticipated to be located based on the draft code language. Retail rents are also preferred because they are almost exclusively reported on a triple-net basis (excluding operating expenses), in contrast to office rents, which tend to include a mix of service types that makes it more challenging to isolate base rent from operating expenses. The average asking rent from 2019 is used as the benchmark for market rate retail rents to reflect normalized market conditions prior to the onset of the global pandemic and to be consistent with KMA's 2019 analysis of the Phase 1 Community Benefit project that serves as the baseline for comparing existing and proposed community benefit options.

As shown in Table 3-2, the scenarios assume a monthly triple-net lease rate that is 50% or 75% of the average market rate retail asking rent in 2019. Based on lease transaction data from Costar for the past year, all recently leased space in Boulder reported a rent above the threshold of 50% of the market average. More than half of recently leased retail space reported a rent that is greater than 75% of the market average. The implication is that below market rents at 75% of the market average will be more affordable than most available retail space in Boulder but would need to be reduced to 50% of the market average to be more affordable than all available retail space in Boulder. Note that because new space typically leases for a premium, the effective rent discount provided by bonus projects would be greater if expressed as a percentage of the fair market rent specific to new development.

Table 3-2: Nonresidential Community Benefit Space Lease Rate Scenarios

Rent Scenario	Rent/ SF (NNN)	Share of 2019-2020 Leasing Activity Above Threshold
Market Rent Benchmark - Average Retail Asking Rent (2019)	$2.27	35%
50% Market	$1.15	100%
75% Market	$1.70	54%

Source: Costar, KMA

Supported Private Investment

The amount of private investment supported by the community benefit space's lease income is estimated to range from approximately $200 per square foot, assuming a steeper rent discount, to over $290 per square foot, assuming a more moderate rent discount. The supported private investment is determined by dividing the net operating income of the community benefit space by a return on cost of 7% and deducting associated financing costs. The targeted return on cost for community benefit space is approximately 0.5% above the market rate return on cost threshold for commercial properties assumed in the 2019 analysis, in recognition of the compliance risk and possibly more limited potential for rent increases.

Development Costs

The total cost to deliver nonresidential community benefit space is estimated to be approximately $460 per square foot, excluding land acquisition and financing, based on the development cost assumptions for ground floor commercial space used in the 2019 analysis. The hard cost estimate assumes that nonresidential community benefit space is delivered in a vanilla shell condition with functioning building systems, basic flooring, and a finished ceiling. In addition to hard construction costs, the estimate includes indirect or soft costs such as architecture and engineering, governmental fees and permits costs, taxes, insurance, and developer overhead and administration. Land acquisition costs are excluded from the cost estimate based on the assumption that land costs are fixed regardless of which community benefit option is selected.

Net Compliance Cost

The net compliance cost represents the developer subsidy required to create the community benefit space. The net compliance cost is calculated by subtracting the private investment supported by future lease income from the estimated development cost to deliver the nonresidential community benefit space. As shown in Table 3-3, the estimated net compliance cost to provide nonresidential community benefit space ranges from $173 per square foot to $262 per square foot under the two lease rate scenarios.

Table 3-3: Compliance Cost to Provide Nonresidential Community Benefit Space, Excluding Land Allocation

Item	50% Mkt.: $1.15/SF	75% Mkt.: $1.70/SF
Development Cost, Excluding Land and Financing	$456/SF	$456/SF
(less) Warranted Private Investment[1]	($202/SF)	($294/SF)
Net Compliance Cost, Before Land	$262/SF	$173/SF

Source: KMA estimate
[1] Net of financing costs.

Development costs are modeled assuming land acquisition costs are borne by the market rate components of the project and are not allocated to the community benefit space. The land cost that developers allocate to community benefit space will vary by project. If the space set aside for community benefits is viewed as inherently more challenging to lease than other components of the project due to location, size, visibility, or other factors, it may not be expected to support a proportionate share of land costs. Some community benefit uses, such as a daycare facility or local coffee shop, may also act as amenities that enhance the overall project's appeal and marketability and would not necessarily be expected to directly support an allocable share of land costs.

By excluding land costs, the compliance cost analysis is intended to be representative of bonus projects that are better positioned to utilize the option to provide nonresidential community benefit space due to their location or physical characteristics or because an opportunity is identified with a community benefit use that works well with the project. This approach helps ensure that incentives under the program are established in a manner that encourages bonus projects that may not be as well positioned to provide community benefit space to use the existing Phase 1 affordable housing option instead. That said, for additional information, the appendix tables provide additional findings assuming a proportionate share of land costs were allocated to the community benefit space.

3.3 Cost Equivalency Between Phase 1 and 2 Community Benefit Options

To continue incentivizing developers to provide affordable housing as authorized by the Phase 1 community benefit option, the cost to provide Phase 2 community benefits should be no less than the cost of the existing option. Table 3-4 summarizes the estimated net compliance cost per square foot of bonus area of the Phase 1 community benefit option. The net cost of the additional inclusionary housing requirement is estimated to be $15 per square foot of bonus area for rental residential projects and $16 per square foot for for-sale residential projects (including the cost to provide 50% of inclusionary units onsite). The cost of the additional commercial linkage fee is $13 per square foot for office projects and $3 per square foot for hotel projects based on the fully phased-in commercial linkage fee.

Table 3-4: Estimated Net Compliance Cost PSF of Phase 1 Community Benefit Option

Building Type	Base Project Requirement	Total Bonus Floor Area Requirement	Incremental Bonus Floor Area Requirement	Estimated Net Compliance Cost / Bonus SF
Rental Residential	25% IH	36% IH (in-lieu)	11% IH (in-lieu)	+/-$15/GSF
For-Sale Residential	25% IH	36% IH (half onsite)	11% IH (half onsite)	+/-$16/GSF
Office	CLF ($30/SF)	1.43 CLF	0.43 CLF	$13/GSF
Hotel	CLF ($8/SF)	1.43 CLF	0.43 CLF	$3/GSF

Source: KMA estimate based on City of Boulder requirements

For each building prototype, KMA estimated the percentage of bonus floor area dedicated to Phase 2 community benefit uses that would result in a compliance cost per square foot of bonus floor area that equals that of the Phase 1 community benefit option. Table 3-5 presents the supported Phase 2 requirement at two rent levels. If lease rates are set at 75% of market rates, the maximum Phase 2 community benefit requirement is estimated to be approximately 9% of floor area for residential bonus projects, 7% for office bonus projects, and 2% for hotel bonus projects.

Requiring projects to provide a steeper rent discount would reduce the amount of community benefit space supported. Residential projects support a 6% onsite requirement assuming rents are set at 50% of market versus the 9% onsite requirement supported if rents are set at 75% of market. As this example illustrates, the City can seek to maximize either the amount of floor area set aside for community benefits or the rent discount provided to tenants.

The findings below are applicable to all three community benefit use categories, including small businesses, the arts, and human services. Because the cost to build ground floor nonresidential community benefit space in a vanilla shell condition is likely to be similar regardless of the end user, the primary variable affecting the supported level of community benefits is the rent that the City allows developers to charge tenants within each use category. While the City has the option to treat each use category differently, applying uniform standards facilitates changes between use categories when a vacancy occurs, and such flexibility may be helpful in making the new option an attractive choice for projects to utilize.

Table 3-5: Supported Nonresidential Community Benefit Space as Percentage of Bonus Floor Area

Building Type	50% Mkt.: $1.15/SF	75% Mkt.: $1.70/SF
Rental Residential	5.8%	8.7%
For-Sale Residential	6.0%	9.2%
Office	4.9%	7.5%
Hotel	1.3%	1.9%

Source: KMA estimate

3.4 Fee Off-Ramp and Financial Penalty

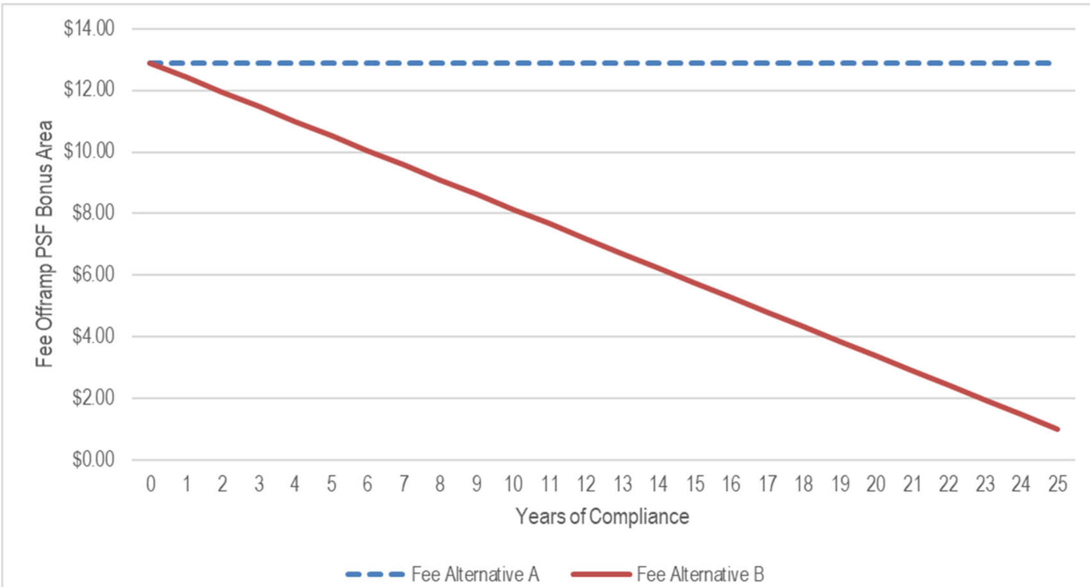
The City may include a fee offramp and/or financial penalty provision applicable in circumstances where a community benefit use is discontinued. A fee offramp would allow property owners to pay a fee to permanently opt out of an agreement to provide nonresidential community benefit space. A financial penalty would fine property owners for the time that a community benefit space is left vacant as a way of motivating property owners to reactivate the space. The following section provides guidance on the selection of an appropriate fee offramp amount that provides a community benefit equivalent to what the developer previously agreed to provide onsite, as well as financial penalty provisions that would persuade property owners to maintain compliance with community benefit requirements.

Fee Offramp

If the City allows projects to withdraw from an onsite community benefit requirement, the fee offramp should be equal to or greater than the one-time inclusionary housing or commercial linkage fee payment that would have been required under the existing Phase 1 community benefit option. For-sale residential projects should be required to pay an amount equivalent to the additional Cash-in-Lieu that would have been due under the Phase 1 community benefit requirement calculated assuming no affordable units are provided on-site. An adjustment for inflation would help preserve the value of the fee offramp over time.

While the City could consider providing credit for the time that projects complied with the Phase 2 community benefit option to reduce the risk of an onsite community benefit requirement, this provision would potentially create an unintended incentive for projects to withdraw from the program after many years of successful compliance. Figure 3-1 compares the fee offramp per square foot of bonus floor area (before inflation) that a bonus office project would owe to exit a Phase 2 community benefit agreement after a specified number of years of compliance under two alternative fee structures. Under Alternative A, the fee offramp is equal to the Phase 1 community benefit requirement. Under Alternative B, the fee offramp is equal to the Phase 1 compliance option less a credit for the cumulative rent subsidy that was provided under the Phase 2 compliance option. Fees are presented in real (constant) dollars before the recommended inflation adjustment. As shown, Alternative A would maintain the value of the fee offramp while compliance credit provided under Alternative B would reduce the fee offramp to nearly zero after 25 years. To uphold the City's objective to create permanently affordable community benefit space, KMA would advise against compliance credits that make it more attractive to withdraw from the onsite requirement than to continue providing agreed-upon community benefit space.

Figure 3-1: Illustrative Fee Offramp PSF of Office Bonus Area (Before Inflation)



Source: KMA. Assumes nonresidential community benefit space requirement equal to 7% of bonus floor area with rents set at 75% of market.

Financial Penalty

The City might also consider a monthly penalty that property owners must pay during the time that a community benefit use is discontinued but before a property owner has requested to permanently opt out of the onsite commitment through payment of the fee offramp.

Even without an additional penalty, the income loss from vacant community benefit space is significant and likely sufficient on its own to motivate most property owners to reactivate vacant community benefit space.

If a vacancy penalty is adopted, KMA would suggest providing a grace period to allow projects time to voluntarily return to compliance and to allow for periodic turnover. After this grace period, we suggest tying the monthly penalty to the rent subsidy that projects would have otherwise provided to an eligible tenant. In the case that a project later chooses to permanently withdraw from an onsite requirement through payment of a fee offramp, the City might consider deducting prior financial penalties from the fee offramp owed.

3.5 Effect of Changes to Site Review Criteria on Supported Level of Community Benefits

Parallel to Phase 2 of the Community Benefit project, the City is considering certain modifications to Site Review criteria that may result in new design requirements including a minimum percentage of façade area to be comprised of high-quality building materials.

Based on the 2019 economic analysis prepared by KMA for Phase 1 of the Community Benefit project, community benefit requirements are estimated to absorb no more than 40% of the incremental land value created through a height or density bonus. The remaining value is available to incentivize developers to proceed with more complex bonus projects. By increasing development costs only for bonus projects, additional Site Review requirements have the potential to reduce the financial incentive to provide community benefits in exchange for bonus floor area.

To maintain an incentive for projects to provide community benefits, the value of the bonus floor area must support the cost of new Site Review requirements. While modest changes to Site Review criteria, such as the proposed building materials requirement, are unlikely to define the difference between a feasible and infeasible bonus project, we recommend caution in adding Site Review criteria that only apply to bonus projects, but impact development costs of the entire project and not only bonus floor area.

Using the four-story office development prototype modeled in KMA's 2019 analysis as an example, a new design requirement that adds, say, 1% to the construction cost of the entire bonus project is estimated to absorb 33% of the incremental value created by an additional floor of development, leaving little incentive, after community benefits, for a developer to proceed with a more complex bonus project instead of building to the base zoning and avoiding the costs triggered by the new Site Review criteria. In contrast, a Site Review requirement that adds 1% to the construction cost of *only the bonus floor area* would absorb less than 10% of the incremental land value created by an additional floor of development and would continue to provide an incentive to pursue the project that provides community benefits.

APPENDIX: SUPPORTING TECHNICAL TABLES

Table 1 **DRAFT**
Onsite Community Benefits Space Supported by Bonus Projects Outside Downtown
Phase 2 Community Benefits Analysis
City of Boulder, CO **2/16/2021**

	Rental Residential	For-Sale Residential	Office	Hotel
I. Cost of Phase 1 Community Benefit Options	$/GSF	$/GSF	$/GSF	$/GSF
Bonus IH Requirement or Linkage Fee (1)	$15	$16	$13	$3
I. Cost to Provide Community Space	$/NSF	$/NSF	$/NSF	$/NSF
Net Cost, Excluding Land (2)				
$1.15/SF NNN (50% of mkt.)	$262	$262	$262	$262
$1.70/SF NNN (75% of mkt.)	$173	$173	$173	$173
Land Allocation (3)	$58	$56	$36	$36
Net Cost, Including Land				
$1.15/SF NNN (50% of mkt.)	$320	$318	$298	$297
$1.70/SF NNN (75% of mkt.)	$231	$229	$209	$209
III. Supported Community Space Requirement	% Bonus GSF	% Bonus GSF	% Bonus GSF	% Bonus GSF
Based on Cost Excluding Land				
$1.15/SF NNN (50% of mkt.)	5.8%	6.0%	4.9%	1.3%
$1.70/SF NNN (75% of mkt.)	8.7%	9.2%	7.5%	1.9%
Based on Cost Including Land				
$1.15/SF NNN (50% of mkt.)	4.7%	5.0%	4.3%	1.1%
$1.70/SF NNN (75% of mkt.)	6.5%	6.9%	6.2%	1.6%

(1) See Table 4 for detail on cost of Phase 1 community benefit compliance option
(2) See Table 3
(3) Based on supported land value per square foot of leasable building area for entire bonus project. See Table 4

Table 2 **DRAFT**
Onsite Community Benefits Space Supported by Bonus Projects in Downtown
Phase 2 Community Benefits Analysis
City of Boulder, CO **2/16/2021**

	Rental Residential	For-Sale Residential	Office	Hotel
I. Cost of Phase 1 Community Benefit Options	**$/GSF**	**$/GSF**	**$/GSF**	**$/GSF**
Bonus IH Requirement or Linkage Fee (1)	$15	$16	$13	$3
I. Cost to Provide Community Space	**$/NSF**	**$/NSF**	**$/NSF**	**$/NSF**
Net Cost, Excluding Land (2)				
$1.15/SF NNN (50% of mkt.)	$262	$262	$262	$262
$1.70/SF NNN (75% of mkt.)	$173	$173	$173	$173
Land Allocation (3)	$125	$105	$96	$73
Net Cost, Including Land				
$1.15/SF NNN (50% of mkt.)	$387	$367	$358	$335
$1.70/SF NNN (75% of mkt.)	$298	$278	$269	$246
III. Supported Community Space Requirement	**% Bonus GSF**	**% Bonus GSF**	**% Bonus GSF**	**% Bonus GSF**
Based on Cost Excluding Land				
$1.15/SF NNN (50% of mkt.)	5.8%	6.2%	4.9%	1.1%
$1.70/SF NNN (75% of mkt.)	8.7%	9.4%	7.5%	1.7%
Based on Cost Including Land				
$1.15/SF NNN (50% of mkt.)	3.9%	4.4%	3.6%	0.9%
$1.70/SF NNN (75% of mkt.)	5.1%	5.8%	4.8%	1.2%

(1) See Table 6 for detail on cost of Phase 1 community benefit compliance option
(2) See Table 3
(3) Based on supported land value per square foot of leasable building area for entire bonus project. See Table 6

Table 3 **DRAFT**
Estimated Net Compliance Cost of Community Benefit Space, Excluding Land
Phase 2 Community Benefits Analysis
City of Boulder, CO **2/16/2021**

	50% Market	75% Market
Assumed Rent PSF		
Market Rent (NNN)[1]	$2.27	$2.27
Community Space Rent (NNN)	$1.15	$1.70
Warranted Private Investment PSF		
Warranted Investment PSF @ 7% ROC[2]	$202	$294
(less) Financing Costs Based on Investment[3]	-$7	-$11
Warranted Investment Net of Financing Costs	$194	$283
Development Costs PSF, Excl. Land and Financing[3]		
Direct Costs (incl. Parking @ 500sf:1)	$380	$380
Governmental Fees & Permits	$19	$19
Other Indirect Costs	$57	$57
Total Development Cost, Excluding Land & Financing	$456	$456
Net Compliance Cost PSF	$262	$173

(1) Average Class A/B retail rent in Boulder in 2019, per Costar. See Table 8
(2) Assumes 5% vacancy and parking income of $100/space/month.
(3) Consistent with commercial development costs used in Phase 1 analysis. Financing costs are excluded to provide for an apples-to-apples comparison to the affordable housing option which is expressed prior to associated financing costs. See report for discussion of land costs.

Table 4 **DRAFT**
Development Parameters of Prototypical Bonus Projects Outside Downtown
Phase 2 Community Benefits Analysis
City of Boulder, CO **2/16/2021**

	Rental Residential	For-Sale Residential	Office	Hotel
Bonus Project				
Number of Stories	4 to 5	4 to 5	4	4 to 5
Site Area (Acres)	2.0	2.0	2.0	2.0
Floor Area Ratio	2.0	2.0	2.0	2.0
Gross Building Area (GSF)	174,000	173,118	174,240	170,300
Net Leasable/Sellable Building Area (NSF)	147,900	147,150	165,528	na
Residential Units or Hotel Rooms	174	150		262
Residual Land Value Before Comm. Benefits				
Supported Investment	$71.4M	$66.6M	$92.2M	$71.8M
(Development Cost Excluding Land)	-$62.8M	-$58.4M	-$86.2M	-$65.8M
Residual Land Value	$8.6M	$8.2M	$6.0M	$6.1M
Residual Land Value / GSF	$49	$47	$34	$36
Residual Land Value / NSF	$58	$56	$36	
Compliance Cost of Phase 1 Comm. Benefits				
Base IH or CLF Requirement	25% IH (in-lieu)	25% IH (half onsite)	$30/sf CLF	$8/sf CLF
Bonus IH or CLF Requirement	36% IH (in-lieu)	36% IH (half onsite)	1.43 CLF	1.43 CLF
Bonus Floor Area	43,500	43,300	43,600	56,800
Bonus Floor Area as % of Total Floor Area	25.0%	25.0%	25.0%	33.4%
Bonus Compliance Cost (Net of Base Req.)(1)	$657,181	$685,100	$562,440	$191,426
Net Cost / GSF Bonus Area	$15	$16	$13	$3

Source: Economic Analysis of Phase 1 Community Benefits Program

(1) See Table 5 for calculation of for-sale residential compliance cost

Table 5
Pro Forma Analysis of For-Sale Residential Development Outside Downtown
Phase 1 Community Benefits Analysis
City of Boulder, CO **2/16/2021**

	Scenario A			Scenario B		
	Bonus Scenario Before Community Benefits			Bonus Scenario With 36% Bonus IH Requirement		
Bonus Floor Area	43,300	SF	25%	43,300	SF	25%
Density		75	du/acre		76	du/acre
Product Type	Condos			Condos		
Market Area	Outside Downtown			Outside Downtown		
Residential Unit Mix	% of Units	No. Units	Unit SF	% of Units	No. Units	Unit SF
Market Rate	87%	131	1,000	86%	130	1,000
Middle Income	3%	4	850	3%	4	850
Low/Mod	10%	15	850	11%	17	850
	100%	150	981	100%	151	979
	[50% cash in-lieu for IH rqrmt]			*[50% cash in-lieu for IH rqrmt]*		
Sale Price		$/Unit	$/NSF		$/Unit	$/NSF
Market Rate		$590,000	$590		$590,000	$590
Middle Income		$262,000	$308		$262,000	$308
Low/Mod		$160,903	$189		$160,903	$189
Low/Mod		$538,300	$549		$533,000	$544
Residential Sales	Total	$/Unit	$/NSF	Total	$/Unit	$/NSF
Gross Sales	$80,745,000	$538,300	$549	$80,483,000	$533,000	$544
(Less) Closing Costs	($3,633,525)	($24,200)	($25)	($3,621,735)	($24,000)	($25)
(Less) Risk Adjusted Return	($10,496,850)	($70,000)	($71)	($10,462,790)	($69,300)	($71)
Net Sales Proceeds	$66,614,625	$444,100	$453	$66,398,475	$439,700	$449
Development Costs excl. Land						
Directs	$44,754,706	$298,400	$304	$44,982,647	$297,900	$304
A&E	$2,237,735	$14,900	$15	$2,249,132	$14,900	$15
Fees & Permits	$3,975,000	$26,500	$27	$3,986,400	$26,400	$27
CIL for IH reqrmt	$1,419,875	$9,466	$10	$1,611,750	$10,674	$11
Taxes/Ins./Legal/Marketing	$1,790,188	$11,900	$12	$1,799,306	$11,900	$12
Overhead/Admin/Other	$1,342,641	$9,000	$9	$1,349,479	$8,900	$9
Contingency	$467,000	$3,100	$3	$469,000	$3,100	$3
Financing	$2,415,000	$16,100	$16	$2,416,000	$16,000	$16
Total Costs	$58,402,146	$389,300	$397	$58,863,715	$389,800	$398
Residual Land Value	$8,220,000	$54,800	$56	$7,534,900	$49,900	$51
per acre	*$4,110,000*			*$3,767,450*		
Difference				*($685,100)*		
Per GSF Bonus Area				*($16)*		

Source: Economic Analysis of Phase 1 Community Benefits Program

Table 6 **DRAFT**
Development Parameters of Prototypical Bonus Projects in Downtown
Phase 2 Community Benefits Analysis
City of Boulder, CO **2/16/2021**

	Rental Residential	For-Sale Residential	Office	Hotel
Bonus Project				
Number of Stories	4 to 5	4 to 5	4	4 to 5
Site Area (Acres)	2.0	2.0	2.0	2.0
Floor Area Ratio	2.4	2.2	2.2	2.2
Gross Building Area (GSF)	209,000	191,588	191,664	195,750
Net Leasable/Sellable Building Area (NSF)	177,650	162,850	182,081	na
Residential Units or Hotel Rooms	209	166		261
Residual Land Value Before Comm. Benefits				
Supported Investment	$103.3M	$84.5M	$113.1M	$103.9M
(Development Cost Excluding Land)	-$81.0M	$67.3M	-$95.6M	-$89.7M
Residual Land Value	$22.3M	$17.1M	$17.5M	$14.3M
Residual Land Value / GSF	$107	$90	$91	$73
Residual Land Value / NSF	$125	$105	$96	
Compliance Cost of Phase 1 Comm. Benefits				
Base IH or CLF Requirement	25% IH (in-lieu)	25% IH (half onsite)	$30/sf CLF	$7/sf CLF
Bonus IH or CLF Requirement	36% IH (in-lieu)	36% IH (half onsite)	1.43 CLF	1.43 CLF
Bonus Floor Area	52,250	48,000	47,900	65,250
Bonus Floor Area as % of Total Floor Area	25.0%	25.1%	25.0%	33.3%
Bonus Compliance Cost (Net of Base Req.)[(1)]	$789,373	$780,200	$617,910	$190,583
Net Cost / GSF Bonus Area	$15	$16	$13	$3

Source: Economic Analysis of Phase 1 Community Benefits Program

(1) See Table 7 for calculation of for-sale residential compliance cost

Table 7
Pro Forma Analysis of For-Sale Residential Development In Downtown
Phase 1 Community Benefits Analysis
City of Boulder, CO **2/16/2021**

	Scenario A			**Scenario B**		
	Bonus Scenario Before Community Benefits			**Bonus Scenario With 36% Bonus IH Requirement**		
Bonus Floor Area	48,000	SF	25%	48,000	SF	25%
Density		83	du/acre		83	du/acre
Product Type	Condos			Condos		
Market Area	Inside Downtown			Inside Downtown		
Residential Unit Mix	% of Units	No. Units	Unit SF	% of Units	No. Units	Unit SF
Market Rate	87%	145	1,000	86%	143	1,000
Middle Income	2%	4	850	2%	4	850
Low/Mod	10%	17	850	11%	19	850
	100%	166	981	100%	166	979
	[50% cash in-lieu for IH req.]			*[50% cash in-lieu for IH req.]*		
Sale Price		$/Unit	$/NSF		$/Unit	$/NSF
Market Rate		$680,000	$680		$680,000	$680
Middle Income		$262,000	$308		$262,000	$308
Low/Mod		$160,903	$189		$160,903	$189
Weighted Average		$616,800	$629		$610,500	$623
Residential Sales	Total	$/Unit	$/NSF	Total	$/Unit	$/NSF
Gross Sales	$102,388,800	$616,800	$629	$101,343,000	$610,500	$623
(Less) Closing Costs	($4,607,496)	($27,800)	($28)	($4,560,435)	($27,500)	($28)
(Less) Risk Adjusted Return	($13,310,544)	($80,200)	($82)	($13,174,590)	($79,400)	($81)
Net Sales Proceeds	$84,470,760	$508,900	$519	$83,607,975	$503,700	$514
Development Costs excl. Land						
Directs	$51,565,294	$310,600	$317	$51,362,353	$309,400	$316
A&E	$2,578,265	$15,500	$16	$2,568,118	$15,500	$16
Fees & Permits	$4,399,000	$26,500	$27	$4,382,400	$26,400	$27
CIL for IH reqrmt	$1,573,375	$9,478	$10	$1,770,239	$10,664	$11
Taxes/Ins./Legal/Marketing	$2,062,612	$12,400	$13	$2,054,494	$12,400	$13
Overhead/Admin/Other	$1,546,959	$9,300	$9	$1,540,871	$9,300	$9
Contingency	$529,000	$3,200	$3	$527,000	$3,200	$3
Financing	$3,071,000	$18,500	$19	$3,037,800	$18,300	$19
Total Costs	$67,325,504	$405,600	$413	$67,243,274	$405,100	$414
Residual Land Value	$17,147,800	$103,300	$105	$16,367,600	$98,600	$101
per acre	*$8,573,900*			*$8,183,800*		
Difference				*($780,200)*		
Per GSF Bonus Area				*($16)*		

Source: Economic Analysis of Phase 1 Community Benefits Program

Table 8
Lease Rate Trends in City of Boulder (2010-2020)
Phase 2 Community Benefits Analysis
City of Boulder, CO

DRAFT

2/16/2021

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 TD
All Building Classes											
Office											
Gross Rent Direct	$1.71	$1.72	$1.71	$1.77	$1.94	$2.28	$2.31	$2.42	$2.30	$2.23	$2.34
Base Rent Direct	$1.13	$1.13	$1.17	$1.23	$1.38	$1.69	$1.73	$1.83	$1.81	$1.75	$1.83
Vacant Percent % Total	9%	8%	6%	5%	4%	5%	7%	8%	6%	6%	10%
Retail											
All Service Type Rent Direct	$1.56	$1.56	$1.57	$1.69	$1.82	$2.07	$1.86	$2.02	$2.14	$2.31	$2.19
NNN Rent Direct	$1.53	$1.53	$1.55	$1.68	$1.81	$2.05	$1.82	$2.02	$2.13	$2.28	$2.17
Vacant Percent % Total	6%	5%	5%	5%	3%	2%	3%	3%	5%	6%	8%
Industrial											
All Service Type Rent Direct	$0.56	$0.58	$0.63	$0.72	$0.85	$0.89	$0.99	$1.09	$1.04	$1.10	$1.08
NNN Rent Direct	$0.54	$0.55	$0.58	$0.66	$0.82	$0.88	$0.97	$1.08	$0.96	$1.00	$1.05
Vacant Percent % Total	6%	6%	4%	3%	2%	4%	2%	3%	5%	2%	7%
Only Class A &B											
Office											
Gross Rent Direct	$1.76	$1.77	$1.73	$1.74	$1.96	$2.31	$2.32	$2.43	$2.29	$2.22	$2.32
Base Rent Direct	$1.16	$1.17	$1.18	$1.21	$1.40	$1.72	$1.74	$1.84	$1.80	$1.74	$1.82
Vacant Percent % Total	9%	8%	6%	5%	4%	5%	8%	9%	7%	6%	10%
Retail											
All Service Type Rent Direct	$1.57	$1.53	$1.61	$1.68	$1.83	$2.04	$1.74	$1.99	$2.14	$2.26	$2.13
NNN Rent Direct	$1.54	$1.50	$1.59	$1.67	$1.83	$2.04	$1.72	$2.01	$2.13	$2.27	$2.14
Vacant Percent % Total	8%	6%	5%	5%	3%	2%	3%	3%	6%	7%	9%
Industrial											
All Service Type Rent Direct	$0.51	$0.52	$0.57	$0.71	$0.79	$0.87	$0.98	$1.13	$0.96	$0.97	$1.09
NNN Rent Direct	$0.49	$0.50	$0.53	$0.64	$0.73	$0.87	$0.96	$1.10	$0.92	$0.96	$1.04
Vacant Percent % Total	7%	5%	3%	2%	1%	5%	3%	4%	6%	3%	7%

Source Costar (11/2020)

Table 9 **DRAFT**
Direct Retail Lease Transactions in City of Boulder (2019-2020)
Phase 2 Community Benefits Analysis
City of Boulder, CO **2/16/2021**

Building Address	Total Bldg SF	SF Leased	Lease Yr	Lease Rate		Floors
1207-1215 Pearl St	12,892	3,150	2020	$4.58	nnn(est)	1
2805 Pearl St	6,934	1,998	2020	$4.58	nnn(est)	1
1033-1037 Walnut St	11,237	834	2019	$4.58	nnn(est)	1
1207-1215 Pearl	12,892	5,208	2020	$4.15	+util(est)	1
1320 Pearl St	24,890	2,158	2020	$3.50	nnn(est)	1
1219-1223 Pearl St	11,800	2,400	2020	$3.25	nnn(est)	1
2359 Arapahoe Ave	1,100	573	2020	$3.17	nnn	1
1830-1886 30th St	109,000	1,109	2019	$3.00		1
1731 28th St	6,408	6,408	2019	$2.92	nnn(est)	1
2700-2760 Canyon Blvd	45,000	2,380	2019	$2.92	nnn(est)	1
1212 Pearl St	6,468	4,302	2020	$2.92		BSMT,1
2775-2795 Pearl St	17,931	4,574	2020	$2.92	nnn(est)	1
1932 14th St	1,000	1,000	2020	$2.88		1
1541-1545 Pearl St	13,356	2,500	2020	$2.72		1
1155-1165 13th St	11,440	1,200	2020	$2.67	nnn(est)	1
1911 11th St	23,117	6,267	2020	$2.50	nnn(est)	1
2355 30th St	8,460	8,460	2020	$2.25	nnn(est)	1
1933 28th St	19,400	1,020	2019	$2.21	nnn(est)	2
4550 Broadway St	8,825	829	2019	$2.17	nnn(est)	1
1709-1711 Pearl St	12,476	1,760	2019	$2.17		2
1125 13th St	2,500	1,939	2020	$2.08		BSMT,1
4550 Broadway St	8,825	829	2020	$2.08	nnn(est)	1
5290 Arapahoe Ave	27,990	1,110	2020	$1.88	nnn(est)	1
1654-1690 30th St	37,456	1,575	2020	$1.83	nnn(est)	1
1654-1690 30th St	37,456	1,416	2020	$1.83	nnn(est)	1
2206-2208 Pearl St	4,810	2,681	2020	$1.83	nnn(est)	1
2900 Valmont Rd	14,439	1,290	2019	$1.83	nnn	1
2719-2735 Iris Ave	17,145	1,508	2020	$1.75	nnn	1
2700-2716 28th St	16,546	1,530	2019	$1.67	nnn(est)	1
6565 Gunpark Dr	17,960	2,645	2019	$1.63	nnn(est)	1
2860-2890 Bluff St	14,308	1,200	2020	$1.60	nnn	1
1600 38th St	21,484	2,423	2020	$1.54	nnn(est)	1
1313-1335 Broadway St	15,636	661	2020	$1.50	mg(est)	2
2750 Glenwood Dr	13,807	1,186	2019	$1.50	nnn(est)	1
2900 Valmont Rd	14,439	1,220	2020	$1.50	nnn	1
2900 Valmont Rd	14,439	778	2020	$1.50	nnn	1
2900 Valmont Rd	14,439	1,070	2020	$1.50	nnn	1
2850 Iris Ave	27,450	1,327	2020	$1.29	nnn(est)	1
2850 Iris Ave	27,450	1,327	2020	$1.29	nnn(est)	1
2850 Iris Ave	27,450	646	2020	$1.29	nnn(est)	1
2850 Iris Ave	27,450	1,839	2020	$1.29	nnn(est)	1
695 S Broadway St	37,557	32,008	2020	$1.25	nnn(est)	1
2900 Valmont Rd	14,439	1,890	2020	$1.25	nnn	1
7464 Arapahoe Rd	13,547	847	2020	$1.21	nnn(est)	2
607-669 S Broadway St	183,084	764	2020	$1.17	nnn(est)	1
607-669 S Broadway St	183,084	6,040	2020	$1.17	nnn(est)	1
1301 Pennsylvania Ave	5,352	1,434	2019	$1.17	nnn(est)	2

Source: Costar (11/2020)

Table 10 **DRAFT**
Direct Office Lease Transactions in City of Boulder (2019-2020)
Phase 2 Community Benefits Analysis
City of Boulder, CO **2/16/2021**

Building Address	Total Bldg SF	SF Leased	Lease Yr	Lease Rate		Floors
Class A/ B Buildings						
1035 Pearl St	52,540	108	2020	$7.54/sf	fs(est)	2
1634 Walnut St	7,663	210	2020	$4.62/sf		2
2299 Pearl St	25,745	150	2020	$4.50/sf	fs(est)	1
1243-1247 Pearl St	17,092	853	2020	$3.75/sf	+util(est)	2
1243-1247 Pearl St	17,092	853	2020	$3.75/sf	+util(est)	2
1243-1247 Pearl St	17,092	224	2019	$3.55/sf	+util(est)	2
4155 Darley Ave	7,446	175	2019	$3.71/sf	fs(est)	1
724-728 Pearl St	16,298	626	2020	$3.61/sf	nnn(est)	2
4155 Darley Ave	7,446	200	2020	$3.50/sf	mg(est)	1
1634 Walnut St	7,663	260	2020	$3.46/sf		2
4155 Darley Ave	7,446	175	2020	$3.43/sf	mg(est)	1
4735 Walnut St	24,686	192	2019	$3.39/sf	fs(est)	1
1650 Canyon Blvd	25,146	17940	2020	$3.33/sf	nnn(est)	2,3
1900 9th St	16,697	1721	2020	$3.13/sf	nnn(est)	3
1881 9th St	78,433	5921	2020	$3.08/sf		2
1634 Walnut St	7,663	240	2020	$3.00/sf	fs(est)	1
3985 Wonderland Hill Ave	4,742	650	2019	$2.97/sf	+util(est)	2
1243-1247 Pearl St	17,092	738	2019	$2.91/sf	+util(est)	2
2595 Canyon Blvd	65,373	1268	2020	$2.83/sf	nnn(est)	1
1050 Walnut St	113,725	2181	2019	$2.83/sf	nnn(est)	2
2700-2760 Canyon Blvd	45,000	3500	2020	$2.71/sf	nnn(est)	2
777 Pearl St	11,500	1647	2019	$2.63/sf	nnn	2
1222 Pearl St	17,856	3813	2020	$2.50/sf	nnn(est)	2
3300-3380 Arapahoe Ave	14,000	650	2020	$2.31/sf	fs(est)	2
1800 30th St	53,791	150	2020	$2.57/sf	mg(est)	2
1300 Walnut St	35,118	3372	2020	$2.46/sf	nnn(est)	1
805 S Broadway	10,850	1216	2019	$2.45/sf	mg	2
1877 Broadway	50,000	2156	2020	$2.42/sf	nnn(est)	7
1320 Pearl St	24,890	1255	2020	$2.42/sf	nnn(est)	3
1401 Walnut St	31,166	3493	2020	$2.42/sf		2
1401 Walnut St	31,166	1619	2020	$2.42/sf		2
1470 Walnut St	52,566	7160	2019	$2.42/sf	nnn(est)	2
1470 Walnut St	52,566	7160	2019	$2.42/sf	nnn(est)	2
2299 Pearl St	25,745	485	2020	$2.38/sf	mg	2
1011 Walnut St	24,911	7642	2020	$2.38/sf	nnn(est)	2
2440 Junction Pl	60,000	7489	2019	$2.33/sf	nnn(est)	2
1123 Spruce St	10,000	2286	2019	$2.33/sf	nnn(est)	2
2995 Wilderness Pl	30,555	2918	2020	$2.33/sf	nnn(est)	1
1401 Walnut St	31,166	464	2020	$2.31/sf	fs(est)	BSMT
6685 Gunpark Dr	27,909	4737	2019	$2.29/sf	nnn(est)	1
1320 Pearl St	24,890	623	2020	$2.25/sf	fs(est)	BSMT

Table 10 **DRAFT**
Direct Office Lease Transactions in City of Boulder (2019-2020)
Phase 2 Community Benefits Analysis
City of Boulder, CO **2/16/2021**

Building Address	Total Bldg SF	SF Leased	Lease Yr	Lease Rate		Floors
2400 Spruce St	10,606	1043	2020	$2.25/sf	nnn	2
2400 Spruce St	10,606	994	2020	$2.25/sf	nnn(est)	2
2305 Broadway	7,435	1800	2020	$2.21/sf	fs(est)	1,3
1401 Walnut St	31,166	273	2020	$2.20/sf	fs(est)	BSMT
207 Canyon Blvd	15,000	3409	2020	$2.17/sf	nnn(est)	3
4845 Pearl East Cir	43,500	9812	2020	$2.17/sf	nnn(est)	3
4888 Pearl East Cir	58,250	10300	2020	$2.17/sf	nnn(est)	3
4949 Pearl East Cir	58,480	6985	2020	$2.17/sf	nnn	3
2595 Canyon Blvd	65,373	1988	2019	$2.13/sf	nnn(est)	1
2300 Broadway St	6,004	6004	2020	$2.08/sf	nnn(est)	1
4999 Pearl East Cir	57,252	2850	2020	$2.08/sf	nnn(est)	2
1123 Spruce St	10,000	480	2020	$2.06/sf	nnn(est)	2
1840 Folsom St	17,012	1757	2020	$2.04/sf	nnn(est)	3
2595 Canyon Blvd	65,373	1383	2020	$2.00/sf	nnn(est)	2
1800 30th St	53,791	1800	2019	$2.00/sf	+util(est)	2
1800 30th St	53,791	1087	2019	$2.00/sf	mg(est)	2
1800 30th St	53,791	2100	2019	$2.00/sf	mg(est)	2
3100 Arapahoe Ave	44,395	5804	2020	$2.00/sf	nnn(est)	3
1155 Canyon Blvd	90,000	2608	2020	$2.00/sf	nnn(est)	1
4845 Pearl East Cir	43,500	2877	2019	$2.00/sf	nnn(est)	1
4875 Pearl East Cir	31,057	12885	2020	$2.00/sf	nnn(est)	1
4999 Pearl East Cir	57,252	11253	2020	$2.00/sf	nnn(est)	1
2595 Canyon Blvd	65,373	3225	2019	$1.92/sf	nnn(est)	3
1123 Spruce St	10,000	500	2020	$1.91/sf	nnn(est)	2
2500 30th St	24,243	692	2020	$1.83/sf	nnn(est)	3
1690 38th St	23,964	11982	2020	$1.83/sf	nnn(est)	1
1775 38th St	13,965	13965	2019	$1.83/sf	nnn(est)	1,2
3100 Arapahoe Ave	44,395	3145	2020	$1.83/sf	nnn(est)	5
3000 Center Green Dr	32,522	4875	2020	$1.83/sf	nnn(est)	1
2027-2035 Broadway Mall	14,100	403	2020	$1.75/sf	mg	BSMT
6666 Gunpark Dr	4,956	1275	2019	$1.75/sf	fs	2
1470 Walnut St	52,566	1116	2019	$1.75/sf	nnn(est)	1
4750 Walnut St	45,192	7517	2020	$1.67/sf	nnn(est)	1
777 29th St	18,102	2146	2020	$1.63/sf	nnn(est)	2
2525 Frontier Ave	13,000	2800	2020	$1.58/sf		1
2525 Frontier Ave	13,000	2650	2020	$1.58/sf		1
2525 Frontier Ave	13,000	1800	2020	$1.58/sf		1
777 29th St	18,102	1037	2020	$1.58/sf	nnn(est)	1
2760 29th St	21,236	1348	2020	$1.54/sf	nnn(est)	1
2995 Baseline Rd	25,554	800	2020	$1.54/sf	nnn(est)	3
4900 Pearl East Cir	67,200	2695	2020	$1.54/sf	nnn(est)	2
4810 Riverbend Rd	5,568	986	2020	$1.50/sf		2

Table 10 **DRAFT**
Direct Office Lease Transactions in City of Boulder (2019-2020)
Phase 2 Community Benefits Analysis
City of Boulder, CO **2/16/2021**

Building Address	Total Bldg SF	SF Leased	Lease Yr	Lease Rate		Floors
4720-4730 Table Mesa Dr	14,149	530	2020	$1.50/sf	nnn(est)	2
1200 28th St	18,754	1478	2020	$1.46/sf	nnn(est)	3
2299 Pearl St	25,745	675	2020	$1.46/sf	nnn(est)	3
4720-4730 Table Mesa Dr	14,149	833	2019	$1.46/sf	nnn(est)	1
1200 28th St	18,754	1448	2020	$1.44/sf		2
6640 Gunpark Dr	5,666	1055	2020	$1.42/sf	nnn(est)	1
2299 Pearl St	25,745	600	2020	$1.40/sf	nnn(est)	2
75 Manhattan Dr	23,718	1700	2019	$1.40/sf	nnn(est)	1
75 Manhattan Dr	23,718	1700	2019	$1.40/sf	nnn(est)	1
1600 Range St	21,464	2966	2020	$1.38/sf	nnn	1
4740 Pearl St	61,717	3096	2020	$1.33/sf		1
3050 Sterling Cir	10,776	2084	2020	$1.33/sf	nnn(est)	1
3020 Carbon Pl	24,450	822	2020	$1.25/sf	nnn(est)	1
5485 Conestoga Ct	32,000	1536	2020	$1.25/sf	nnn(est)	2
6654 Gunpark Dr	5,655	1015	2020	$1.25/sf	nnn(est)	1
4735 Walnut St	24,686	2669	2020	$1.25/sf		1
4720-4730 Table Mesa Dr	14,149	1331	2019	$1.21/sf	nnn(est)	1
1722 14th St	15,545	636	2020	$1.17/sf	nnn(est)	1
2525 Frontier Ave	13,000	2300	2020	$0.92/sf		1
1300 Walnut St	35,118	4291	2020	$0.79/sf	nnn(est)	1
<u>Class C Buildings</u>						
595 Canyon Blvd	4,200	290	2019	$4.81/sf	fs(est)	1
595 Canyon Blvd	4,200	195	2019	$3.56/sf	fs(est)	1
595 Canyon Blvd	4,200	298	2020	$3.44/sf	fs(est)	1
1629 Canyon Blvd	1,890	615	2019	$2.59/sf	+util(est)	2
595 Canyon Blvd	4,200	200	2020	$2.50/sf	fs(est)	BSMT
1928 Pearl St	2,387	2387	2020	$2.50/sf	nnn(est)	1
4585 13th St	3,520	424	2020	$2.36/sf	+util(est)	1
1425 Pearl St	5,288	2550	2020	$2.33/sf	nnn(est)	2
1515 Walnut St	6,489	1998	2020	$2.17/sf	nnn(est)	2
2400 28th St	6,000	165	2020	$2.16/sf	fs(est)	1
1830 17th St	2,866	2866	2020	$1.88/sf		1
5171 Eldorado Springs Dr	7,823	2828	2020	$1.29/sf	nnn(est)	1
5305 Spine Rd	13,744	1402	2020	$1.00/sf	nnn(est)	1

Source: Costar (11/2020)

Table 11 **DRAFT**
Direct Industrial Lease Transactions in City of Boulder (2019-2020)
Phase 2 Community Benefits Analysis
City of Boulder, CO **2/16/2021**

Building Address	Total Bldg SF	SF Leased	Lease Yr	Lease Rate	Floors
3200 Carbon Pl	14,060	3,748	2020	$1.92 nnn(est)	1
2205 Central Ave	24,330	4,780	2020	$1.83 mg(est)	1
2205 Central Ave	24,330	4,674	2020	$1.83 mg(est)	1
5717 Arapahoe Ave	40,417	450	2020	$1.67 mg	1
5461 Western Ave	9,182	1,200	2020	$1.67	1
3100 Carbon Pl	9,243	1,215	2020	$1.63 nnn(est)	1
3200 Carbon Pl	14,060	1,083	2020	$1.63 nnn(est)	1
5717 Arapahoe Ave	40,417	500	2020	$1.50 fs	1
5717 Arapahoe Ave	40,417	1,300	2020	$1.50 fs	1
3063 Sterling Cir	18,730	4,853	2020	$1.33 nnn(est)	1
1812 Valtec Ln	16,428	2,000	2020	$1.29 fs(est)	1
5717 Arapahoe Ave	40,417	950	2019	$1.25	2
5717 Arapahoe Ave	40,417	308	2020	$1.25 fs	2
1779 Valtec Ln	12,500	6,000	2020	$1.25 mg(est)	1
2516 49th St	12,720	1,364	2020	$1.17 nnn(est)	1
6880 Winchester Cir	27,963	27,963	2020	$1.17 nnn(est)	1
2907 55th St	34,000	7,300	2020	$1.08 nnn	1
1880 S Flatiron Ct	44,392	1,480	2020	$1.08 nnn(est)	1
2840 Wilderness Pl	22,585	3,450	2019	$1.08 nnn(est)	1
2840 Wilderness Pl	22,585	3,045	2020	$1.08 nnn(est)	1
1700 55th St	20,000	2,050	2020	$1.00 nnn(est)	1
5765-5775 Arapahoe Ave	9,748	2,353	2020	$1.00 nnn(est)	1
3200 Carbon Pl	14,060	3,748	2020	$1.00 nnn(est)	1
2200 Central Ave	28,800	3,200	2020	$1.00 nnn(est)	1
4750 Nautilus Ct S	26,320	6,949	2020	$1.00 nnn(est)	1
4699 Nautilus Ct S	24,084	3,717	2020	$0.88	1
4699 Nautilus Ct S	24,084	1,900	2020	$0.88 nnn(est)	1
6205 Lookout Rd	18,465	2,630	2020	$0.83 nnn(est)	1
3075 75th St	15,030	5,170	2020	$0.67 nnn(est)	1
6205 Lookout Rd	18,465	2,650	2020	$0.66 nnn(est)	1
6205 Lookout Rd	18,465	2,395	2020	$0.66 nnn(est)	1
6455 Spine Rd	200,000	56,673	2020	$0.42	1

Source: Costar (11/2020)

Table 12 **DRAFT**
Multifamily Properties Built in Boulder Since 2010
Phase 2 Community Benefits Analysis
City of Boulder, CO **2/16/2021**

Property	Year Built	Stories	Units	App J	App L	Zoning	Staff Rec	
Market/ Mixed Income								1/2
Two Nine North	2010	4	238	N	N	BR-1	Y	
Lofts on the Hill	2011	3	13	Y	N	BMS	Y	
Lofts On College	2011	3	17	Y	N	BMS	Y	
Plaza On Broadway	2013	3	39	N	N	RH-5	FS	
The Province at Boulder	2014	5	84	Y	N	RH-3	Y	
East Village Flats	2014	2	49	Y	N	RH-5	FS	
Violet on Broadway	2014	3	98	N	N	MU-2	Y	
Boulder View	2014	3	69	Y	N	IG	Y	
Griffis 3100 Pearl	2014	4	319	Y	Y	MU-4	N	
Apex 5510 Apartments	2014	3	231	Y	N	RH-5	FS	
1725 18th St.	2015	2	3	N	N	RH-2	N	
The Hive at 9Seventy	2015	4	138	Y	N	RH-3	Y	
Gunbarrel Center	2015	3	251	Y	N	BR-2	Y	
17*Walnut	2015	3	26	Y	N	DT-2	Y	
U Club on 28th	2016	4	98	N	N	BT-1	N	
Wonderland Creek Townh	2017	2	37	N	N	RM-1	N	
1005 on the Block	2018	3	9	N	N	RH-5	FS	
Parc Mosaic	2019		240	N	N	BC-2	Y	
Timber Lofts	2019	4	129	Y	Y	MU-4	N	
Pearl 21 Townhomes	2020		16	N	N	MU-3	N	
Diagonal Crossing	2019	3	335	N	N	BT-1	N	
Alexan Diagonal Crossing	2020	3	250	N	N	BT-1	N	
2333 Arapahoe Ave	2017	3	28	N	N	BT-2	N	
Total Units			**2,717**					
Appendix J (excluding L)			*878*	*32%*				
Appendix L			*448*	*16%*				
Zoning Districts Recommended by Staff			*1,174*	*43%*				

Table 12 **DRAFT**
Multifamily Properties Built in Boulder Since 2010
Phase 2 Community Benefits Analysis
City of Boulder, CO **2/16/2021**

2/2

Affordable							
Red Oak Park	2011	2	59	N		RH-4	FS
Westview Apartments	2012	2	34	N		BMS	Y
Ledges on 29th	2014	2	69	N		BMS	Y
Lumine	2015	1	69	N		BMS	Y
Depot Square Apartments	2015	4	71	Y	Y	MU-4	N
S'Park West	2019	4	45	Y	Y	MU-4	N
Ciclo	2019	4	38	Y		MU-4	N
The Bust Stop	2020	3	55	N		IS-1	N
Attention Home Apartmen	2020	3	40	N		RH-2	N

Total Units	**480**	
Appendix J (excluding L)	*38*	*8%*
Appendix L	*116*	*24%*
Zoning Districts Recommended by Staff	*172*	*36%*

Source: Costar 12/2020

Table 13 **DRAFT**
Attached Homes Built in Boulder Built Since 2010 and Sold Since 2017
Phase 2 Community Benefits Analysis
City of Boulder, CO **2/16/2021**

Address	Year Built	Units Sold	App. J	App. L	Zoning	Staff Rec	
1850 Yaupon Ave	2010	1	N	N	RMX-2	N	1/2
2044 Walnut St	2010	1	N	N	RH-2	N	
3255 Ouray St	2010	1	N	N	RMX-2	N	
3644 Pinedale St	2010	1	N	N	RMX-2	N	
3649 Silverton St	2010	1	N	N	RMX-2	N	
4150 Longview Ln	2010	1	N	N	RMX-2	N	
4157 Clifton Ct	2010	1	N	N	RMX-2	N	
4166 Lonetree Ct	2010	1	N	N	RMX-2	N	
4176 Lonetree Ct	2010	1	N	N	RMX-2	N	
4181 Lonetree Ct	2010	1	N	N	RMX-2	N	
4573 Sunnyside Pl	2010	1	N	N	RMX-2	N	
1625 Yarmouth Ave	2011	1	N	N	MU-1	Y	
1633 Yarmouth Ave	2011	1	N	N	MU-1	Y	
1649 Yarmouth Ave	2011	1	N	N	MU-1	Y	
1707 Yarmouth Ave	2011	7	N	N	MU-1	Y	
3961 Broadway St	2011	1	N	N	RL-2	N	
4155 47th St	2011	1	N	N	RMX-2	N	
4166 Longview Ln	2011	1	N	N	RMX-2	N	
4174 Longview Ln	2011	1	N	N	RMX-2	N	
4178 Longview Ln	2011	1	N	N	RMX-2	N	
4182 Longview Ln	2011	1	N	N	RMX-2	N	
4549 Sunnyside Pl	2011	1	N	N	RMX-2	N	
4567 Sunnyside Pl	2011	1	N	N	RMX-2	N	
4600 17th St	2011	1	N	N	MU-1	Y	
4602 16th St	2011	1	N	N	MU-1	Y	
4612 16th St	2011	1	N	N	MU-1	Y	
4628 16th St	2011	1	N	N	RMX-2	N	
1944 Arapahoe Ave	2012	1	N	N	RH-1	N	
4125 47th St A	2012	1	N	N	RMX-2	N	
4626 16th St	2012	1	N	N	RMX-2	N	
1310 Rosewood Ave	2013	1	N	N	MU-2	Y	
1820 Mary Ln	2013	4	N	N	RMX-2	N	
2917 13th St	2013	1	N	N	RL-1	N	
3195 Big Horn St	2013	1	N	N	RMX-2	N	
3680 Paonia St	2013	1	N	N	F	N	
5315 5th St	2013	2	N	N	RM-1	N	
3071 Carbondale Ln	2014	1	N	N	F	N	
3620 Paonia St	2014	1	N	N	F	N	
5070 Ralston St C	2014	1	N	N	RM-1	N	
5318 5th St	2014	1	N	N	RM-1	N	
2445 Junction Pl	2015	3	Y	Y	MU-4	N	
370 Arapahoe Ave	2015	1	N	N	BT-2	N	
3741 Paonia St	2015	1	N	N	F	N	

Table 13 **DRAFT**
Attached Homes Built in Boulder Built Since 2010 and Sold Since 2017
Phase 2 Community Benefits Analysis
City of Boulder, CO **2/16/2021**

Address	Year Built	Units Sold	App. J	App. L	Zoning	Staff Rec	
1219 High St	2016	1	N	N	BT-2	N	2/2
2930 Broadway St	2016	2	N	N	RH-2	N	
1900 23rd St	2018	1	N	N	MU-3	N	
1932 23rd St	2018	1	N	N	MU-3	N	
1940 23rd St	2018	1	N	N	MU-3	N	
2126 Pearl St	2018	3	N	N	MU-3	N	
630 Terrace Ave	2018	5	N	N	RM-1	N	
630 Terrace Ave	2018	1	N	N	RM-1	N	
1908 23rd St	2019	1	N	N	MU-3	N	
1916 23rd St	2019	1	N	N	MU-3	N	
1924 23rd St	2019	1	N	N	MU-3	N	
2304 Pearl St	2019	1	N	N	MU-3	N	
2306 Pearl St	2019	2	N	N	MU-3	N	
2791 32nd St	2019	1	Y	Y	RH-6	N	
2793 32nd St	2019	1	Y	N	RH-6	N	
2901 32nd St	2019	1	Y	N	RH-6	N	
3111 Bluff St	2019	1	Y	Y	RH-6	N	
3113 Bluff St	2019	1	Y	Y	RH-6	N	
3115 Bluff St	2019	1	Y	Y	RH-6	N	
3117 Bluff St	2019	1	Y	Y	RH-6	N	
3119 Bluff St	2019	1	Y	Y	RH-6	N	
3121 Bluff St	2019	1	Y	Y	RH-6	N	
650 Terrace Ave	2019	5	N	N	RM-1	N	
2116 Pearl St	2020	4	N	N	MU-3	N	
2118 Pearl St	2020	4	N	N	MU-3	N	
2128 Pearl St	2020	1	N	N	MU-3	N	
2718 Pine St	2020	1	N	N	BC-2	Y	

Total Units (Sample)	**100**	
Appendix J (excluding L)	*2*	*2%*
Appendix L	*10*	*10%*
Zoning Districts Recommended by Sta	*17*	*17%*

Source: RealQuest (2019) and Redfin (2020)
Data set only includes homes sold in last three years rather than all development activity

Table 14 **DRAFT**
Office Properties Built in Boulder Since 2010
Phase 2 Community Benefits Analysis
City of Boulder, CO **2/16/2021**

Property	Year Built	Stories	RBA	App J	App L	Zoning	Staff Rec
2855 N 63rd St	2011	2	36,000	N	N	IG	Y
909 Walnut St	2015	3	13,065	Y	N	DT-5	Y
1738 Pearl St	2015	3	29,451	N	N	DT-2	Y
1048 Pearl St	2016	5	175,000	Y	N	DT-5	Y
4740 Pearl St	2016	3	61,717	N	N	IG	Y
1301 Walnut St	2016	4	63,000	Y	N	DT-5	Y
2440 Junction Pl	2017	4	60,000	Y	Y	MU-4	N
2490 Junction Pl	2017	4	60,200	Y	Y	MU-4	N
2930 Pearl St	2017	4	250,000	N	N	BR-1	Y
2755 Canyon Blvd	2018	4	43,000	N	N	BR-1	Y
3107 Iris Ave	2018	2	40,000	N	N	BT-1	N
4801 Riverbend Rd (BCH)	2019	5	76,000	Y	N	P	Y
2830 Valmont Rd	2019	1	2,086	N	N	BC-2	Y
3390 Valmont Rd	2019	4	53,318	Y	Y	MU-4	N
3390 Valmont Rd	2019	4	70,334	Y	Y	MU-4	N
Diagonal Hwy Office	2020	2	18,666	N	N	BT-1	N
Diagonal Hwy Office II	2020	3	32,553	N	N	BT-1	N
2950 Pearl St (II)	2020	4	120,000	N	N	BR-1	Y
Total Square Feet			**1,204,000**				
Appendix J (excluding L)			327,000	27%			
Appendix L			244,000	20%			
Zoning Districts Recommended by Staff			869,000	72%			

Source: Costar 12/2020

Table 15 **DRAFT**
Hotel Properties Built in Boulder Since 2010
Phase 2 Community Benefits Analysis
City of Boulder, CO **2/16/2021**

Property Name	Year Built	Stories	Rooms	App. J	App. L	Zoning	Staff Rec
Residence Inn Boulder Canyon Boulevard	2018	4	155	N	N	BR-1	Y
Embassy Suites by Hilton Boulder	2017	5	204	N	N	BR-1	Y
Hilton Garden Inn Boulder	2017	5	172	N	N	BR-1	Y
Hyatt Place Boulder Pearl Street	2015	5	150	Y	Y	MU-4	N
Hampton Inn Boulder North	2013	3	100	Y	N	BC-2	Y
Total Rooms			781				
Appendix J (excluding L)			100	13%			
Appendix L			150	19%			
Zoning Districts Recommended by Staff			631	81%			

Source: Costar 12/2020

Table 16 **DRAFT**
Retail Properties Built in Boulder Since 2010
Phase 2 Community Benefits Analysis
City of Boulder, CO **2/16/2021**

Building Address	Year Built	Stories	RBA	App. J	App L	Zoning	Staff Rec
1960 28th St	2010	1	7,027	N	N	BR-1	Y
1690 28th St	2012	1	7,067	Y	N	BR-1	Y
2850-2900 Baseline Rd	2013	2	9,741	N	N	BC-2	Y
2900 Baseline Rd	2013	2	7,266	N	N	BC-2	Y
1906 28th St	2014	1	14,000	Y	N	BR-1	Y
3060 Pearl Pky	2014	1	3,156	Y	Y	MU-4	N
901 Pearl St	2015	3	21,252	N	N	DT-2	Y
3150 Pearl St	2015	2	5,796	Y	Y	MU-4	N
6315 Lookout Rd	2016	1	5,500	Y	N	BC-2	Y
3053 28th St	2017	1	1,500	N	N	BC-1	Y
5075 Pearl Pky	2017	2	25,236	N	N	IS-2	N
2990 Diagonal Hwy	2019	1	2,000	N	N	BC-1	Y
6325 Lookout Rd	2019	1	5,500	Y	N	BC-2	Y
2375 Canyon Blvd	2019	2	5,400	N	N	BT-2	N

Total Square Feet	120,000	
Appendix J (excluding L)	*32,000*	*27%*
Appendix L	*9,000*	*8%*
Zoning Districts Recommended by Staff	*81,000*	*68%*

Source: Costar 12/2020

KEYSER MARSTON ASSOCIATES
ADVISORS IN PUBLIC/PRIVATE REAL ESTATE DEVELOPMENT

DRAFT MEMORANDUM

To: Karl Guiler, Senior Planner, City of Boulder

From: Keyser Marston Associates

Date: May 4, 2021

Subject: Addendum to Economic Analysis in Support of Phase 2 Community Benefit Project

Introduction

Keyser Marston Associates, Inc. prepared a report entitled "Economic Analysis in Support of Phase 2 Community Benefit Project" ("Economic Analysis"). Phase 2 of the Community Benefit project introduces new options for providing community benefits in connection with a height or density bonus focused on below market rate nonresidential space for small businesses and nonprofits, the arts community, and human and social services. The Economic Analysis provides recommendations regarding Phase 2 community benefit options for both residential and commercial bonus projects that would result in a compliance cost no less than the existing option to provide additional inclusionary housing or commercial linkage fee payment.

Since the Economic Analysis was prepared, the proposed structure of the Community Benefit program has changed such that the current Phase 1 option to pay an additional affordable housing fee is no longer anticipated to be available to commercial bonus projects. Commercial projects would only have the option to provide affordable non-residential space or pay an in-lieu fee. With this proposed change, in-lieu fees for commercial community benefit projects can be established independent of the existing commercial linkage fee option.

The following addendum to the Economic Analysis provides additional analysis and input on structuring the Phase 2 community benefit option for commercial community benefit projects. The addendum evaluates the compliance cost associated with a potential increase to the onsite requirement for commercial bonus projects above what was previously recommended and the effect that a higher onsite requirement may have on program utilization. The addendum provides recommendations regarding in-lieu fees for

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commercial projects that opt not to provide onsite community benefit space and addresses other policy topics pertinent to implementation of the Phase 2 Community Benefit project.

Compliance Cost Associated with a Potential Increase in the Affordable Commercial Requirement

The net compliance cost of providing below market nonresidential community benefit space is defined as the cost to develop nonresidential community benefit space minus the amount of private investment (debt and equity) supported by the affordable commercial rents. As detailed in the Economic Analysis, the net cost to provide nonresidential community benefit space is estimated to be $173 per square foot of community benefit space assuming rents are set at 75% of market rate rents and $262 per square foot of community benefit space assuming rents are set at 50% of market rate rents.

The compliance cost per square foot of bonus floor area depends upon the amount of floor area that is dedicated as affordable commercial space to qualify for a height or density bonus. Table 1 compares the compliance costs per square foot of bonus floor area for two alternative requirements for commercial bonus projects:

1) KMA's original recommendation that commercial bonus projects provide community benefit space equal to 5% of bonus floor area with rents set at 50% of market rate or 7% of floor area with rents set at 75% of market rate;
2) A higher onsite requirement for commercial bonus projects of 6% of bonus floor area with rents set at 50% of market rate or 9% of bonus floor area with rents set at 75% of market rate. This higher requirement matches recommended onsite requirements for residential bonus projects and would allow establishment of consistent percentages for residential and commercial.

Commercial bonus projects that satisfy KMA's previously recommended onsite requirement (5% or 7% of bonus floor area) are estimated to incur a compliance cost of approximately $13 per square foot of bonus floor area. Projects required to satisfy the increased onsite requirement (6% or 9% of bonus floor area) are estimated to incur a compliance cost of approximately $16 per square foot of bonus floor area. The higher onsite requirement adds approximately $3 per square foot of bonus floor area to the Phase 2 compliance cost, which would represent a modest increase.

Table 1: Compliance Costs of Alternative Affordable Commercial Requirements for Commercial Bonus Projects

		Original Recommendation	Higher Requirement
A. Community Benefit Share of Bonus Floor Area			
50% of Market		5%	6%
75% of Market		7%	9%
B. Compliance Cost PSF of Bonus Floor Area			
50% of Market	*$262/SF benefit space*	$13/SF	$16/SF
75% of Market	*$173/SF benefit space*	$12/SF[1]	$16/SF
Average		*$13/SF*	*$16/SF*

Source: KMA estimate.
[1] The use of rounded percentages results in a slightly lower compliance cost for 75% of market rent scenario.

Effect of Increase in the Affordable Commercial Requirement on Utilization of Community Benefit Program

Projects that participate in the community benefits program are eligible to receive a modification to height and/or floor area standards prescribed by the base zoning. Utilization of the community benefits program hinges on whether height and density modifications generate sufficient incremental value, net of the cost of providing community benefits, to incentivize developers to proceed with a more complex bonus project instead of building to the base density and not providing community benefits.

The existing Phase 1 community benefit option and previously recommended Phase 2 option are designed to absorb a portion of the incremental value created by height and floor area modifications while leaving the balance of incremental value as an incentive for projects to utilize the program. In addition, the Phase 2 recommendations sought to create a roughly equal choice between the Phase 1 and Phase 2 options, under the assumption projects would have an ability to choose between them. As the Phase 1 option for commercial projects to pay an additional commercial linkage fee is proposed to be replaced, cost equivalency with the Phase 1 option is less of a factor so long as an incentive remains to use the program.

The existing Phase 1 community benefit option was informed by KMA's 2019 pro forma analysis of prototypical bonus projects, which found that height and density incentives generated approximately $35 per square foot of bonus floor area for commercial projects and nearly $50 per square foot of bonus floor area for residential projects, before deducting community benefits and other Site Review costs. Phase 2 requirements, as recommended in the Economic Analysis, are designed to be equivalent in cost to the Phase 1 requirements. Both the adopted Phase 1 community benefit requirements and recommended Phase 2 requirements are slightly greater for residential uses than commercial uses, given that residential bonus projects are estimated to have greater capacity to support community benefits than commercial projects based upon KMA's 2019 pro forma analysis.

If the Phase 2 onsite requirement is increased for commercial projects to match the residential requirement, the incentive for commercial bonus projects to participate in the program would be slightly less than what KMA's original recommendation would have supported, and less than the incentive available to residential bonus projects, based upon the share of incremental land value absorbed by providing community benefits.

Table 2 compares the compliance cost per square foot of bonus floor area of alternative Phase 2 options to the incremental value supported by the bonus floor area, as estimated in the 2019 analysis of the Phase 1 Community Benefit project. As shown, if the onsite requirement for commercial projects is increased to 6% and 9%, community benefits requirements are estimated to absorb 44% to 46% of the incremental value created by the bonus floor area versus 37% to 38% of the incremental value under KMA's prior recommendation. For residential bonus projects, in contrast, community benefits requirements are estimated to utilize 32% to 33% of incremental value with a 6% or 9% onsite requirement.

While a slightly higher onsite requirement for commercial projects could modestly impact participation in the community benefits program, commercial developers are still estimated to realize a significant share of the incremental value created by height or density modifications. This financial incentive, while less than what is available to residential projects, would likely still incentivize commercial projects to participate in the community benefits program, particularly projects with strong market potential.

Table 2: Community Benefit Compliance Cost versus Incremental Land Value (Per Bonus Square Foot)

		Compliance Cost Share of Incremental Land Value	
	Incremental Land Value(1)	5%/7% Onsite Requirement $13/SF Cost(2)	6%/9% Onsite Requirement $16/SF Cost(2)
Rental Residential	$49/SF	-	32%
For-Sale Residential	$47/SF	-	33%
Office	$34/SF	38%	46%
Hotel	$36/SF	37%	44%

Source: KMA estimate
(1) Based on KMA's 2019 pro forma analysis of prototypical bonus projects outside of downtown, before consideration of the cost of providing community benefits.
(2) Reflects onsite compliance cost of 50% market rent scenario.

Recommended In-Lieu Fee for Community Benefit Space

Under the proposed Phase 2 community benefit program, commercial community benefit projects not providing affordable non-residential space onsite would pay an in-lieu fee that would be used to fund creation of affordable nonresidential space for eligible small business, arts, and human service uses. To meet the City's goal of encouraging onsite community benefits, KMA recommends setting an in-lieu fee that is greater than the cost of providing onsite community benefits but still meaningfully less than the incremental land value created by zoning incentives. The City takes a similar approach with its Inclusionary Housing program in applying a premium to Cash-In-Lieu rates for for-sale residential projects providing fewer than half of required units onsite. Setting the fee higher than the cost of providing onsite space is more important to encouraging onsite compliance if use of the in-lieu fee option is relatively unrestricted.

Table 3 identifies in-lieu fee alternatives equal to the estimated cost of providing onsite community benefits and with premiums over the cost of onsite compliance of 15%, 30% and 50%. If the in-lieu fee option will be available to most commercial community benefit projects, KMA recommends in-lieu fees include a 30% premium over cost to provide an incentive for delivery of the onsite space. If in-lieu fees are allowed only in limited circumstances, such as projects owing a very small amount of affordable space, a fee equal to cost or with a smaller 15% premium is recommended. With a 30% premium, the in-lieu fee is $341 per square foot of community benefit space owed with rents at 50% of market. KMA recommends the in-lieu fee be determined based on the amount of community benefit space required when rents are set at 50% of market, which results in a somewhat higher total in-lieu fee than with the 75% of market option. A fee of $341 per square foot of community benefit space converts to $17 to $20 per square foot of bonus floor area based upon the two onsite requirements described previously ($341 X 5% = $17/SF while $341 X 6% = $20/SF). An in-lieu fee of $17 to $20 per square foot of bonus floor area is still less than the incremental land value created by zoning incentives (see Table 2) and so would maintain an incentive for projects unable to provide community benefits onsite to utilize the program.

The City could choose to define in-lieu fees based either on the amount of community benefit space owed or based on the amount of bonus floor area included in the project. The decision is more a matter of preference in communicating the requirement than anything else. A fee per square foot of benefit space format is suggested as this would allow the fee to remain the same even if percentage requirements are adjusted. Defining the in-lieu fee relative to the amount of community benefit space owed is also more analogous to the structure of Cash-In-Lieu under the City's Inclusionary Housing program.

Table 3: In-Lieu Fee Options for Community Benefit Space

	In-Lieu Fee Equal to Onsite Compliance Cost	In-Lieu Fees That Include a Premium Over Onsite Cost		
		15% Premium Over Onsite Cost	30% Premium Over Onsite Cost	50% Premium Over Onsite Cost
In-Lieu Fee PSF of Community Benefit Space				
50% of Market	$262/SF	$301/SF	$341/SF	$393/SF
75% of Market	$173/SF	$199/SF	$225/SF	$260/SF
Equivalent In-Lieu Fee PSF of Bonus Area				
5% Onsite	$13/SF	$15/SF	$17/SF	$20/SF
6% Onsite	$16/SF	$18/SF	$20/SF	$24/SF

Source: KMA estimate

Other Recommendations

Escalation of Commercial Rents and In-Lieu Fees

The Phase 2 Economic Analysis defines affordable commercial rents in relation to the average citywide asking rent for Class A and B retail as reported by Costar. Retail rents were selected as the most representative of market conditions for ground floor space, where community benefit tenants are anticipated to be located. Retail rents are also preferred because they are almost exclusively reported on a triple-net basis, making it simpler to differentiate base rent from operating expenses. KMA recommends annually updating affordable rents using Costar or a similar third-party real estate database to determine average market rate rents for Class A and B retail space and then applying the applicable rent discount to 50% or 75% of market.

For annual adjustment to rents during the course of a multi-year lease, it is recommended that leases be permitted to utilize typical escalator provisions such as a fixed percentage increase or use of an index like the Consumer Price Index. This would provide certainty regarding the rents that will apply over the term of the lease to both landlord and tenant. For renewals at the end of a lease term, it is recommended that rents be reset to no more than the then current affordable rent, determined as described above.

The cost of delivering the affordable non-residential space will generally track with trends in market rents over time since affordable rents are proposed to be set at a percentage discount from market. Since it will be necessary to update affordable rents annually, the percentage change in affordable rents from the prior year can also be readily computed[1]. This percentage change can then be applied as an escalator for in-lieu fees to allow fees to remain proportionate to the cost of including community benefit space onsite.

While another escalator such as the consumer price index could also be used, it likely would not keep pace with changes in the cost of including community benefit space onsite and so could result in the fee becoming a more favorable choice over time.

Other Non-Residential Uses

The Economic Analysis focuses on office and hotel as the nonresidential uses most likely to take advantage of the Community Benefit program, and therefore the most relevant basis to inform the onsite percentage requirements for nonresidential bonus projects. If other nonresidential uses seek to take advantage of the community benefit program, KMA recommends applying the office findings to these uses.

[1] As affordable rents are set as a percentage of market rents, by definition, the percentage change in market rents from the prior year will be the same as the percentage change in affordable rents.

Dear Community Officials, April 16, 2021

Boulder Art Matrix (BAM) is a non-profit 501c3, operating since 2014 in Boulder, with a mission to support the arts and artists in Boulder. *Art and Culture as community benefit is a way to sustain Boulder's creative identity, with elements of Placemaking to be intentional trade-offs for increased building height.*

We appreciate all the effort of City Staff, Planning and Council to pass Phase I and Phase II of Art and Culture as a Community Benefit.

In 2018, BAM researched other art and entertainment districts and found large scale neighborhood development had increased community support when elements of Placemaking were added to the neighborhood. Support made it more likely for neighbors to approve the added building height developers were seeking.

In 2014, the failure of creating an art hub at the old Armory, pushed BAM to look to amend the Comprehensive Plan to include art and culture. During the last Comp. review, there appeared to be a lack of vision for long-term sustainability for the future of the arts in Boulder. The Office of Arts and Culture along with many art groups strongly advocated the value of the creative image of Boulder.

Implementation of height variance in exchange for a community benefit is in its infancy. BAM respectfully requests a review panel be created in order to screen community benefit applications. The value of deeming something appropriate for a Community Benefit credit should offer some positive physical impact and value for the community.

Cash in Lieu can and should benefit affordable housing and the community in which the developer is building. Elements of placemaking, including public pocket parks and community green spaces (over underground parking), *create neighborhood identities.* Council has identified a list of possible community benefits, including ground floor activation, art venues, and public art installation.

The Ball Aerospace proposal offers questions for assessing the tradeoff of community benefit. The proposal favors an employee parking garage, additional surface parking and 55-foot buildings in exchange for community benefit. However, the proposal does not appear to promote a walkable neighborhood expansion.

The wishes of the developer, the city and the needs and preferences of the local community will continually need to be balanced to create success.

Thank you for your commitment to make Arts and Culture a Community Benefit.

Boulder Art Matrix

Sally Eckert, President, Natalie Portman-Marsh, Board Chair

BOULDER CHAMBER INPUT FOR AFFORDABLE COMMERCIAL

Overall, there's no opposition to the goals, but the current construct is too restrictive and improperly designed to meet the desired intent. The work conducted by staff is useful, and we suggest an incentive-based approach to implementing the affordable commercial strategy that uses the data and findings from the report to define a clear strategy for implementation. Our members provided the following observations on existing challenges.

- City Council may not get what it hopes for in Affordable Commercial spaces because there is not enough incentive to provide on-site Affordable Commercial for additional height per the proposed program requirements, fees and penalties.
- The program requires additional clarity and definition due to the different perspectives and expectations (by City Council, Planning Board, Staff and Consultants) of how it should function and what it should produce.
- There is too much cost, time and risk associated with Boulder's review process to make the current framework effective. An applicant will typically spend $250 - $350K to get to Planning Board review, where a project could potentially get rejected. Adding a new requirement will make it unlikely applicants will pursue such projects.
- For a business to succeed in a location, discount rent is not the essential factor to ensure success. There are several other property costs, city fees and operating expenses that businesses in Boulder incur. Juanita's and other businesses with local character didn't close solely due to rent rates.
- If the goal of the program is to activate spaces that can support and sustain success for small businesses, then broadening tenant mix, by incubating like or complimentary businesses in close proximity, is essential.
- If the City is to establish a program of this nature or ask for this as a Community Benefit, it needs to invest resources into managing it and sustain the program. Often, the City will lock in what it wants from a development project as a benefit, but then won't invest the resources into the Community Benefit it receives. Examples include the space adjacent to the St. Julien, the Goose Creek Path and several community rooms, spaces or public facilities throughout Boulder. Affordable commercial spaces must be part of a broader program designed to support the businesses that occupy them.

Conclusion: The City should implement a program that has a simple and predictable process, while continuing to address the identified challenges above by taking more feedback from those who will be utilizing and delivering the products of this program. The program should adopt best practices from existing similar programs (i.e. the City's affordable housing program), refine it and invest the appropriate resources within Community Vitality to support management of a strong Affordable Commercial business program. Implementation of this program should be paired with:

- Further defining incentives for providing on-site affordable commercial
- Providing a cash in lieu option to fund an affordable commercial program.
- Immediate elimination of Appendix J
- Options to support small businesses immediately

SUGGESTED SOLUTIONS FOR A CITY-MANAGED AFFORDABLE COMMERCIAL PROGRAM

Currently, the definition of what is "affordable commercial" is not as clear as affordable housing, which has a supportive program built around it. We recommend Community Vitality staff continue to define, design and develop an affordable commercial program, with the accompanying regulatory structure, further informed by Boulder's development professionals, architects, commercial brokers and lenders.

City Staff-led Program: There needs to be a city staff led process to vet and qualify tenant eligibility, negotiate lease terms and manage an inventory of below market commercial spaces.

Tenant Eligibility: Tenant criteria should be flexible to qualify those that aren't defined by the one of the current categories (i.e. arts, human services, small businesses, non-profits). For example, franchises are often owned by categorical licenses that should not automatically be excluded (i.e. minority-owned, women-owned, DBE's).

Business/Tenant Growth and Success: The report recommendations do not address what happens if tenant businesses need more space or are successful. Flexibility should be built into the program to allow a business to remain in a successful location, rather than disqualify them or make the property/tenant be out of compliance. A business should be able to remain at a market rate rent level or have city grants that support that business end after they meet a certain threshold of sustainable success.

Bonus Height Verification: Community Vitality staff should provide confirmation, along with Planning and Development Services, as to whether a project meets the program criteria for a height exemption prior to advancement to Planning Board or City Council.

Planning Board: Program criteria and options should be clearly defined in the code, and not subject to Planning Board approval. This approval would come too late in the process and creates additional risk and disincentives pursuing desired projects. Planning Board should not make decisions about the eligibility or placement of tenants. Nor should Planning Board, or Planning Staff, provide oversight or manage economic development or small business support programs, as they do not have the market understanding or expertise to launch a pilot program like this and provide the required capacity it needs to succeed. Similar to how the inclusionary housing program is staffed, staff members that provide oversight of an Affordable Commercial program should be experts in financing commercial development projects and have a deep understanding of market trends, economic conditions, tenant needs, opportunities and constraints.

Fund Management: The City should hire a fund manager with professional expertise in financing commercial real estate development to manage the Affordable Commercial program financial assets that can be used to develop affordable spaces and provide businesses programmatic support. The assets can also be used to manage and support the development of incubation spaces.

Business Support Resources: "Cheap rent" isn't the only factor that will allow a small business or organization to thrive. The City should provide additional stipends or subsidies to help these businesses deal with all the other factors that make their operations in Boulder expensive. Financial support mechanisms could include down payment rent assistance, revolving or forgivable loans, covenant-restricted investments and/or other low-AMI housing type financing parallels and support mechanisms.

On-site Incentives, Phased Implementation and Program Evaluation: To incentivize more on-site spaces, immediately provide a cash in lieu option, create simple requirements for businesses to qualify as tenants, provide incentives to developers for on-site spaces, and provide immediate access to business resources to support small businesses in Phase 1 implementation. This will give projects flexibility and provide more affordable spaces. Monitor and evaluate the program with the intent of refining it every 18-24 months to assure it functions as desired.

Utilize cash in lieu fees (vs. on-site affordable commercial): Cash in lieu paid to the City to buy, manage and build space should be an option. It is well-understood that Boulder gets more housing units by leveraging in-lieu fees than through what can be built on-site through its inclusionary housing requirements. Affordable Housing pairs funding with Low Income Housing Tax Credits, property tax exemptions, grants and lines of credit to leverage funding better than private developers. In-lieu fees can be leveraged to create spaces that better meet program goals than the 5-7% of a proposed development project that is contemplated in the report. Likewise cash in lieu funds for an affordable commercial program can have oversight from a Development Review Committee to approve funding requests. Funds can be used to offset other barriers to businesses such as costs associated with, Boulder's land use review costs, use review process, tenant relocation, tenant build outs, purchase of permanent spaces or other initiatives that are similar to how funds in the inclusionary housing program are used.

Create Incubation Hubs or Creative Clusters: It is often more successful to group similar and a supportive mix of businesses in a common place (for co-working or complimentary services). This tends to create a more cohesive and functional economic environment than "ad-hoc" spaces in random buildings.

OTHER PROGRAM CONSIDERATIONS FOR AFFORDABLE COMMERCIAL

Projects Below 20,000 Sq. ft.: Not every site is suited for on-site spaces or has the potential to be an attractive/functional space for an affordable commercial tenant. Projects below 20,000 square feet are unlikely to accommodate shared infrastructure and on-site affordable commercial to serve multiple tenants. This is why regulatory flexibility and a cash-in-lieu are essential elements of an Affordable Commercial program.

Regional Context & Other Business-Related Costs
Overall, Boulder is one of the most expensive markets for business operations compared across our region; many businesses are already priced out of market due to costs other than rent.

- Rent is typically only 10-20% of the average Boulder business operating costs.
- Major operating costs for businesses also include location/district fees, local and regional taxes and fees, building operations expenses (i.e. utility costs, energy regulations, land scaping, snow removal), providing regionally competitive wages and other business related costs. Tenants pay these costs.
- Boulder's permitting process is more lengthy and expensive than other communities, which adds to the overall cost of development and, ultimately, tenant rental rates. If on-site Affordable Commercial approval lengthens the process for permitting, on top of current delays, holding costs go up, impacting the ability to accommodate on-site affordability.

Owner occupied developments need special consideration regarding on-site requirements: Many owner-occupied commercial developments don't lend themselves to tenant leasing. Often, owner-occupied developments are not multi-tenant properties, nor do they include spaces for lease. For example, if an aerospace or biotech company is expanding its location, it isn't conducive to developing an affordable commercial space, nor does that company manage commercial space tenants.

Lending & Leasing Issues

- Restrictive covenants impact the financing of projects, which is an additional risk that the lender will have to consider. It makes it more challenging to obtain financing and impacts any potential sale of the property.
- Without a structured program, it is not practical to assume there is a market of business tenants to draw from, or for prospect tenant businesses to know about available spaces when the opportunities exist.
- Five-year leases are common for commercial spaces, thus the length of standard leases must be considered in reviewing qualifications and compliance.
- Triple net leases vary greatly throughout Boulder. Rents range from $15-20/square foot to $40-$45/square foot. Currently we are in a very dynamic market and with the variability of triple net costs, the analysis shouldn't assume rent averages across the city for the basis of determining lease rates. Geographic areas across the city vary greatly, in some zones great variabilities exist building by building, and in many cases in adjacent commercial spaces.

Outreach to Lenders is Needed: Outreach should be conducted to understand if affordability-related deed restrictions can meet federal and state loan regulations. As an un-tested concept, The City should seek verification that the federally-regulated lending industry can finance such projects or how it impacts property sales. If financing is not available or impractical for these types of projects, they can not be delivered and no one wins.

Case Studies & Pilot Opportunities

Existing & Future City-owned Properties: The City has an opportunity to evaluate its own properties in order to model an Affordable Commercial program. Analysis can be performed on the retail sections of the downtown parking garages (15/Pearl, Walnut, N. Broadway) to understand how cost fluctuations, rent rates, triple net leases, property improvements and other costs affect an Affordable Commercial program. The program can be modeled at the Alpine Balsam site, 30Pearl and along with the team of the Macy's redevelopment to understand how to apply the program before citywide implementation.

Existing Affordable Commercial Programs: The report did not indicate if other communities have implemented such programs successfully and any lessons learned. A comparative case study to another city with similar market dynamics would be helpful for comparing feasibility assumptions.

Project Pro-Formas: As a comparative example and indicator of costs and requirements, it would be helpful to know how an affordable commercial program could have applied to three different scenarios in three different parts of town, in three different zones/uses.

PLAN-Boulder County

planboulder.org

P.O. Box 4682 Boulder, CO 80306

PLAN-Boulder County Comments to the Planning Board regarding Below Market Commercial Space as a Community Benefit Option

June 2, 2021

PLAN-Boulder County would like to clarify the summary of our comments included in the Planning Board packet regarding the addition of below market rate commercial space as a community benefit option. We support exploration of the concept but have significant concerns with the clarification of the specific goal, how it might be implemented, and the likelihood of unintended consequences that are associated with new and complex programs.

Community Benefit Phase I dealt effectively and in a straightforward manner with Affordable Housing, Boulder's most important community benefit. It had the clear goal of increasing affordable housing in exchange for extra height, and the planning and implementation of the program was manageable because the city had a long history of providing affordable housing. Community Benefit Phase II is a brand-new concept that is far more complex.

Ordinance 8469 implements a Community Benefit that means different things to developers, the business community, and the residents of Boulder. The ordinance is so overly complicated that it is impossible to tell whether it will accomplish the original goal that inspired the request for affordable commercial space: protecting small, local businesses that are either being displaced by new development or priced out of the city by rising commercial rents.

We have the following broad concerns:

1. The program should focus on providing benefits to the community in general, not on benefits to specific industries. Boulder has a thriving venture capital industry that finances the startups and smaller businesses that feed our specialized industries.

2. It is critical that the eligibility criteria be refined to include more than the size of the business based on the number of employees and profitability. It should also include how a business benefits the overall community. For instance, if the goal of the program is to benefit the Boulder community, how would a small business that is owned by a non-Boulder resident, employs non-Boulder residents, and delivers a product that is not used in Boulder be a benefit to the Boulder community? Goals should be clearly defined and the eligibility criteria should be re-examined in light of those goals.

3. Because the provision of affordable commercial space is a such a new concept, we believe that is should be treated as a pilot program in a restricted area in order to test the concept, identify the issues associated with implementing the program, and evaluate the effectiveness of the program. Boulder's 30Pearl Project, a mixed-use development that will include commercial space leased at below-market rates, is already considered to be an affordable commercial pilot. After a few years of experience with 30Pearl, the city should be better equipped to deal with a significant expansion of an affordable commercial space program. Until then, the city should continue with the current Community Benefit of Affordable Housing.

4. The section of the ordinance listing proposed density modifications should be removed and dealt with separately. It further complicates an already complex program, and veers off into residential uses, which are not even part of Phase II. The land use changes themselves raise serious questions about density and open space which cannot be given a full critical appraisal in the context of this ordinance.

5. Appendix J should be extended until Community Benefit Phase II is implemented. This would allow for a more detailed analysis of the proposed exclusion of lower density residential and other zones where requests for additional height and floor area would not be appropriate. It would also allow time to consider the protection of view corridors called out in the BVCP.

6. Lastly, care should be taken to ensure that this program does not increase the imbalance between jobs and housing by incentivizing more commercial space.

Respectfully,

Peter Mayer
Allyn Feinberg
Co-Chairs PLAN-Boulder County

I understand the desire for the city to receive some sort of community benefit in exchange for increased height and density over the allowed limits in a development. I want to note that the impacts of increased height and density in developments will be the same to the citizens living in that community no matter if a “community benefit” is provided or not. The views will still be obstructed by further height allowances and the increased density will still add more traffic and increased population in the area.

With the inclusionary housing requirement, a certain percentage of affordable housing units are required in a development and thus the cash-in-lieu option has to be offered in order to avoid the “taking” of a land owner’s property and their ability to get the full profit from that property. Unlike the inclusionary housing requirement, this community benefit ordinance is a benefit for benefit circumstance. The developer can build up to the by-right limits allowed under the land use designation and zoning on the property. **There is no “taking” in this situation.** However, if the developer wants to build higher and/or denser than by-right allowed in the zoning and land use designations they would need to go to site review to get approval. Therefore the property owner/developer can be offered greater height and density variances in the development in exchange for a community benefit built on-site and only on-site. For the additional floor area allowed to the developer, there could be a split in the amount that the developer gets to add to his market rate development and the amount given to the community benefit. This could possibly be a 60/40 split where the community benefit gets 60% of the additional floor area or maybe a 50/50 split. The amount would have to be worked out. This type of program would still be desirable to developers because they would get some increase in floor area where they can obtain increased profit from. Also, the community benefit located in the development, such as a day care center, art center, library, climbing wall – recreation center, etc. would be a draw for tenants either living or working in that development.

The community benefit ordinance as it is being presented to council in this March 2, 2021 City Council meeting, is a wolf in sheep’s clothing. It allows the developers and investors to build denser and higher developments by paying a “cash-in-lieu” payment to the city. In Boulder, where demand will almost always exceed supply this is a no brainer for the developer as they will make much more profit from the additional floor area now allowed in their development over the years as their investment grows. The “cash-in-lieu” payment will be a small and minor charge for a huge return on investment. As was stated by the consulting firm hired by the city to study this - “Most stakeholders said their default preference is to make a cash payment in-lieu of providing onsite community benefits to avoid the ongoing compliance risk.” Therefore, most developments will choose not to build affordable housing or other community benefit on site for a number of reasons. I suspect the main one being what I stated above – The cash-in-lieu payment will be a small and minor charge for a huge return on investment the additional floor area will give the developer.

So, when the developers pay the cash-in-lieu that money will be earmarked for a community benefit. But where are those community benefits going to be located? There is very little land available in the City of Boulder and what is available is expensive as Boulder is a highly desirable place to live. So what happens is land that was previously set aside, when earlier developments were built, for services and amenities (community benefits) are being taken away from those communities to build affordable housing units. Examples are Palo Park – a school dedication for a school or park for the community was sold to Boulder Housing Partners (BHP) for housing. The Stanford Court property, which has a church and community garden on it, has also been sold to BHP for additional housing. This was so Frasier Meadows' new expanded development could provide their affordable housing off-site. The surrounding community suggested other uses for the Stanford Court property such as a day care center but their ideas were not considered. Also to note is that the affordable housing developments built by BHP are very close to if not 100% affordable housing. Therefore, these developments are eligible for height and density increases also. The result is an additional tall and dense development added to Boulder. What is the goal of this ordinance? To gain more community benefits such as libraries, art centers, day care centers, parks, etc. for the citizens living in Boulder or is it to increase the amount of tall and dense development in the city and the profits of the developers?

There is always a reason why the developer cannot provide the affordable housing on-site and it usually is because it "doesn't pencil out in the finances", which I see as, they won't be able to get the profits they want or need from the development. So in practice, the cash-in-lieu option is a net loss of community benefit to the community as they keep losing land that was originally set aside for community amenities for the community such as schools, churches, recreation centers, libraries, and parks.

The way staff has presented the community benefit ordinance with the cash-in-lieu option will not result in community benefit for the citizens – it will rather result in a huge benefit and profit for the developers. However, if the community benefit in this ordinance is required to be built on site with no cash-in-lieu option then the citizens of Boulder will see a benefit in all those libraries, daycare centers, recreation rooms, affordable housing units, art center, and more that are built within a housing or commercial development. Also, if the only way a developer can obtain increased floor area through increased height and/or density of a development is if they provide a community benefit on-site, it will give a huge incentive for the development to provide that benefit on site. If the community benefit is affordable housing, that additional housing can be used to offset the Inclusionary Housing Requirement.

Another issue that staff has asked council to consider is the view shed impact of the added height in the community benefit ordinance. Citizens from each Subcommunity should decide which lots are eligible for the additional height when considering the community benefit. This can be a new Appendix J. Who better, than the citizens living in those Subcommunities, would know where the desirable view sheds are that need to be preserved. For instance, one of the areas in the Gunbarrel Subcommunity where height exemptions are allowed under Appendix J is the southwest corner of Spine Road and Lookout Road where there presently is a bank and post office in single story buildings. The view of the foothills and mountains from Todd's coffee shop and King Soopers grocery store across the street from here is highly prized by the citizens who live in the area and therefore they would want that view shed preserved. Higher heights elsewhere in Gunbarrel would have less of an impact. A new Appendix J concerning height allowances can be drafted by the citizens for the Subcommunities in which they live. What I have seen happen in the past is that the view sheds in the eastern and northern sections of the city are not given the same consideration and protection as those in the southern and western sections of the city. I have heard comments that the higher buildings can be built in the east "where the views are not as important". I can say as a citizen who lives in Gunbarrel, that our view sheds are just as important to us as the view sheds further west and south are to the citizens living there. To be equitable, the view sheds of all areas of the city should get equal protection.

Requiring that only 6% or 9% of the bonus floor area obtained from the increased height and intensity allowance be used for the community benefit is laughable. Why don't you just give away the bank! What has made Boulder such a beautiful and desirable place to live is the hard work of many previous and present citizens who worked diligently to protect views, open space, historical buildings, and the character of Boulder. Now many high-tech, highly profitable businesses want to move here and many developers and investors want to make as much money as possible by building as much as possible to cash in on Boulder's appeal and character until they ultimately destroy it. The bonus floor area obtained should be divided either 60/40 or 50/50 with the 60 or 50 percent as the amount given to the community benefit. Otherwise, this measly amount of 6-9% of additional floor area provided in these developments does nothing and is just a drop in the bucket to offset the increase in population, traffic, and needs of the community for all this growth.

To sum all this up:

1) There should not be any cash-in-lieu option for this ordinance. The only way a development can get added height and intensity in its project (except for minor technical building problems such as fitting in a roof component or vent) is to provide a community benefit and provide that community benefit on-site. Remember this is a benefit for benefit situation and is not a "taking". The developer can build up to what is by-right in the land use designation and the zoning.

2) There should be no off-ramp option allowed and the community benefit space should be required to remain as a public community benefit for the public in perpetuity. There are very many needs for community spaces including for libraries, art centers, rec centers, day care centers, etc. that it should not be hard for the development to find a tenant for the community space.

3) The additional floor space obtained from the additional height and intensity allowance should be split 60/40 or 50/50 with 60% or 50% of that additional floor space be used for the community benefit.

4) Citizens in each subcommunity should decide which lots are acceptable for the increase in height and intensity to protect view sheds in their subcommunity. This can be a new Appendix J.

Thank you for your time in reviewing my comments concerning this important issue.

Donna George

From: Ferro, Charles
To: Guiler, Karl
Subject: FW: Destroying the city of Boulder
Date: Wednesday, March 31, 2021 8:27:05 AM

-----Original Message-----
From: Richard <larsonr1@juno.com>
Sent: Tuesday, March 30, 2021 9:18 PM
To: Council <council@bouldercolorado.gov>
Subject: Destroying the city of Boulder

External Sender

I read with dismay, council's willingness to grant exceptions to the current height limit ordinance. As I remember, the citizens of Boulder voted for this ordinance. I don't really understand why the council feels it can ignore the expressed wishes of the citizens.

Much of the the city looks like crap except for the LR-1 zoned areas and you seem hell-bent on destroying them as well.

Leave the height limit as is!

R.T. Larson

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This email has been checked for viruses by Avast antivirus software.
https://gcc02.safelinks.protection.outlook.com/?
url=https%3A%2F%2Fwww.avast.com%2Fantivirus&data=04%7C01%7CGuilerK%40bouldercolorado.gov%7Cc5691089ba92495d01e908d8f4510d6b%7C0a7f94bb40af4edcafad2c1af27bc0f3%7C0%7C0%7C637527976249561133%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=14yf152SgOAkbgbcJvysgkdmi4JAKqBx2qBNkMWCnXI%3D&reserved=0

From: Mike Chiropolos
To: boulderplanningboard; Guiler, Karl
Subject: Community Benefits: what about a Hub modeled on Carbondale and other towns?
Date: Thursday, April 01, 2021 3:46:55 PM

External Sender

Dear Planning Board Members:

I learned about the "community benefits" effort after receiving an invitation from Karl Guiler in the Planning Department to join an ad-hoc citizens group to share our perspective. Before that, I hadn't heard about it.

First, Karl has been great: knowledgeable, responsive, articulate, reasoned, a good listener, down the line. It's been a pleasure to interface with him and other interested and engaged residents.

Second, my first take on the current proposal was confusion. Lots of questions. Lack of understanding. Starting with basic questions like what's the problem we're trying to solve, what's being proposed, how does the current proposal address the "problem", and how has it worked elsewhere if it's been tried.

The consultant's report went right over my head. It was full of jargon and formula and assumptions that made it inaccessible.

Third, during the second virtual meet with Karl I started to get what was happening. My initial reaction was that most Boulder residential neighborhoods aren't looking for heights greater than three stories, and that the proposed uses or benefits could be accommodated in three stories? That was my takeaway from Boulder Zero in SoBo next to Martin Acres. Local concerns appeared to be responsive to the nature of the proposed uses, not the height, density or footprint.

Fourth, the existing proposal is somewhat complex and Byzantine. Although well-meaning, one might ask who and if it would work on the ground. Why not take an ad-hoc approach on obvious re-developments such as Diagonal Plaza and Ball – that make sense for those sites. Work with developers and neighbors and expert staff to get it right. Innovation and creativity, not rules and complex formulas.

Should the code be simplified and easier to navigate, or more complex and challenging for citizens?

Fifth, a proposal. I was reminded of Carbondale's Community Benefits Hub, an amazingly vibrant and popular amenity in that town of 25,000.

Might one or more such hubs in Boulder be a better approach, in lieu of scattered lower rent floor space at 5% of 75% or 9% of 50% (or whatever is proposed) scattered across the city, in high-end condos where the NGOs and nonprofits who work there can't afford to live?

Here's the website of Carbondale's hub:

Home - Third Street Center

Staff and other stakeholders could tweak and adjust it for Boulder, with room for on- or off-site additions and the possibility of multiple locations, ideally incorporating green space and public parks on-site as in Carbondale.

Worth a look?

Finally, I'd have sent this idea earlier but it only came to me during the call with Karl and Lisa Spalding yesterday. Lisa had some great ideas from other places which I haven't had the time to research yet.

Thank you for serving and striving to make Boulder a better place true to the values that animate the Boulder Valley Comp Plan.

Best,

/s
Mike Chiropolos
Attorney & Counselor, Chiropolos Law

3325 Martin Drive - Boulder CO 80305
mike@chiropoloslaw.com
303-956-0595

"Because it's not the size of the firm in the fight, it's the size of the fight in the firm"

From: Kathleen McCormick
To: boulderplanningboard; Council
Cc: Rivera-Vandermyde, Nuria; Guiler, Karl; Devin Hughes; Bruce Borowsky; Georgia Schmid; Eboni Freeman; Maria Cole; Caroline Kert
Subject: Support for Community Benefits Ph II for Arts + Culture
Date: Thursday, June 03, 2021 5:13:52 PM

External Sender

Dear Boulder Planning Board and City Council Members,

I write to ask for your support for Phase II of Community Benefits. The Boulder Arts Commission and the Boulder Office of Arts + Culture have worked on this effort for three years with Karl Guiler and colleagues at Planning & Development Services, and BAC unanimously has approved the concept and uses of arts and culture as a community benefit with new development. BAC supports this potential to provide spaces that offer direct benefits to artists, other creative professionals, and arts/culture organizations while also encouraging community participation and enjoyment in the arts.

Boulder's nonprofit arts/culture industry (pre-COVID) delivered $70 million in annual economic activity; more than $2 million in local tax revenues and $2 million in state tax revenues; and 4,500 jobs representing about 3.5 percent of the city's workforce. Boulder has the third-highest concentration of professional artists in the U.S. for a city its size (NEA).

However, working as an artist/creative professional in Boulder comes at a high cost. Artists and other creative professionals are finding it increasingly difficult to become established and stay in Boulder and to find affordable studio, performance, exhibition, and live-work spaces. Affordability of housing and commercial spaces is the primary concern of Boulder's artists, nearly 80 percent of whom have second jobs to make ends meet, and 36 percent of whom have household incomes below the living wage.

In Downtown, the NoBo Arts District, University Hill, and other parts of the City, new infill development with art studios, performance spaces, galleries, gathering places, and shops for small local businesses would boost incomes for artists and Boulder's draw as a creative-culture center.

Arts/culture as a community benefit could provide space for nonprofit arts organizations and activate housing, offices, hotels, restaurants, plazas, and shopping areas. Research shows that creative placemaking--arts/culture integrated with new development or redevelopment--can produce excellent economic, social, and equity returns for cities, especially when combined with affordable housing, commercial space, and support services (see *Creative Placemaking: Sparking Development with Arts and Culture*, Urban Land Institute 2020).

For the sake of our city's creative economy and our enjoyment of a vibrant arts and culture environment, please support Phase II Community Benefits. These are development incentives, not requirements, that will support a healthy and resilient community as we recover from COVID-19 and plan for the city we want to live and work in, activated by arts and culture.

With gratitude for all your efforts for the Boulder community,
Kathleen McCormick, Chair, Boulder Arts Commission
303.817.2088; fonthead1@gmail.com

ORDINANCE 8471

AN ORDINANCE AMENDING TITLE 9, "LAND USE CODE," B.R.C. 1981, BY EXTENDING THE APPENDIX J, "AREAS WHERE HEIGHT MODIFICATIONS MAY BE CONSIDERED" MAP EXPIRATION DATE FROM AUGUST 31, 2021 TO DECEMBER 31, 2021; AND SETTING FORTH RELATED DETAILS.

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

Section 1. Section 9-2-14, "Site Review," B.R.C 1981, is amended as follows:

……

(b) Scope: The following development review thresholds apply to any development that is eligible or that otherwise may be required to complete the site review process:

(1) Development Review Thresholds:

……

(E) Height Modifications: A development which exceeds the permitted height requirements of Section 9-7-5, "Building Height," or 9-7-6, "Building Height, Conditional," B.R.C. 1981, is required to complete a site review and is not subject to the minimum threshold requirements. No standard other than height may be modified under the site review unless the project is also eligible for site review. A development that exceeds the permitted height requirements of Section 9-7-5 or 9-7-6, B.R.C. 1981, must meet any one of the following circumstances in addition to the site review criteria:

(i) The height modification is to allow a roof that has a pitch of 2:12 or greater in a building with three or fewer stories and the proposed height does not exceed the maximum height permitted in the zoning district by more than ten feet.

(ii) The building is in the Industrial General, Industrial Service,

or Industrial Manufacturing Zoning District and has two or fewer stories or the height is necessary for a manufacturing, testing, or other industrial process or equipment.

(iii) The height modification is to allow up to the greater of two stories or the maximum number of stories permitted in Section 9-7-1, B.R.C. 1981, in a building and the height modification is necessary because of the topography of the site.

(iv) At least forty percent of the floor area of the building is used for units that meet the requirements for permanently affordable units in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981.

(v) The height modification is to allow an emergency operations antenna.

(vi) The building or use is located in an area designated in Appendix J, "Areas Where Height Modifications May Be Considered," and meets the requirements of Paragraph 9-2-14(h)(2)(K), "Additional Criteria for Height Bonuses and Land Use Intensity Modifications for Properties Designated Within Appendix J," B.R.C. 1981. [1] []

……

Footnotes:

[1] The limitation of this subparagraph (vi) to a building or use located in an area designated in Appendix J expires on ~~August 31, 2021~~ December 31, 2021 per Ordinance No. ~~8453~~ 8471 .

Section 2. This ordinance amends the Footnote 1, in Section 9-2-14, "Site Review," B.R.C. 1981, expiration date from August 31, 2021 to December 31, 2021 and Ordinance 8453 which established this expiration date.

Section 3. The council orders that the limitation of Subparagraph 9-2-14(b)(1)(E)(iv), B.R.C. 1981, to a building or use located in Appendix J, "Areas Where Height Modifications May Be Considered," shall expire on December 31, 2021, after which time the standards established in Ordinance 8469 shall apply. Ordinance 8469 will take effect on January 1, 2022. The council intends that the city create and adopt procedures before January 1, 2022, that will enable implementation of the standards established in Ordinance 8469 when it takes effect.

Section 4. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 5. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 15th day of June 2021.

Sam Weaver,
Mayor

Attest:

Elesha Johnson,
City Clerk

READ ON SECOND READING, PASSED AND ADOPTED this 13th day of July 2021.

Sam Weaver,
Mayor

Attest:

Elesha Johnson,
City Clerk

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