



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: June 21, 2022

AGENDA TITLE

Second reading and consideration of a motion to adopt by emergency measure Ordinance 8517 amending Chapter 8-6, "Public Right-of-way and Easement Encroachments, Revocable Permits, Lease and Vacations," B.R.C. 1981, by adding a new Section 8-6-12, "Outdoor Seating in Public Rights of Way and Private Property," B.R.C. 1981, allowing for a five-year pilot program that waives certain code requirements and allows outdoor seating through issuance of city revocable permits, and amending Chapter 20, "Fees," B.R.C. 1981, by amending Section 4-20-20, "Revocable Right of Way Permit/Lease Application Fee," B.R.C. 1981, and adding a new Section 4-20-76, "Outdoor Seating Pilot Program Infrastructure Fee," B.R.C. 1981, setting forth applicable fees associated with the five year pilot program; and setting forth related details.

PRESENTERS

Nuria Rivera-Vandermyde, City Manager
Chris Meschuk, Deputy City Manager
Sandra Llanes, Deputy City Attorney
Cris Jones, Interim Director of Community Vitality
Natalie Stiffler, Interim Director of Transportation & Mobility
David Gehr, Interim Director of Planning and Development Services
Devin Joslin, Civil Engineering Senior Manager
Edward Stafford, Civil Engineering Senior Manager
Charles Ferro, Planning Senior Manager
Mishawn Cook, Licensing Manager
Laurel Witt, Assistant City Attorney
Teresa Pinkal, Community Vitality Senior Manager
Jennifer Pinsonneault, Community Vitality Senior Program Manager
Reegan Brown, Community Vitality Senior Project Manager

EXECUTIVE SUMMARY

At the last Outdoor Dining Pilot Program update during the City Council meeting on April 19, 2022, council was provided with progress updates on the proposed pilot program and west end closure to vehicle traffic. This information can be found in the April 19 council meeting agenda. Since that time, with council support, staff has formalized the Outdoor Dining Pilot Program (Pilot Program) rules and has drafted ordinance language to include the consideration of a motion to publish amendments to the Boulder Revised Code. This is the next step in implementing the council-supported outdoor dining Pilot Program. These amendments will allow restaurants, brewpubs, taverns, breweries, distilleries or wineries (collectively referred to as “restaurant”) to establish outdoor dining areas in the public right of way (ROW), a public easement, or in a parking area, required yard or open space area on private property.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to adopt by emergency measure Ordinance 8517 amending Chapter 8-6, “Public Right-of-way and Easement Encroachments, Revocable Permits, Lease and Vacations,” B.R.C. 1981, by adding a new Section 8-6-12, “Outdoor Seating in Public Rights of Way and Private Property,” B.R.C. 1981, allowing for a five-year pilot program that waives certain code requirements and allows outdoor seating through issuance of city revocable permits, and amending Chapter 20, “Fees,” B.R.C. 1981, by amending Section 4-20-20, “Revocable Right of Way Permit/Lease Application Fee,” B.R.C. 1981, and adding a new Section 4-20-76, “Outdoor Seating Pilot Program Infrastructure Fee,” B.R.C. 1981, setting forth applicable fees associated with the five year pilot program; and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic** – The continuation of outdoor dining extensions may contribute to a positive economic impact by allowing businesses to increase their sales through expanded outdoor seating. The increased economic activity may also allow businesses to retain and hire additional staff. This post-pandemic model for reimagining how we utilize our public spaces also promotes a diverse and vibrant economy that supports businesses and residents alike.
- **Environmental** – While no specific environmental impact assessment has been completed related to this work, staff appreciates that additional energy

consumption has resulted from heating, air conditioning, and lighting of some outdoor dining extensions.

- **Social** – Based on feedback received in various surveys, input from the Downtown Management Commission (DMC), and the Center for People with Disabilities, staff appreciates that outdoor dining extensions have some social impacts as a result of restricted access to the public ROW for people with disabilities, cyclists, transit users, and people from diverse socioeconomic backgrounds who have experienced access challenges to patronize businesses.

OTHER IMPACTS

- **Fiscal** – Council approved recommendations for citywide ARPA funding including \$250,000 for a Pilot Program. The Central Area General Improvement District (CAGID) has also allocated \$50,000 of funding for infrastructure purchase. Additionally, the Community Vitality and Transportation and Mobility Departments are currently pursuing a Colorado Department of Transportation (CDOT) Revitalizing Main Streets grant to further offset possible capital costs. Staff has not yet been able to estimate the significant resources that will be required to adequately address safety, accessibility, equity, and operational challenges associated with the Pilot Program.
- **Staff time** – The proposed Pilot Program will require significant staff resources from a variety of departments to fully develop, effectively implement, and manage. Specifically, Planning and Development Services, Regulatory Licensing, Public Safety, Transportation and Mobility, and Community Vitality staff will coordinate to ensure the Pilot Program operations are running smoothly, assist with any potential troubleshooting, and provide general oversight and support.

RESPONSES TO QUESTIONS FROM COUNCIL AGENDA COMMITTEE

N/A

BOARD AND COMMISSION FEEDBACK

Given that the originally proposed Pilot Program was geographically focused on downtown, staff solicited feedback from the Downtown Management Commission (DMC) during meetings on Nov 9, 2021 and March 8, 2022. During the DMC meeting on March 8, members of the commission agreed that the city's responsibility is to serve the community and restaurants that have been affected by COVID-19 disproportionality, pointing to other communities that have leased the public ROW for outdoor dining purposes. Concerns around equity were raised, pointing to successful restaurants that have benefited greatly from outdoor dining programs, omitting smaller and less profitable restaurants from being able to utilize public space. It was clarified that ARPA dollars could be allocated to this program and state grant dollars, if received, could be used to reduce the cost burden to restaurants for the infrastructure cost. The concept of a temporary modification Pilot Program was also discussed with the Beverage Licensing Authority at their hearing on Jan 19, 2022. A follow up letter was submitted to the Beverage Licensing Authority on May 18, 2022.

PUBLIC FEEDBACK

No public feedback was solicited specifically in regard to the ordinance language. However, the project team provided regular updates on the Pilot Program and gathered feedback from restaurants in collaboration with the Downtown Boulder Partnership. Staff also provided regular updates to the Downtown Management Commission, the Boulder Junction Access District commissions, the University Hill Commercial Area Management Commission, the Planning Board, the Transportation Advisory Board, and the Beverage Licensing Authority.

BACKGROUND

Prioritizing public safety concerns arising from the COVID-19 pandemic, City of Boulder emergency orders 2020-16 and 2020-18 (as amended) were enacted in alignment with guidance from federal, state and county public health agencies. Those emergency orders, and therefore the Boulder Business Recovery Program, have been extended and will now expire on Aug 31, 2022. Through national research and public outreach, as well as direction from council provided during the City Council meeting on April 19, city staff are moving forward with a proposal for implementation of a Pilot Program for outdoor dining extensions in the public right of way and on private property to begin after the expiration of the emergency orders. One of the first steps in successfully implementing this Pilot Program is to establish an ordinance amending Chapter 8-6, “Public Right –of Way and Easement Encroachments, Revocable Permits, Lease and Vacations,” B.R.C. 1981, by adding a new section 8-6-12, “Outdoor Dining in Public Rights-of-Way and Private Property,” B.R.C. 1981, allowing for a five-year pilot program that waives certain code requirements and allows outdoor dining through issuance of city revocable permits, and amending chapter 20, “Fees,” B.R.C. 1981, by amending section 4-20-20, “Revocable Right of Way Permit/lease application fee,” B.R.C. 1981, and adding a new section 4-20-76, “Outdoor Dining Pilot Program Infrastructure Fee,” B.R.C. 1981, setting forth applicable fees associated with the five-year pilot program. Proposed Ordinance 8517 can be found in **Attachment A**.

ANALYSIS

Outdoor Dining Pilot Program Guidelines

The intent of the Pilot Program is to consider several influencing factors that emerged during the rapid expansion of outdoor dining during the COVID-19 pandemic. These factors were identified by key stakeholders including participating business owners, the Downtown Management Commission (DMC), the Center for People with Disabilities, and city staff. For the purposes of the Pilot Program, an encroachment means a restaurant, brewpub, tavern, brewery, distillery or winery (collectively referred to as “restaurant”) outdoor dining area located in the public right of way, a public easement, or in a parking area, required yard or open space area on private property. The Pilot Program allows restaurants to establish outdoor dining areas in the public right of way, a public easement, or on private property for the purpose of outdoor dining subject to the following conditions and to allow waiver or modification of certain requirements under the code that would otherwise have to be complied with to establish an outdoor dining area. Through an

evaluation and planning process, staff identified four primary Pilot Program considerations including safety, accessibility, equity, and operations which were provided to council in an information item in the Feb 1, 2022, meeting packet. Additionally, staff utilized the Racial Equity Instrument (see **Attachment B**) to evaluate this program more holistically. These considerations are guiding the creation of the Pilot Program guidelines and requirements (see **Attachment C**). The ordinance provides the legal framework for the program and the Pilot Program Guidelines and Requirements provide the details and requirements of the program. Once final, the Pilot Program Guidelines and Requirements will become the basis for a city manager rule. The following sections outline the considerations for the Pilot Program guidelines and requirements.

Safety

The Pilot Program includes safety considerations for the design and durability of infrastructure. Key safety elements identified by staff include durability against vehicle traffic, as well as weather elements. Metal planter boxes capable of holding approximately ½ cubic yard of soil and/or plants and reflective markers are required to be continuously placed (no gaps wider than 18”) along infrastructure located adjacent to active traffic for safety purposes. In addition, other types of barriers, rails, or standalone parklet construction materials certified as M30/P1 in accordance with American Society of Testing and Materials (ASTM) F2656 testing procedures may be considered acceptable, upon review of documentation verifying crash test certification. Building code requirements will be enforced and restaurants would be required to maintain a certificate of insurance listing the City of Boulder as additionally insured. Designated service areas and hard fencing or railings will be required for proper alcohol control and will be compliant with the state liquor code requirements.

Accessibility

Infrastructure utilized in the Pilot Program must be compliant with the Americans with Disabilities Act (ADA) to include a flush transition from the sidewalk and curb into the dining area, as well as a level and slip-resistant surface in the dining area. Further, road access, defined as a minimum 20-foot-wide unobstructed fire apparatus access road with an unobstructed vertical clearance of 15 feet for emergency vehicles must be maintained. Additional accessibility consideration include infrastructure that does not obstruct the visibility of storefronts or impact traditional loading zones.

Equity

The equity considerations address infrastructure footprints, participation requirements for restaurants (including eligibility requirements for subsidies), special events, and participation in a competitive marketplace. All participating restaurants must have available space within 150 feet of their entrances, either within space previously allocated for parking or other unencumbered open spaces. The maximum size limit for outdoor extensions associated with the Pilot Program for any eligible business is 500 square feet (sf). For Pilot Program extensions in the public ROW, no more than a total of 1,000 sf would be permitted for all combined extensions along any typical block face or any full block of the Pearl Street Mall. Outdoor dining extensions on private property would also be restricted to 500 sf per restaurant; however, there would be no cap on the number of

restaurants allowed to expand or the cumulative amount of private property permitted for expansion. Height restrictions of three feet and prohibition of closed in structures and roofs is required out of safety, consideration for other businesses, as well as wind and snow load requirements.

In order to be eligible for a subsidy, restaurants must demonstrate they have spent funds on permitted outdoor dining infrastructure prior to the Pilot Program launch. This eligibility requirement acknowledges the efforts of restaurants to adapt through the most difficult times of the pandemic. While special events will be prohibited from utilizing space allocated to outdoor dining in existing on-street parking spaces, restaurants on the Pearl Street Mall will be required to temporarily remove and store parklet infrastructure on private property if/when any city permitted special events seek to utilize those spaces for no more than 10 days during any given month.

Operations

The Pilot Program shall be for a five-year period beginning on Sept. 1, 2022, and ending on Oct. 31, 2027, unless extended by subsequent City Council action, and will include a standard revocable permit and city and state alcohol licensing requirements. The Pilot Program requires that infrastructure consists of modular pieces that can accommodate emergency, maintenance, repair, and utility access needs. To ensure a smooth and safe transition out of pandemic-driven practices toward a more scalable and sustainable operation, the Pilot Program offers two financing options to achieve infrastructure compliance for outdoor dining extensions in the public ROW, as well as an option for outdoor extensions on private property as outlined in **Table 2**.

TABLE 2: FINANCING OPTIONS

<i>Option A: Individual Program (Public ROW)</i>	
Infrastructure	• Pilot Program compliant infrastructure purchased individually by restaurant
Pilot C (Annual)	• On Mall: \$18.76/sf, Off Mall \$13.13/sf (Annual Revocable Permit)
Subsidy	• Eligible restaurants reimbursed for a portion of infrastructure costs (up to \$2,500)
Install/Storage	• Restaurant obligation
Application Fee	• Initial application: \$650 • Resubmittal within four weeks of initial application: \$325 • Renewal: \$113
<i>Option B: Bulk Program (Public ROW)</i>	
Infrastructure	• Pilot Program compliant infrastructure purchased in bulk by city and leased to restaurants for 5 years
Pilot Cost (Annual)	• On Mall: \$18.76/sf, Off Mall \$13.13/sf (Annual Revocable Permit) • On Mall: \$16.25/sf, Off Mall \$21.87/sf (Pilot Program Infrastructure Fee)
Subsidy	• Restaurant lease reflects up to 50% discount on infrastructure cost
Install/Storage	• City obligation
Application Fee	• Initial application: \$650 • Resubmittal within four weeks of initial application: \$325 • Renewal: \$113
<i>Option C: Individual Program (Private Property)</i>	

Infrastructure	• Pilot Program compliant infrastructure purchased individually by restaurant
Pilot Cost (Annual)	• None
Subsidy	• Eligible restaurants reimbursed for a portion of infrastructure costs (up to \$2,500)
Install/Storage	• Restaurant obligation
Application Fee	• Initial application: \$650 • Resubmittal within four weeks of initial application: \$325 • Renewal: \$113

Option A seeks to support restaurants to become compliant with the Pilot Program requirements while allowing flexibility for coordinating personal purchase of infrastructure. Under Option A, restaurants would go through the standard revocable permit evaluation process and be responsible for standard fees. Restaurants would be eligible for a partial infrastructure reimbursement in recognition of the capital expense used to become compliant with the Pilot Program. Option A places the responsibility for temporary removal and storage for maintenance and special events on the restaurants.

Option B provides an opportunity to realize bulk purchase discounts for city approved infrastructure. This option spreads the cost over five years through a lease back to the restaurant. Operational savings are further realized under Option B as the infrastructure has already been vetted by city staff which will streamline the revocable permit process. Under Option B, restaurants will pay the revocable permit fee and the Pilot Program infrastructure fee. Program fees will be general fund revenue and may be used to recoup capital costs, pay for storage and set up associated with special events and maintenance, and aid ongoing program operations.

Option C is only applicable to outdoor dining extensions on private property. Through the Pilot Program, outdoor dining extensions on private property are allowable for eligible restaurants. Under this option, no annual revocable permit fee will be required but businesses would still need to apply to participate in the Pilot Program and enter into an agreement with the city regarding Pilot Program requirements and conditions. A subsidy will be available for eligible restaurants.

Pilot Program Subsidy

Subsidies associated with the Pilot Program will be funded through a variety of sources including ARPA funds, district budget funding, grant funding and general fund appropriation. The council approved recommendations for citywide ARPA funding include \$250,000 for an outdoor dining pilot. The Central Area General Improvement District (CAGID) has also allocated \$50,000 of funding for infrastructure purchase. The Community Vitality and Transportation and Mobility departments are further interested in pursuing a Colorado Department of Transportation Revitalizing Main Streets grant. The restaurant community has to-date, utilized their own resources to address pandemic emergency orders. Staff recommends subsidies as outlined in Section 1 of the analysis to encourage compliance and uniformity to the Pilot Program.

NEXT STEPS

If the motion passes on second reading and is adopted by emergency, the ordinance will be effective immediately upon passage, and staff will continue to work toward implementing the Pilot Program. The initial application period will commence June 27, 2022, and end July 15, 2022, at which time the city will begin the purchasing process for parklet infrastructure as detailed in the Outdoor Dining Pilot Program Guidelines (**Attachment C**). The city will then initiate a two-phase transition process to bring restaurants into compliance with the Pilot Program. Phase I will allow restaurants which elect not to participate in the Pilot Program to remove infrastructure from the public right of way by August 31, 2022. Phase II will allow restaurants which are participating in the Pilot Program to transition infrastructure through October 31, 2022, in order to accommodate infrastructure purchase lead times. Once the initial Pilot Program is established, an annual application period will run from February 1 – March 1 beginning in 2023 and annually thereafter for the duration of the program.

ATTACHMENTS

A – Proposed Ordinance 8517

B – Racial Equity Instrument

C – Outdoor Dining Pilot Program Guidelines

ORDINANCE 8517

AN ORDINANCE AMENDING CHAPTER 8-6, "PUBLIC RIGHT-OF-WAY AND EASEMENT ENCROACHMENTS, REVOCABLE PERMITS, LEASE AND VACATIONS," B.R.C. 1981, BY ADDING A NEW SECTION 8-6-12, "OUTDOOR SEATING IN PUBLIC RIGHTS OF WAY AND PRIVATE PROPERTY," B.R.C. 1981, ALLOWING FOR A FIVE-YEAR PILOT PROGRAM THAT WAIVES CERTAIN CODE REQUIREMENTS AND ALLOWS OUTDOOR SEATING THROUGH ISSUANCE OF CITY REVOCABLE PERMITS, AND AMENDING CHAPTER 20, "FEES," B.R.C. 1981, BY AMENDING SECTION 4-20-20, "REVOCABLE RIGHT OF WAY PERMIT/LEASE APPLICATION FEE," B.R.C. 1981, AND ADDING A NEW SECTION 4-20-76, "OUTDOOR SEATING PILOT PROGRAM INFRASTRUCTURE FEE," B.R.C. 1981, SETTING FORTH APPLICABLE FEES ASSOCIATED WITH THE FIVE YEAR PILOT PROGRAM; AND SETTING FORTH RELATED DETAILS.

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

Section 1. A new Section 8-6-12, "Outdoor Seating in Public Rights of Way and Private Property," B.R.C. 1981, is added to read as follows:

8-6-12. - Outdoor Seating in Public Rights of Way and Private Property.

- (a) Purpose. The purpose of this section is to establish a city pilot program that allows restaurants, brewpubs, taverns, breweries, distilleries or wineries to use areas in the public right-of-way, a public easement, or on private property for the purpose of outdoor seating subject to the following conditions and to allow waiver or modification of certain requirements under this code that would otherwise have to be complied with to establish an outdoor seating area. For the purposes of this section, an encroachment means a restaurant, brewpub, tavern, brewery, distillery or winery with an outdoor seating area in the public right-of-way, a public easement, or in a parking area, required yard or open space area on private property.
- (b) Prohibition. No person shall place, maintain, or continue to use or maintain any encroachment in the public right-of-way, a public easement or on private property unless such person has a revocable permit granted under this section or approvals granted under Chapter 8-6, "Public Right-of-way and Easement Encroachments, Revocable Permits, Leases and Vacations," and Title 9, "Land Use Code," B.R.C. 1981, as applicable. No person shall fail to comply with any conditions of approval or requirement in any city manager rule.

- (c) **Application Requirements.** An applicant for permission to establish an encroachment in the public right-of-way, public easement, or on private property requiring approval of a modification or waiver of existing laws or development approvals related to parking areas or yard areas shall:
- (1) File a written application on a form provided by the city manager that includes the following: the date, the name of the applicant, the exact location of the proposed encroachment, the type of encroachment and such other information as the city manager may deem necessary;
 - (2) File evidence of and maintain liability insurance meeting the requirements of Section 4-1-8, "Insurance Required," B.R.C. 1981, for any use of the public right-of-way or public easement area;
 - (3) Pay the fee prescribed by Section 4-20-20, "Revocable Right of Way/Lease Application Fee," Section 4-20-11, "Mall License and Permit Fees," and Section 4-20-76, "Outdoor Seating Pilot Program Infrastructure Fee," B.R.C. 1981, as applicable;
 - (4) In the case of private property, proof of permission from property owner; and
 - (5) Comply with all requirements in this code, except as modified by this section and any applicable city manager rule.
- (d) **Approval Requirements.** The city manager may issue a revocable permit under this section for an encroachment for a period not to exceed three years, upon finding that:
- (1) The encroachment is designed in a manner to be temporary in nature or easily removed;
 - (2) The encroachment does not constitute a traffic or other hazard;
 - (3) In the case of public property, the encroachment does not destroy or impair the public's use of the land for its intended purposes or serves a public purpose that cannot otherwise be accomplished without such minor impairment;
 - (4) The encroachment is located in portions of the public right-of-way or public easement that are designated by the city manager or in a city manager rule, in locations that balance the desire for outdoor dining while not adversely impacting the delivery, maintenance or use of municipal services; accessibility to transportation amenities; general public health, safety and welfare; any other public purpose or other lawfully established uses;
 - (5) The encroachment on a sidewalk in commercial areas maintains a minimum clearance of eight feet vertically and six feet horizontally of unobstructed pedestrian way as set forth in Section 8-6-8(f)(9), "Exempt Encroachments," B.R.C. 1981. The requirements of this paragraph may be modified by the city manager if reasonable passage is provided on the sidewalk and the safety of pedestrians, bicyclists and motorists is not impaired;
 - (6) The outdoor seating area includes curb cuts and pedestrian ramps to allow people of all abilities to access public spaces;
 - (7) Proper signage is posted that allows people of all abilities to minimize out of direction travel if or when accessible routes are not available;
 - (8) The applicant meets the requirements in this section; and
 - (9) The applicant meets of the requirements of any city manager rule, including without limitation, size limitations, location, and design guidelines.

- (e) Waiver or Modification of Standards. The city manager may waive or modify conditions of an existing development approval and waive or modify any standard in this code including without limitation the following code requirements:
 - (1) Chapter 9-6, "Use Standards," B.R.C. 1981, including specific use standards applicable to restaurants, brewpubs, taverns, breweries, distilleries, and wineries;
 - (2) Section 9-2-14, "Site Review," B.R.C. 1981, including requirements for minor modifications or amendments;
 - (3) Section 9-2-15, "Use Review," B.R.C. 1981;
 - (4) Section 9-9-6, "Parking Standards," B.R.C. 1981;
 - (5) Section 9-9-12, "Landscaping and Screening Standards," B.R.C. 1981;
- (f) The manager may waive or modify any standard in this code or a development approval upon finding:
 - (1) The standard is met with an equivalent approach or a condition of approval addressing the purpose and intent of the regulatory requirements; or
 - (2) The use is compatible with uses in the surrounding area, has minimal impacts on uses in the surrounding area, and is consistent with preserving the public health, safety and welfare of the employees and patrons of the restaurant, brewpub, tavern, brewery, distillery, winery, visitors to the area, and users of surrounding properties.
- (g) Conditions of Approval. The city manager may place conditions of approval on any permit granted pursuant to this section to ensure that the use is compatible with uses in the surrounding area, has minimal impacts on uses in the surrounding area, and is consistent with preserving the public health, safety and welfare of the employees and patrons of the restaurant, brewpub, tavern, brewery, distillery, winery, visitors to the area, and users of surrounding properties.
- (h) Rulemaking. The city manager is authorized to adopt rules necessary to implement the purpose of this section and the pilot program pursuant to Chapter 1-4, "Rulemaking," B.R.C. 1981.
- (i) Pilot Program Duration. The pilot program shall be for a five-year period beginning on September 1, 2022 and ending on October 31, 2027 unless extended by subsequent city council action.

Section 2. Section 4-20-20, "Revocable Right of Way Permit/Lease Application Fee,"

B.R.C. 1981, is amended to read as follows:

- (a) An applicant for a revocable right-of-way permit shall pay:
 - (1) Initial application: \$650.
 - (2) Resubmittal within four weeks of initial application: \$325.
 - (3) Renewal: \$113.
- (b) An applicant for a revocable right-of-way lease shall pay:
 - (1) Initial application: \$750.
 - (2) Resubmittal within four weeks of initial application: \$375.
 - (3) Renewal: \$150.
- (c) An applicant for an encroachment investigation shall pay the following fees:
 - (1) Residential encroachment: \$708.

- (2) Commercial encroachment: \$1,415.
- (d) An applicant for an encroachment off the Pearl Street Mall shall pay an annual fee of \$13.13 per square foot of leased area.
- (e) An applicant for a monitoring well encroachment shall pay \$530 per well per year.
- (f) An applicant for a residential encroachment shall pay an annual fee of \$100.
- (g) An applicant for an encroachment for a telecommunication conduit crossing as set forth in Subsection 8-6-6(j), "Leases for Point-to-Point Telecommunication Conduit Crossings," B.R.C. 1981, shall pay \$18.81 per lineal foot of the conduit crossing per year.
- (h) An applicant for a revocable permit on private property pursuant to Section 8-6-12, "Outdoor Seating in Public Rights of Way and Private Property," B.R.C. 1981, shall pay:
 - (1) Initial application: \$650.
 - (2) Resubmittal within four weeks of initial application: \$325.
 - (3) Renewal: \$113.
- (i) Applications for any other encroachments not covered by this section will be reviewed and assessed a fee designed to recover city costs associated with the review and inspection.

Section 3. A new Section 4-20-76, "Outdoor Seating Pilot Program Infrastructure Fee,"

B.R.C. 1981, is added to read as follows:

4-20-76. - Outdoor Seating Pilot Program Infrastructure Fee.

An applicant for the Outdoor Seating Pilot Program as set forth in Section 8-6-12, "Outdoor Seating in Public Rights of Way and Private Property," B.R.C.1981, shall pay the applicable application fee and revocable permit fee as set forth in Section 4-20-20, "Revocable Right of Way Permit/Lease Application Fee," or 4-20-11, "Mall License and Permit Fees," B.R.C. 1981, and may, if located in the public right-of-way or a public easement, pay an annual infrastructure fee as follows:

- (1) On Mall: \$16.25/sf.
- (2) Off Mall: \$21.87/sf.

Section 4. The City Council finds this ordinance is necessary for the immediate preservation of public peace, health, safety, and property justifying the adoption of this ordinance as an emergency measure. The council declares this to be an emergency measure due to the need to have this ordinance adopted prior to the expiration of Emergency Order 2020-18, as amended, which expires at 11:59 pm on August 31, 2022.

Section 5. 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 6. 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 7th day of June 2022.

Aaron Brockett,
Mayor

Attest:

City Clerk

READ ON SECOND READING, PASSED AND ADOPTED AS AN EMERGENCY
MEASURE BY TWO-THIRDS OF COUNCIL MEMBERS PRESENT this 21st day of June
2022.

Aaron Brockett,
Mayor

Attest:

City Clerk



Racial Equity Instrument *to assess policies, programs and budget decisions*

City of Boulder Racial Equity Instrument

The City of Boulder will advance racial equity in all elements of our local government. The city defines racial equity as the elimination of racial disproportionalities so that race can no longer be used to predict success, and the ability of all community members, regardless of race, to experience a high quality of life and access to opportunity.

The Racial Equity Instrument is a tool to help staff who have completed the “Advancing Racial Equity: the Role of Government” training improve city operations by viewing and planning projects through a racial equity lens. It establishes a process and set of questions to guide the development, implementation and evaluation of City of Boulder policies, programs, practices, procedures, and budget issues to advance racial equity.

When Do I Use It?

Early in any Decision-Making Process. Apply the instrument to any decision-making process regardless of size or scope, to align with racial equity goals and desired outcomes.

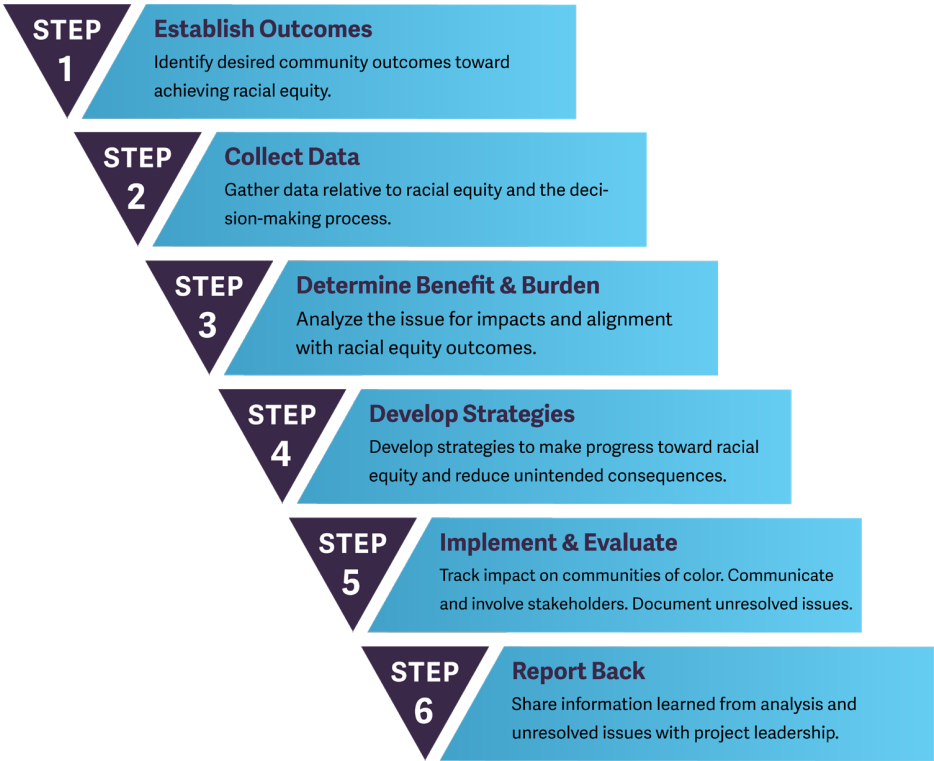
How Much Time Does It Take?

Enough time to ensure a comprehensive racial equity analysis. Scale the time allocation to fit the complexity of the decision-making process. A concise, simple internal decision might only require 4-5 total hours. A more complex departmental or city-wide project decision might require several months or more to complete.

How Do I Use It?

With inclusion. The six-step analysis should be performed by a group of people with different racial perspectives to check our assumptions and improve the way we do business.

Step by step. The Racial Equity Instrument is made up of six steps:



Title: Outdoor Dining Pilot Program

Department: Multiple: CV, P&DS,

Contact: Reegan Brown, CV Sr. Program Manager
BrownR@bouldercolorado.gov
720-660-9334

☐ Policy ☒ Program ☐ Budget Issue

Step 1: Establish Outcomes.

Identify the desired result, outcomes and indicators toward achieving racial equity.

Desired Community Result: community-level condition of well-being. "All Boulder residents..."

Organizational Outcome: what will happen as a result of an action under the city's control.

Indicator: a measure which helps quantify the achievement of a desired result and outcomes.

Example desired community result: All babies are born healthy.

Example organizational outcome: Reduced cost barriers for prenatal health care and other direct services; increased cultural competence and health equity practices among service providers; increased city support for social determinants of health.

Example indicators: Positive changes in maternal mortality disaggregated by race, prenatal health by neighborhood, healthy births by race, infant health by race and by neighborhood.

1a. What are the desired community results?

Restaurants can expand their operations and the public right of way is reimagined as part of Boulder's broader post-pandemic recovery.

1b. What are the intended organizational outcomes?

Restaurants have a greater opportunity of recovering financially through expanded operations; repurpose available parking spaces and open spaces for alternative uses beyond vehicle storage.

1c. What indicators will you use to measure the outcomes?

Increases in eating places sales tax year over year; positive community feedback received from regular surveying that will be conducted.

1d. What populations might be impacted by this proposal?

- | | | | | |
|---|---|--|--|--|
| <input type="checkbox"/> Infants | <input type="checkbox"/> Children | <input type="checkbox"/> Teens | <input type="checkbox"/> Students | <input type="checkbox"/> Older adults |
| <input type="checkbox"/> Men | <input type="checkbox"/> Women | <input type="checkbox"/> LGBTQIA | <input type="checkbox"/> Immigrants | <input type="checkbox"/> Undocumented |
| <input type="checkbox"/> Low-income | <input type="checkbox"/> Homeless | <input checked="" type="checkbox"/> Disabled | <input type="checkbox"/> Health-impacted | <input checked="" type="checkbox"/> Other - <u>Restaurants</u> |
| <input type="checkbox"/> African American/Black | <input type="checkbox"/> Asian/Pacific Islander | <input type="checkbox"/> Hispanic/Latino | <input type="checkbox"/> Other _____ | |
| <input type="checkbox"/> Mixed-Race | <input type="checkbox"/> Native American | <input type="checkbox"/> White | | |

1e. What issue areas might be affected by this proposal?

- | | |
|--|--|
| <input checked="" type="checkbox"/> Community Engagement | <input type="checkbox"/> Human services |
| <input type="checkbox"/> Civic Engagement | <input checked="" type="checkbox"/> Jobs |
| <input type="checkbox"/> Criminal/restorative justice | <input checked="" type="checkbox"/> Parks and recreation |
| <input checked="" type="checkbox"/> Economic development | <input checked="" type="checkbox"/> Planning / development |
| <input type="checkbox"/> Education | <input checked="" type="checkbox"/> Procurement |
| <input type="checkbox"/> Environment | <input type="checkbox"/> Technology systems |
| <input type="checkbox"/> Food access and affordability | <input checked="" type="checkbox"/> Transportation |
| <input checked="" type="checkbox"/> Government decision-making processes | <input type="checkbox"/> Utilities |
| <input checked="" type="checkbox"/> Health | <input type="checkbox"/> Workforce policies |
| <input type="checkbox"/> Housing / Homelessness | <input type="checkbox"/> Other specific City departments |

Step 2: Collect Data.

Gather data relative to racial equity and the decision-making process. What does the data say? What does the data tell us?

Data resources: <https://work.bouldercolorado.gov/racial-equity/data-sources>

Inclusive Engagement resources: <https://work.bouldercolorado.gov/communications/community-engagement>

Example: The city does not routinely collect prenatal or infant health data. However, county public health data indicates that African American, Native American and Latino babies tend to have lower birth-weight and a higher rates of illness resulting in doctor or emergency room visits. Most people of color live in specific neighborhoods. Some city residents testify that they do not have health insurance and are nervous about visiting doctors that don't speak Spanish or other non-English languages.

2a. Will the proposal impact specific geographic areas in Boulder (neighborhoods, areas or regions)?

- ☒ All of Boulder
- ☐ Boulder Civic Area
- ☐ Boulder Plaza Subarea
- ☐ Crossroads East/Sunrise Center Area
- ☐ Gunbarrel Community Center
- ☐ Junior Academy Area
- ☐ North Boulder
- ☐ Transit Village Area Plan/Boulder Junction
- ☐ University Hill Area Plan
- ☐ Other (ex: manufactured home community)

2b. What are the racial demographics of people impacted by this issue? Be Specific.

The City of Boulder is made up of a demographic that is 79% White, 10% Hispanic or Latinx, 6% Asian, and 3% two or more races. This is a Citywide program impacting restaurants and the public right of way. The specific racial demographics of people impacted aside from the citywide figures are unknown, however when looking at impacts by industry, restaurants were the hardest hit during the pandemic.

2c. What other quantitative data do you have, that can help understand racial disparities associated with this issue (think about the indicators noted in Step 1)? How have you involved community members to gather and understand this data?

The City of Boulder conducted an online survey to help inform the initial exploration of an outdoor dining pilot program in Boulder, which received a total of 836 responses. Out of those responses, 208 indicated they represent a business in downtown Boulder. 14 respondents indicated they were minority-owned businesses. Although these disparities captured through the outdoor dining survey are not addressed through the outdoor dining program itself, we are pursuing other programs as part of our broader Economic Vitality work and exploring initiatives that focus on opportunities for BIPOC-owned businesses and their customers.

2d. What qualitative data – including community conversations, public meeting comments -- should be taken into consideration? Based on that data, what concerns or experience with the proposal, might people of color have?

The City of Boulder gained input from internal city staff, key stakeholders (including participating business owners, the Downtown Management Commission (DMC), the Center for People with Disabilities, and others), and the public. In partnership with the Downtown Boulder Partnership (DBP), staff will also be holding engagement meetings, open to all restaurants, beginning May 23rd.

Based on the data collected thus far, one concern that people of color may have is that input was gained from stakeholders that primarily represent a White demographic. However, this leads us to a broader question that outdoor dining alone cannot address - how do we make the City of Boulder more inclusive?

2e. What data gaps exist? If you lack adequate data, how can you obtain more or better data to analyze the proposal with a racial equity lens?

Given the demographics of Boulder, we lack adequate input from people of color. Due to the absence of this data, it is important to speak to other communities who have implemented outdoor dining programs, particularly communities that have a larger demographic of people of color. Additionally, working with DBP and the Boulder Chamber will help us gather more or better data.

Step 3: Determine Benefit and Burden.

Analyze the issue through a racial equity lens and consult with partners and community members, to determine expected and unexpected impacts, and to ensure alignment with racial equity outcomes.

Example: The city might initially think that a marketing campaign is the most effective way to address maternal and infant health. However, focusing on individual behavior change could increase stress on people of color if they don't have adequate income or social supports, or if they would still have to engage with bias and racism in the health care system. Cost and cultural competence are systemic barriers the city can address. Community members have previously described these concerns, and we have survey data to affirm these concerns. Check-in with city staff and community partners affirms that these situations still exist.

3a. How might the policy, program, or budget issue increase or decrease racial equity?

Staff does not contend that this program advances or hinders racial equity. However, in an effort to ensure that all voices are heard regarding the use of the curb, we will conduct ongoing community engagement as part of this Pilot Program. This includes partnering with DBP, the Boulder and Latino Chamber, minority-owned businesses, and other key stakeholders.

3b. Challenge your thinking. Consider one of the indicators from Step 1 and ask why a racial disparity might exist. Then, why else? Why else? Why else? Do the same exercise for another indicator.

The challenge with pursuing community feedback in Boulder is that it is a White majority population, so survey data is bound to be skewed, favoring mostly those who identify as a White demographic. This, again, leads to the broader question of how to make the City of Boulder more inclusive.

3c. With which city and community partners will you engage, to listen and understand diverse perspectives, center lived experience, and further deepen your analysis of benefits/burdens associated with this issue? Refer to the city's [Engagement Strategic Framework](#) and [Outreach Outpost](#) resources to ensure alignment with city best practices. Don't hesitate to reach out to Engagement Team staff if you're feeling stuck.

Staff will work closely with our cross-departmental partners, DBP, the Boulder and Latino Chamber, minority-owned businesses and restaurant owners, as well as marginalized and underserved communities within Boulder. We will also facilitate conversations with other cities who have implemented similar programs.

3d. Given your answers to 3b – 3c, are the potential benefits aligned with the desired community results that were defined in Step 1? If not, how might you modify the organizational outcome to avoid creating an additional burden on people of color? Or, what issues should you keep in mind as you design Strategies in Step 4?

Yes, the potential benefits are aligned with the desired community results that were defined in Step 1. As the Pilot Program develops and progresses, we will ensure that holistic community engagement is a key part of our strategic plan to ensure there are no additional burdens on people of color.

Step 4: Develop Strategies.

Identify activities that advance racial equity outcomes and minimize harm through unintended consequences. Describe the specific strategies, tasks, necessary resources and people responsible to help ensure the activity will advance racial equity.

Example: Design marketing campaign focused on wellness education; self-efficacy for health care. Provide implicit bias training sessions for health care providers. Collaborate with people of color parent groups to co-design research and support group to identify key social determinants of health for maternal and infant care.

4a. Use the chart below to plot strategies related to your policy, program or budget issue that can help reduce disparity and increase equity for people of color in our community.

Strategy	Action/Task	Person Responsible	Deadline	Resources Needed
N/A: This program does not inherently advance nor hinder racial equity				

Check to ensure your plan is:

- Realistic;
- Adequately funded;
- Adequately resourced with personnel;
- Adequately equipped to utilize community resources with mechanisms to ensure successful implementation and enforcement;
- Adequately resourced to ensure on-going data collection, public reporting, and community engagement;
- Addressing root causes of racial disparity, explored in Step 3; and
- Likely to help meet the outcomes and desired result outlined in Step 1.

4b. What complementary program or policy strategies - or city departmental or community partnerships - exist that could help maximize positive impacts in the community? How will you partner with these stakeholders for long-term positive change?

Complementary programs include our exploration of affordable commercial, administration of small business grants through ARPA funding, and the development of our Economic Sustainability Strategy. We work closely with several other city departments, including the City Manager's Office, on continuously exploring and implementing programs that yield long-term positive change for our community.

4c. Are the impacts aligned with your desired community results and organizational outcomes defined in Step 1? If not, how will you re-align your work?

Yes, impacts are aligned with desired community results.

Step 5: Implement & Evaluate.

Track impact on communities of color, communicate and involve stakeholders. Document unresolved issues.

Example: The city will coordinate with health professionals and parent groups on pre/post survey to determine improvement in individual behaviors and institutional behaviors, policies and practices. City will also work with county to assess longer-term changes in maternal health, infant birthweight and other indicators defined in Step 1.

5a. What data collection tools and evaluation methods will you use to track the indicators noted in Step 1, and determine the impact of your strategies?

We will work with our Department of Finance to evaluate sales tax data for eating places in Boulder and conduct community surveys in partnership with the Downtown Boulder Partnership to gain qualitative data on the effectiveness and impact of the Pilot Program.

5b. How will you ensure and retain meaningful community engagement in this process, to move beyond “informing” and toward shared, equitable engagement in decision-making? Refer again to the City’s Community Engagement Strategy.

CV staff will create an ongoing community engagement plan as it relates to outdoor dining, collaborating closely with affected groups and stakeholders involved. Staff will use the 9-step community engagement strategy as guidance.

5c. What issues are unresolved? What additional resources/partnerships might help achieve the desired result?

As we reimagine the use of streets and the curb, it is vital that marginalized voices be heard. As we prioritize restaurants in this program, we also need to consider the concerns of groups that have been marginalized or underserved for years. Partnering with various community organizations that represent these groups will be crucial in the development of this program.

Step 6: Report Back.

Be accountable. Share information learned from analysis and unresolved issues with project leadership.

Example: Results will be released through presentations and discussions with parent groups, at neighborhood clinics and childcare centers.

6a. What evidence can you compile and share to demonstrate the successful impacts or shortcomings of the proposal to advance racial equity?

We will compile sales tax data, number of partnerships formed, and general community feedback from engagement efforts in partnership with various stakeholders and marginalized groups.

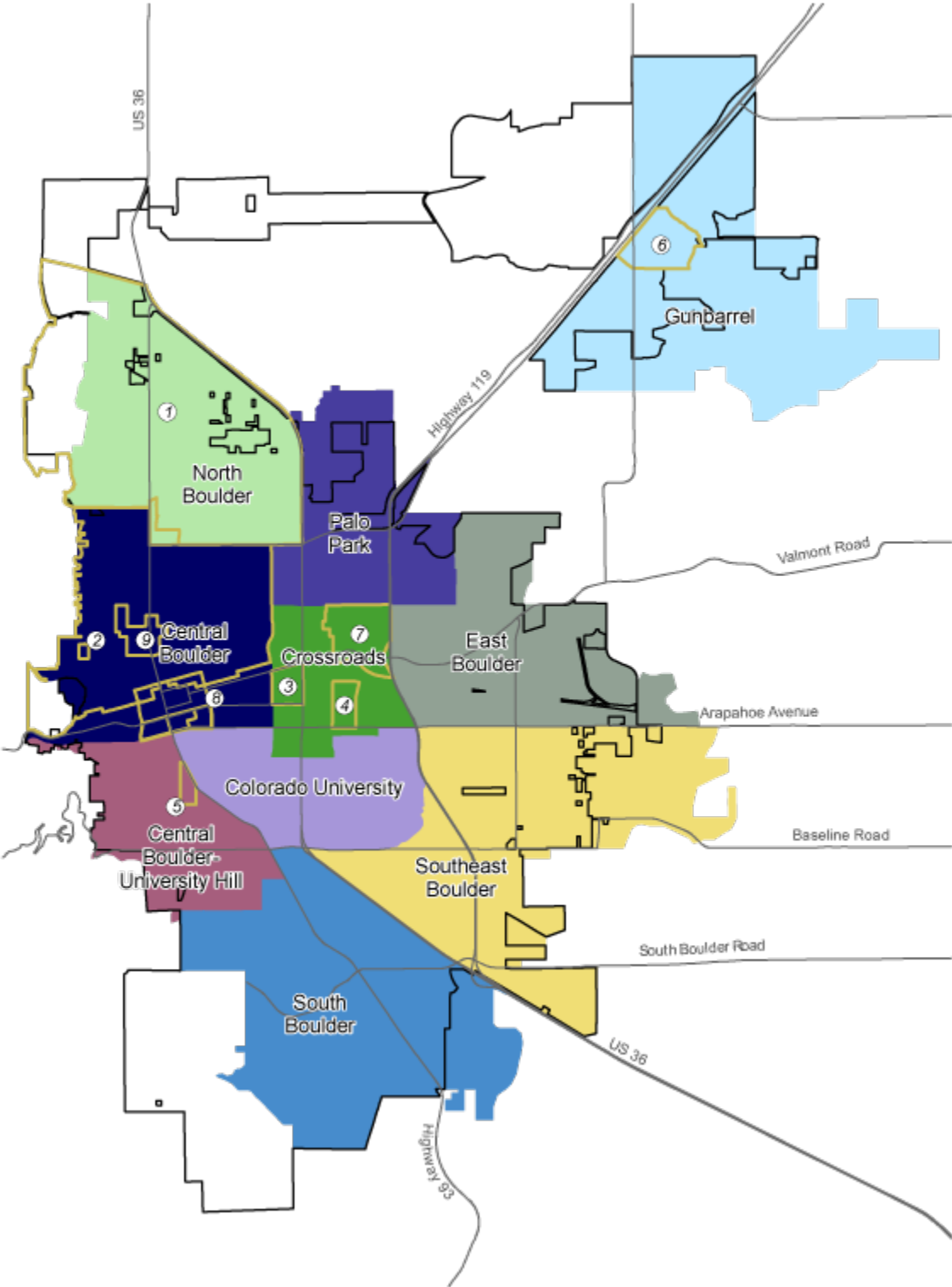
6b. What ongoing communication and engagement strategies will you use to report the proposal results and community impacts, particularly to people most directly impacted?

We currently have a regular biweekly meeting with our partners from other city departments in which we will discuss results and impacts. We also plan to facilitate reoccurring meetings with other key stakeholders including DBP, the Boulder and Latino Chamber, minority-owned businesses, and the public at large.

6c. How will you continue to partner, build trust, and deepen relationships with people of color and other populations to make sure your work to advance racial equity is effective and sustainable for the long-haul?

CV staff will continue to pursue efforts that build trust and deepen relationships with people of color in the City of Boulder through small business support, exploring an affordable commercial program, and general community engagement efforts. It is the combination of these programs and various partnerships that will advance racial equity.

6d. Other ideas:



SHARED CITY-WIDE DEFINITIONS OF RACIAL EQUITY TERMS

Using shared definitions of key terms in the city's racial equity work provides clarity and consistency across all bureaus, which leads to better analysis of how institutional racism functions and is maintained. We can then be more effective in deconstructing these mechanisms that support institutional racism and begin constructing ones that produce equitable outcomes.

Accountable: Responsive to the needs and concerns of those most impacted by the issues you are working on, particularly to communities of color and those historically underrepresented in the civic process. Source: Seattle RSJI

Adverse Impacts: refers to practices or policies that appear neutral but have a discriminatory effect on a protected group. Source: Office of Equity and Human Rights (OEHR)

Civil Rights Title VI: refers to Federal law. No person in the United States, on the grounds of Race, Color, or National Origin, shall be excluded from participation in, denied the benefits of, or subjected to discrimination under any program, service, or activity of a public entity, like the City of Boulder, that receives federal assistance.

Communities of Color: is a term used primarily in the United States to describe communities of people who are not identified as white, emphasizing common experiences of racism. Source: OEHR

Desired Community Result: a community-level condition of well-being.

Discrimination: refers to practices or policies that may be considered discriminatory and illegal if they have a disproportionate "adverse impact" on persons in a protected class. Source: OEHR

Disparate Impacts: refers to practices or policies that may be considered discriminatory and illegal if they have a disproportionate "adverse impact" on persons in a protected class. Source: OEHR

Diversity: includes all the ways in which people differ, and it encompasses all the different characteristics that make one individual or group different from one another. Source: UC Berkeley CEID

Ethnicity: a category of people who identify with each other based on common language, ancestral, social, cultural, or national experiences. Source: Oxford English Dictionary

Equity: When one's identity cannot predict the outcome. Source: OEHR

Equity Lens: is a critical thinking approach to undoing institutional and structural racism, which evaluates burdens, benefits, and outcomes to underserved communities. Source: OEHR

Explicit Bias: is the evaluation of one group and its members relative to one another, expressed directly, with full awareness. Source: OEHR

Implicit Bias: is the evaluation of one group and its members relative to one another, expressed indirectly, usually without awareness. This operates in one's subconscious. Source: OEHR

Inclusive Engagement: Processes inclusive of people of diverse races, cultures, gender identities, sexual orientations and socio-economic status. Access to information, resources and civic processes so

community members can effectively engage in the design and delivery of public services. Source: Seattle RSJI

Indicator: a measurable fact or trend that shows a change, or the rate or degree of change. In strategic planning, indicators help determine whether a planned activity is resulting, or is likely to result in positive outcomes.

Institutional Racism: occurs within institutions and systems of power. It is the unfair policies and discriminatory practices of particular institutions (schools, workplaces, etc.) Source: Race Forward, Moving the Race Conversation Forward

Internalized Racism: lies within individuals. These are our private beliefs and biases about race and racism, influenced by our culture. Source: Race Forward, Moving the Race Conversation Forward

Interpersonal Racism: occurs between individuals. These are biases that occur when individuals interact with others and their private racial beliefs affect their public interactions. Source: Race Forward, Moving the Race Conversation Forward

Outcome: The specific result you are seeking to achieve within the community that advances racial equity. Source: Seattle RSJI

Performance Metrics: measures an organization's behavior, activities, and performance. It assesses how well workers are doing their respective tasks and how companies are accomplishing their objectives. It provides hard data and gives off outcomes that appraise clearly defined quantities within a range that facilitates improvement and upgrading. Source: Wikipedia

Privilege: refers to the unearned set of advantages, entitlements, and benefits bestowed by the formal and informal institutions of society to ALL members of a dominant group (e.g. White privilege, male privilege, etc.). Privilege is usually invisible to those who have it. Source: OEHR

Race: A non-scientific, social construct that divides people into distinct groups based on characteristics such as physical appearance, ancestral heritage, cultural affiliation, cultural history, or ethnic classification. Source: Maurianne Adams, Lee Anne Bell and Pat Griffin, editors. Teaching for Diversity and Social Justice: A Sourcebook. New York: Routledge.

Racial Disparity: A significant difference in conditions between a racial group and the White population that is avoidable and unjust. For example, African-Americans are underrepresented in City of Portland management positions when compared to the percentage of African-Americans in the general population or the representation of Whites in management positions. Source: OEHR

Racial Equity: when race does not determine or predict the distribution of resources, economic/political/social opportunities, and burdens for group members in society. Source: OEHR and Seattle RSJI

Racial Equity Framework: An understanding of the root causes of racial disparities, an analysis of the structures that perpetuate these disparities, and the ability to deploy critical strategies to undoing those structures (e.g., community self-determination, shifting power) in order to replace them with structures that produce equitable outcomes.

Racial Equity Tool: A set of strategies, procedures, and resources designed to integrate explicit consideration of racial equity and that can be implemented and applied throughout organizational policy, procedures, and operations to ensure/drive equitable process, impacts, and outcomes. Source: OEHR

Racial Inequity: Race can be used to predict life outcomes, e.g., disproportionality in education (high school graduation rates), jobs (unemployment rate), criminal justice (arrest and incarceration rates), etc. Source: GARE

Stakeholders: Those impacted by proposed policy, program or budget issue who have potential concerns or issue expertise. Source: Seattle RSJI

Structural Racism: is racial bias among institutions and across society. Source: Race Forward, Moving the Race Conversation Forward

Under-served: refers to people and places that historically and currently have not had equitable resources or access to infrastructure, healthy environments, housing choice, etc. Disparities may be recognized in both services and in outcomes. Source: OEHR



CITY OF BOULDER,
COLORADO

Outdoor Dining Pilot Program Guidelines

Effective Aug. 31, 2022

Adopted XXXXXX

An Outdoor Dining Pilot Program has been designed by a staff stakeholder group represented by the City of Boulder departments of Community Vitality, Transportation and Mobility, Planning and Development Services, Regulatory Licensing, and the City Attorney's Office. The intent of the Pilot Program is to consider several influencing factors that emerged during the rapid expansion of outdoor dining during the COVID-19 pandemic.

On April 19, 2022, council provided city staff with direction to move forward with the development of this Pilot Program. The following rules will apply beginning Aug. 31, 2022, which marks the end of the emergency order. The Pilot Program shall be a five-year period beginning on Sept. 1, 2022 and ending on Oct. 31, 2027 unless extended by subsequent Boulder City Council action. Section 8-6-12, "Outdoor Seating in the Public Rights-of-Way and Private Property", B.R.C. 1981 is the authority for these rules.

1. DEFINITIONS

- A. Restaurant – an establishment provided with a food preparation area, dining room equipment, and persons to prepare and serve, in consideration of payment, food, or drinks to guests.
- B. Brewpub – an establishment that is primarily a restaurant where malt liquor is manufactured on the premises as an accessory use. A brewpub may include some off-site distribution of its malt liquor consistent with state law.
- C. Tavern – an establishment serving malt, vinous, and spirituous liquors in which the principal business is the sale of such beverages at retail for consumption on the premises and where snacks are available for consumption on the premises.
- D. Winery – a use with a manufacturer or wholesaler license issued under § 44-3-401, et seq., C.R.S., and does not include any retail type liquor license under § 44-3-309, et seq., C.R.S., on the lot or parcel, that is primarily a manufacturing facility, where vinous liquors are manufactured, that may include a tasting room that is less than or equal to thirty percent of the total floor area of the facility or one thousand square feet, whichever is greater. Winery does not include a vintner's restaurant licensed pursuant to § 44-3-422, C.R.S.
- E. Distillery – a use with a manufacturer or wholesaler license issued under § 44-3-401, et seq., C.R.S., and does not include any retail type liquor license under § 44-3-309, et seq., C.R.S., on the lot or parcel, that is primarily a manufacturing facility, where spirituous liquors are manufactured, that may include a tasting room that is less than or equal to thirty percent of the total floor area of the facility or one thousand square feet, whichever is greater.
- F. Parklets and/or Infrastructure – modular barrier and platform structures for assembly to be placed in the public right of way including on sidewalks and in on-street parking spaces, as well as on private property and to be used for outdoor dining.

- G. Right of Way (ROW) – areas meeting the definition of **Public right of way** per [B.R.C. 1981 Title 1.2.1 Definitions](#), the entire area between property boundaries which is: owned by a government, dedicated to public use or impressed with an easement for public use; primarily used for pedestrian or vehicular travel; and publicly maintained, in whole or in part, for such use. Right of way includes, without limitation, the public street, shoulder, gutter, curb, sidewalk, sidewalk area, parking or parking strip and any other public way.

2. ELIGIBILITY

- A. ELIGIBLE APPLICANTS: Restaurants, brewpubs, taverns, breweries, distilleries or wineries (collectively referred to as “restaurant”) that have available public ROW within 150 feet of their entrances on the Pearl Street Mall proper or ROW directly fronting the building they are located within.

For the purposes of qualifying for an infrastructure subsidy (see section 6B), eligible restaurants will be defined as restaurants that can demonstrate the use of private funds to provide outdoor dining extensions prior to the Pilot Program launch.

- B. ELIGIBLE STREETS: Parklets are permitted on streets within Boulder city limits with speed limits of 30 mph or lower.

3. APPLICATION PROCESS AND REQUIREMENTS

A. APPLICATION TIMELINE

- i. The initial application window is June 27 – July 15, 2022.
- ii. Annual applications thereafter will be accepted Feb. 1 – March 1 beginning in 2023.

B. APPLICATION REQUIREMENTS, REVIEW AND APPROVAL PROCESS

- Prepare your application materials:
 - A site plan
 - Survey
 - Certificate of Insurance (COI)
 - Proof of ownership from landlord
 - Landlord agreement letter for use of property
 - Gather contact information for the property owner and tenant
 - Proof of authorization to bind on behalf of owner and tenant

- Submit the [online application form](#):
 - Application is submitted online for the Outdoor Dining Pilot Program
 - You will be prompted to upload your documents to the application
 - Upon successful upload, you will receive an email confirming your application was received
- Watch your email for updates:
 - Email communications will come from a “no reply” address, please watch your spam folder
 - You will receive email communications
 - If additional information is required
 - When your application fee is ready for payment
 - Fee payments are made online through our [Customer Self Service \(CSS\) portal](#)
 - As your application progresses
 - When your permit is ready for signature
 - When your permit has been recorded
 - When your annual permit payment is due
- After review, your permit is prepared:
 - Staff will prepare permit for signature
 - Both the property owner and tenant are required to sign the permit
 - Your initial annual permit payment will be available to pay at this time
- Once your permit is complete:
 - If you are applying for a liquor license modification, you will use this approval to apply
 - Each permit is for a period of three (3) years less one (1) day or until the removal of the Outdoor Seating Area, whichever occurs first, you may be eligible for renewal to continue in the program

The initial application window to participate in the Pilot Program is June 27- July 15, 2022. An annual application period will run from February 1 – March 1 beginning in 2023 and annually thereafter for the duration of the program. Applications are not accepted outside of the designated window, if you do not wish to apply now, you may choose to apply during the next application window.

The Pilot Program officially begins on Sept. 1, 2022, immediately after the summer temporary expansion end date. The city will initiate a two-phase transition process to bring restaurants into compliance with the Pilot Program. Phase I will allow restaurants which elect not to participate in the Pilot Program to remove infrastructure from the public right of way by August 31, 2022. Phase II will allow restaurants which are participating in the Pilot Program to transition infrastructure through October 31, 2022, in order to accommodate infrastructure purchase lead times. The new Outdoor Dining Pilot Program was designed using feedback and lessons learned from the past two years to allow expansion of current outdoor patio guidelines for dining establishments.

The application can be found here:

<https://bouldercolorado.gov/services/outdoor-dining-pilot-program>

4. DESIGN GUIDELINES

Location, Spacing, and protection	<ul style="list-style-type: none"> • For any parklet or outdoor dining area placed next to open travel lanes on the street level: <ul style="list-style-type: none"> ○ Continuous barrier(s) shall be provided to protect occupants of the dining area. The city has approved the use of metal planter boxes capable of holding approximately ½ cubic yard of soil that can integrate into the rail design, attach or hang from the rail, or sit adjacent to the infrastructure if it is filled with soil and, as an option, plants. Planter boxes must always be filled with soil. The metal planter boxes should form a continuous barrier along the street side parklet railing, such that there are no gaps larger than 18 inches between each planter box. The metal planter boxes should protect the area between the ground and a height of at least 28 inches. In addition, other types of barriers, rails, or standalone parklet construction materials certified as M30/P1 in accordance with American Society for Testing and Materials (ASTM) F2656 testing procedures may be considered acceptable, upon review of documentation verifying the crash test certification. Any other type of barrier or rail design will require city review and approval prior to placement. ○ The approach and departure sides of either the planter box and/or parklet shall be marked with vertical elements (plastic flex posts with retroreflective tape), retroreflective tape, or object marker signs to make them more visible to traffic and maintenance staff under a variety of lighting and weather conditions. ○ The maximum width of any parklet or dining area, inclusive of protection barriers, shall not extend beyond 11 feet from the road center line (e.g. travel lanes adjacent to parklets shall not be narrowed). ○ Infrastructure must adhere to the parking code as set forth in B.R.C. 7-6-13. • For any parklet or dining area placed along curb side parallel parking, metal planter boxes must be added to the end of the parklet. • Adequate emergency access shall be provided on any street (open or closed). Access is defined as a minimum 20-foot-wide unobstructed fire apparatus access road with an unobstructed vertical clearance of 15 feet (and meets all
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	<p>applicable standards as set forth in Chapter 10-8, "Fire Prevention Code," B.R.C. 1981). Emergency access lanes shall be kept free and clear of all obstructions.</p> <ul style="list-style-type: none"> • If a parklet will be used for alcohol service associated with an already issued liquor license, the area between the existing licensed premise and the proposed parklet may not be transected by vehicle traffic (only pedestrian cross traffic allowed) and alcohol beverages removed from the licensed premise for service in the parklet must be carried by a server from the liquor licensed establishment. • Tables, temporary enclosures (including parklets), chairs, barriers, carpet, and artificial turf may not obstruct access to manholes, valve boxes, drain pans along the curb, fire hydrants, building fire department connections, or storm water inlets. Parklets shall be located to avoid obstructing underground utility access and electrical transformer vaults. • Parklets may not be located within designated turn lanes, tapers or bike lanes.
Size	<ul style="list-style-type: none"> • The size limit for outdoor extensions associated with the Pilot Program for any eligible business is 500 square feet (sf). For Pilot Program extensions in the public ROW, no more than a total of 1,000 sf would be permitted for all combined extensions along any typical block face or any full block of the Pearl Street Mall. Outdoor dining extensions on private property are also restricted to 500 sf per restaurant; however, there would be no cap on the number of restaurants allowed to expand or the cumulative amount of private property permitted for expansion. • All eligible restaurants may be considered for a minimum of a 100 sf. parklet regardless of the total square feet of pre-existing permitted parklets within the associated block. • Barrier height restrictions of three feet and prohibition of closed-in structures and roofs are required out of safety, consideration for other businesses, as well as wind and snow load requirements. A minimum of three-foot height barriers between the designated dining area and other areas are required for proper alcohol control. The requirements align with current laws and regulations including clearly defined boundaries for liquor services in outdoor dining spaces.
Structures	<ul style="list-style-type: none"> • Parklets shall not include roofs, due to wind loading and business visibility concerns. • All decks and platforms must be anchored to prevent movement from wind load. • Temporary enclosures shall be weighted, anchored or secured to the ground, but cannot be anchored with stakes in the public right of way (i.e. on streets or sidewalks).

	<ul style="list-style-type: none"> Any temporary structure shall be easily disassembled into separate pieces and moved through manual labor and standard pick-up trucks. All structures for businesses with liquor licenses must demonstrate they can control their premise in accordance with state statutes and rules. Fencing, railings, or planters of at least 3 feet in height are required to create containment of the alcohol licensed premises. All structures shall demonstrate compliance with City of Boulder's adopted building codes including wind speeds. Per the Colorado Front Range Wind Table, the ultimate design wind speed shall be 165 mph for areas west of Broadway Street and 150 mph for areas east of Broadway Street.
Accessibility and Mobility	<ul style="list-style-type: none"> Accessibility in accordance with local and federal codes shall be provided for any parklet and shall be the sole responsibility of the business owner. No parking spaces allocated for use by people with disabilities shall be repurposed for outdoor dining. Parklets shall have a flush transition at the sidewalk and curb to permit easy access and avoid tripping hazards. Level, slip-resistant floor must be provided for any parklet. The design of the parklet should direct patrons to access/egress at the ends on its sidewalk-facing side and ensure that the transition between the existing sidewalk and parklet is fully accessible. Designated bicycle lanes shall not be obstructed and shall remain open for use.
Use & Furnishings	<ul style="list-style-type: none"> Temporary outdoor patios must close by 10 p.m. Sunday through Thursday and by 11 p.m. Friday, Saturday, and federal holidays. <i>Note: These hours apply to the new, temporary outdoor patio space only. Existing permanent patios that have been approved may follow the previously permitted hours.</i> The following items are allowed in outdoor seating areas: <ul style="list-style-type: none"> Removable tables, benches and chairs. Umbrellas if they are anchored and do not obstruct pedestrian walkways Murals and art on barriers and containment devices (chalk cannot be used for murals). Temporary lightweight items like umbrellas, small planters and other ornamental elements shall be removed nightly. Lightweight temporary tables and chairs shall also be brought in nightly unless they can be stacked and secured with steel cables or other suitable means to the city's satisfaction. More substantial seating elements like picnic tables may remain overnight. Outdoor dining areas shall not be used for storage. No open flames shall be permitted. No outdoor dining area shall include decorations that pose a hazard (e.g. thorns, poisonous plants, sharp edges, tripping hazards, etc.)

Flood and Stormwater	<ul style="list-style-type: none"> Any structure located within a 100-year floodplain requires a floodplain development permit and must comply with BRC 9-3. No items may be placed such that they block the free flow of stormwater through the city's right of way. Any structures shall be elevated to allow the free flow of stormwater.
Electrical & Lighting	<p>Ornamental lighting with low wattage bulbs is permitted. No fixture may be greater than 50 lumens. Per the city's sign code, lighting may not flash, move, rotate, scintillate, blink, flicker, vary in intensity, vary in color, or use intermittent electrical pulsations.</p> <ul style="list-style-type: none"> Extension cords shall not be run overhead. Extension cords are not allowed to be run on the ground across vehicle travel lanes and pedestrian or bicycle paths. All cords shall be listed for heavy duty usage, three-pronged and a minimum of 12 gauge and shall be in good condition. All electrical use must be GFCI protected and protected from weather. Extension cords shall be directly plugged into the outlet and are limited to one cord per outlet. Multiple cords may not be chained together. A separate electrical permit, which requires a licensed electrical contractor, is required for anything other than a listed extension cord and plug connected circuit/device (AKA plug and go). Use of public outlets in the public right of way is prohibited. Heating device load demands must not be exceeded for electrical circuits. All equipment must be used according to Underwriter Laboratories (UL) listings and manufacturer's instructions. Circuits must be ground-fault circuit interrupter (GFCI) protected.
Heating	<ul style="list-style-type: none"> Electric heaters are prohibited. Gas heaters are discouraged but if utilized shall comply with the following: <ul style="list-style-type: none"> Must be used according to manufacturer's installation and use instructions. Minimum clearances between heaters and combustible material shall be maintained in accordance with the manufacture recommendations but never less than three feet. Must comply with all applicable fire code regulations. Spare propane tanks shall be stored outside, on grade, and in a suitable enclosure or otherwise protected against tampering. Protection means tanks are nested and tethered to the wall, ideally in cage enclosures. Tanks may not be located on rooftops. Gas heaters and/or propane tanks shall not be placed inside any tent or canopy enclosure. Solid fuel heaters or burning devices (e.g. wood, pellets) and open flames (e.g. fire pits, candles) are NOT allowed under any circumstances.

Winter Weather (Snow/Ice)	<ul style="list-style-type: none"> • Operators are required to provide all snow removal necessary to keep ingress and egress areas clear of snow, ice, and other obstructions. The city will not be providing additional snow removal for outdoor dining areas and the responsibility continues to be the responsibility of the property owner(s) and/or operator(s). • Snow should not be placed in streets, walkways, egress paths or any doorways. Snow placement should also consider Colorado's freeze thaw cycles and be placed so that icing does not create safety hazards.
Other General Requirements	<ul style="list-style-type: none"> • No additional temporary signage will be permitted. The city's code defines sign as <i>"any object or device or part thereof situated outdoors or in an exterior window which is used to advertise, identify, display, direct, or attract attention to an object, person, institution organization, business, product, service, event, or location by any means, including, without limitation, words, letters, figures, design symbols, colors, sculpture, motion, illumination, or projected images."</i> • Live and/or amplified music and entertainment is subject to existing land use approvals, city noise ordinance requirements, city emergency orders, and any other relevant law. • Operators are required to provide receptacles in the outdoor seating area for trash, recyclables and compostable collection in accordance with Boulder's Universal Zero Waste Ordinance.
Alcohol Requirements	<ul style="list-style-type: none"> • For establishments that hold an issued Liquor License, a Temporary Modification of Premises application should be submitted as soon as possible to allow for Regulatory Licensing Division on behalf of the State Liquor Enforcement Division staff sufficient time to review, process and issue the modifications. Application and information on how to apply can be found here under the Liquor License Application Documents section-Temporary Modifications Liquor Licenses City of Boulder (bouldercolorado.gov). Regulatory Licensing may be reached with application questions in the weekly virtual application clinic each Wednesday from 11:30 a.m. to 12:30 p.m. Please see link on the "How to Apply for a Liquor License" section of the webpage for how to attend. You may also email staff at licensingonline@bouldercolorado.gov.

5. FEE SCHEDULE

Application Fee (annual)	Initial Application Fee: \$650 Resubmittal within four weeks of initial submission: \$325 Renewal: \$113
Revocable ROW Permit Fee (annual)	On-Mall: \$18.76/sq ft Off-Mall: \$13.13/sq ft
Outdoor Dining Pilot Program Infrastructure Fee (annual)	On-Mall: \$16.25/sq ft Off-Mall: \$21.87/ sq ft
Liquor License Fee	City Liquor Application: \$50 The State Liquor Enforcement Division requires payment of an annual fee.

6. SUBSIDY

Option A – Public Right of Way	Pilot Program compliant infrastructure as determined by the city, purchased individually by restaurants	Eligible restaurants reimbursed a portion of the infrastructure costs (up to \$2,500)
Option B – Public Right of Way	Pilot Program compliant infrastructure purchased in bulk by city and leased to restaurants for 5 years	Restaurant lease reflects up to 50% discount on infrastructure cost + \$50 city and state liquor licensing fees (if alcohol service will occur in outdoor service areas)
Option C – Private Property	Pilot Program compliant infrastructure as determined by city, purchased individually by restaurant	Eligible restaurants reimbursed a portion of infrastructure costs (up to \$2,500)

7. **MAINTENANCE AND STORAGE:** Restaurants participating in option A or C will maintain a clean and safe outdoor dining space. Outdoor dining infrastructure and furniture are not allowed to be stored in the public ROW. For those restaurants who are participating in option B the bulk purchase the city will be responsible for maintaining the infrastructure. The city will also be responsible for moving and storing the infrastructure.

8. REMOVAL: Restaurants participating in option A or C are expected to temporarily remove and store outdoor dining infrastructure onto private property for any city permitted special event that seek to utilize those spaces for no more than 10 days during any given month. Special events are prohibited from utilizing space allocated to outdoor dining in existing on-street parking spaces. Restaurants participating in option B the city will be responsible for moving the infrastructure.
9. GENERAL PERMITTING AND INSURANCE REQUIREMENTS:
 - A. Each operator shall have general liability, workers compensation, and employer's liability coverage meeting city and state standards and naming the city as an additional insured.
 - B. Outdoor dining on public ROW requires the business to enter into a revocable right of way permit agreement with the city as part of the application process.
 - C. Outdoor Dining on private property requires the business to enter into an agreement with the city regarding compliance with pilot program guidelines, conditions, or restrictions.