

CITY OF BOULDER  
OPEN SPACE AND MOUNTAIN PARKS DEPARTMENT  
GUIDANCE FOR LICENSE AND DISPOSAL REQUESTS  
INVOLVING OPEN SPACE LANDS  
**MARCH 2022**

**I. INTRODUCTION**

The City of Boulder's Open Space and Mountain Parks (OSMP) Department protects and manages open space land for specific open space purposes as outlined in the City of Boulder Charter (City Charter). Community support of OSMP depends upon the confidence the public has in OSMP's ability and commitment to fulfill the open space purposes defined in the City Charter and the City Charter requires an extensive process before disposing of, or allowing use of, open space land interests for other purposes. Therefore, the use of, and disposals of, open space land interests are only granted in a manner that is consistent with City Charter and the Boulder Revised Code (BRC) and after a thorough review and approval process involving OSMP staff, the Open Space Board of Trustees (OSBT), and when called for in the City Charter or the BRC, the City Council.

As defined in Article XII, Section 170 of the City Charter, "open space land" means any interest in real property purchased or leased with the sales and use tax pledged to the open space fund pursuant to the vote of the electorate on Nov. 7, 1967, or proceeds thereof, any interest in real property dedicated to the city for open space purposes, and any interest in real property that is ever placed under the direction, supervision, or control of the open space department, unless disposed of as expressly provided in Section 177.

This document sets forth guidance to ensure that license and disposal requests are evaluated in a consistent, comprehensive, and fair manner, while also informing requestors that all proposals are different and require individual consideration due to the unique features of open space land and specific site and project elements. Identifying and assembling all the information that may be needed to adequately consider a request is often a cooperative and interactive process between OSMP staff and the requestor. This guidance is meant to introduce some of the terminology, processes, and requirements associated with license and disposal requests and replaces any previous guidance or related documents.

**II. TYPES OF REQUESTS (DEFINITIONS)**

When OSMP is contacted by an outside party or agency, or another city department regarding a request for an interest in open space land or for the use of open space lands for purposes other than those set forth in Article XII, Section 176 of the City Charter, OSMP staff, working in consultation with City Attorney's Office, shall determine if a request should go through the license or disposal request process.

- A. **LICENSES:** A requestor seeking a nonexclusive use of open space that does not conflict or interfere with open space purposes will be directed through a request for a nonexclusive, revocable license agreement for a term of 20 years or less (consistent with

[Article VIII, Section 111](#) of the City Charter). Examples may include but are not limited to ditch/lateral crossings, neighborhood gates in OSMP fences\*\*, traffic signs, and placement of removable infrastructure providing safety or stability benefits such as guardrail anchors or guy wires. Licenses are not assignable or transferrable and are revocable for noncompliance or if the city determines, in its sole discretion, that the license ceases to further the public interest of the city. If a proposed use requires exclusive use; term of greater than 20 years; or is not revocable, it will not qualify for a license request.

\*\*To prevent/reduce social trail connections, resource damage and enforcement and trespass issues, it is not the practice of OSMP to accept license or disposal requests for gates or bridges from private properties to open space land. These are considered private use for a non-open space purpose with negative impacts to adjacent open space lands and not in fulfillment of the City Charter. Exceptions may include requests where private party is willing to grant public access across their property and/or where gate could benefit the general public, neighborhoods or OSMP and/or where granting such requests could help meet visitor management and resource protection objectives as defined in relevant OSMP planning documents.

- B. **DISPOSALS:** A requestor seeking a permanent or possessory interest in open space land or a use that is exclusive; for a term greater than 20 years; or that conflicts or interferes with open space purposes will be directed through a disposal request. Examples may include but are not limited to fee ownership; utility, ditch/lateral and access easements; transferring management or control to another city department; and additional use or development rights previously prohibited in dedicated open space easements, conservation easements or development rights agreements.

### **III. AUTHORITY**

Authority related to licenses and disposals (and permits<sup>1</sup>) is granted to OSMP, OSBT, City Council and the residents of Boulder by the following sections of the [Article XII Open Space](#) of the City Charter and the [BRC](#).

- [Section 171](#) Functions of the department
- [Section 175](#) Functions of the Board
- [Section 177](#) Disposal of open space land
- [BRC 8-8-11](#) Transfer of Open Space Lands
- [BRC 8-10-1 et seq.](#) Leases of Property in Excess of Twenty Years up to Thirty Years
- [BRC 2-2-13](#) Open Space Program
- [BRC 2-3-9](#) Open Space Board of Trustees
- [BRC 2-2-8](#) Conveyance of City Real Property Interests

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<sup>1</sup> Information regarding permits for activities on OSMP-managed lands can be found at <https://bouldercolorado.gov/osmp-permits>.

OSMP is further guided by its mission to preserve and protect the natural environment and land resources that characterize Boulder and to foster appreciation and use that sustain the natural values of the land for current and future generations. Additionally, the [OSMP Master Plan](#) details collective values and focus areas that influence decision-making.

Some license and disposal requests may also require additional outside regulatory approvals or permitting (e.g. US Fish and Wildlife Service related to threatened and endangered species and impacts to wetlands or floodplains permitted by the US Army Corps of Engineers), however City Charter purposes are distinct from the regulations of other agencies. OSMP, OSBT and/or City Council can, in most situations be more restrictive than other permitting agencies.

#### **IV. MAKING A REQUEST**

License and disposal requests are generally pursued after requestor has consulted with OSMP staff, reviewed this guidance document, and submitted a non-refundable administrative fee and the materials/information requested by staff. **Based on the specific request, site, and project elements, OSMP staff will seek information and documentation from the requestor necessary to fully inform staff on the request which requires<sup>2</sup>:**

- Requestor name and contact information
- Written narrative describing details of proposal and reason for license or disposal request
- Map depicting locations and property(ies) involved in request
- Identification of regulatory agencies with jurisdiction over the land use or proposed project

**And without limitation may include:**

##### **A. Benefit and Impact Assessment**

- Impacts and benefits to open space land, purposes, or uses
- Impacts and benefits to OSMP programs and/or the general public
- Impacts and benefits to threatened and endangered species, wetlands, floodplains, or other sensitive features and resources
- Land management and stewardship considerations

##### **B. Alternatives Analysis**

- Alternatives (locations, methods and costs) available or considered by the requestor and why they are not being pursued
- Condemnation authority

##### **C. Maps, Studies, Surveys, and Assessments**

- Map or maps identifying impacts and/or infrastructure from the proposed action at a scale requested by OSMP

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<sup>2</sup> Any documents submitted as part of a license or disposal request will be retained by the City of Boulder in accordance with the Document Retention Schedule and are a part of the public record, subject to disclosure under the Colorado Open Records Act, C.R.S. §24-72-200.1 *et seq.*

- Map or maps delineating sensitive areas or features including natural and cultural resources and wetlands and floodplain boundaries at a scale requested by OSMP
  - Results of environmental or resource studies, surveys or assessments conducted by or on behalf of the requestor or requested by OSMP
  - Inventory or data on environmental setting which could include details such as adjacent land uses, geology, hydrology, flora, and fauna
- D. Review and Recommendations by Other Agencies
- Proof of consultation or required permit(s) with/from identified agencies
  - Proof of compliance with land use requirements
- E. Mitigation and Restoration Plans
- Proposed on- or off-site mitigation
  - Detail of mitigation requirements of other agencies
  - Restoration and monitoring plans, including revegetation and weed control
- F. Valuation, Costs, and Timelines
- Land and resource valuation (by appraisal or other means approved by OSMP staff)
  - Exchange options and valuation of each
  - Detailed project costs and timelines
  - Mitigation and restoration monitoring schedule and costs
- G. Project or Site-Specific Information
- Drafts of legal documents associated with the request (may be provided by OSMP staff)
  - Preliminary title reports
  - Any additional request-, project-, or site-specific information requested by OSMP staff

## V. **REQUEST CONSIDERATION**

Consideration of a license or disposal request is guided by the City Charter as detailed below.

A. **OSMP Staff Review and Recommendation:** In accordance with Charter Section 171(c), OSMP staff will review the request and information received and additional information known or available to staff including mapping and data related to sensitive areas and resources and will provide a staff recommendation regarding the request to the OSBT.

B. **Consideration by the OSBT:** After receipt of the request, OSMP staff will work with the requestor to develop a schedule of timely consideration by OSBT, which may include multiple meetings and site visits. The OSBT's consideration will include a public hearing and vote of the board. OSBT may request additional information in addition to materials requested by OSMP staff in order to consider the request. Specific conditions and requirements can be included in the OSBT action on the license or disposal request.

- **For license requests** of a period less than 20 years, an OSBT recommendation to OSMP staff is required and no City Council action is required.
- **For disposal requests**, OSBT recommendation and approval of the disposal by an affirmative vote of at least three members of OSBT is required prior to City Council consideration. If OSBT does not approve the disposal request, the request is denied and will not be considered by City Council.

C. **Consideration by Boulder City Council:** If a disposal request is approved by OSBT and recommended for approval by City Council, staff will work with the City Clerk’s Office to schedule the request for consideration by the City Council at an upcoming council meeting. Disposal of open space shall only be granted with the approval of the City Council in accordance with City Charter and Boulder Revised Code and after a public petition period.

D. **Public Petition Period:** Pursuant to [Article XII, Section 177](#) “No open space land owned by the city shall be disposed of until sixty days following the date of city council approval of such disposal. If, within such sixty-day period, a petition meeting the requirements of [Charter] Section 45 above and signed by registered electors of the city to be at least ten percent of the average of the number of registered electors of the city who voted in the previous two municipal candidate elections as of the day the petition is filed with the city clerk, requesting that such disposal be submitted to a vote of the electors, such disposal shall not become effective until the steps indicated in [Charter] Sections 46 and 47 above have been followed.

This section shall not apply to agricultural leases for crop or grazing purposes for a term of five years or less.

This section is to be construed liberally in favor of providing opportunities for the citizens of the city to refer measures proposing the disposal of any open space land.”

## **VI. APPROVED REQUESTS**

- A. **Licenses.** After OSBT recommendation, the Department will determine whether to grant the license. Such approval can also include additional conditions or requirements.
- B. **Disposals.** If approved by OSBT and City Council and after the public period passes without petition, the documents necessary to convey the land interests approved for disposal, including any requirements or conditions, will be signed by the City Manager.

## **VII. APPROVAL CONDITIONS AND REQUIREMENTS**

OSMP staff, OSBT, and/or City Council approval may be subject to reversionary clauses and contingent on identified conditions and requirements including, but not limited to:

- Payment of fees and compensation to the Open Space Fund.
- Obtaining surveys, legal descriptions, and satisfactory title reports.

- Review and recommendations by other agencies and/or other city departments.
- Execution of applicable legal agreements which may include indemnification, maintenance, mitigation and monitoring requirements and insurance requirements.