



CITY OF BOULDER,
COLORADO

Outdoor Dining Pilot Program Rules

July 29, 2022

The Outdoor Dining Pilot Program was 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.

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 “Eligible Businesses”) 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 6 Option A and C), Eligible Businesses will be defined as those 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 Jun. 27 – Jul. 15, 2022.
- ii. Annual applications thereafter will be accepted Feb. 1 – Mar. 1 beginning in 2023.

B. APPLICATION REQUIREMENTS, REVIEW AND APPROVAL PROCESS

- Prepare your application materials:
 - Plan and Section Drawings or Survey
 - Certificate of Insurance (COI) (Use of public land)
 - From the Building Owner- proof of ownership and authority to bind
 - From the tenant- proof of authority to bind
 - Landlord Consent/ Neighboring Frontage Consent
 - Gather contact information for the property 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
- If applicable, apply for liquor license modification:
 - If you are applying for a liquor license temporary modification, you will use this approval to apply

The initial application window to participate in the Pilot Program is Jun. 27 - Jul. 15, 2022, for permits beginning Sept. 1, 2022. City Permit Applications will only be accepted during a one-month application window each year after the initial application period. The annual application window for each successive year of the Pilot Program will be Feb. 1 – Mar. 1 beginning in 2023. If you do not wish to apply now you may choose to apply in Feb. 2023, during the next application window. Applications are for three-year permits with an annual lease fee and applicable license and permitting application fees apply.

The Pilot Program officially begins on Sept. 1, 2022, immediately following the expiration of emergency orders allowing for temporary expansions on Aug. 31, 2022. The City of Boulder will initiate a two-phase transition process to bring Eligible Businesses into compliance with the Pilot Program. Phase I will allow Eligible Businesses which elect not to participate in the Pilot Program to remove infrastructure from the public right-of-way by Aug. 31, 2022. Phase II allows Eligible Businesses participating in the Pilot Program to transition infrastructure through Oct. 31, 2022, in order to accommodate infrastructure purchase lead times.

The application can be found here:

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

4. DESIGN GUIDELINES

A. All design elements should enhance the existing downtown character and comply with the City of Boulder Downtown Urban Design Guidelines.

<p>Location, Spacing, and protection</p>	<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). • For any parklet or outdoor dining area placed in private parking lot:
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- Continuous barrier(s), such as the metal planter boxes described previously, are not required and are considered optional, subject to the metal planter boxes being able to be installed without encroaching on the necessary lane width.
- Outdoor dining infrastructure must adhere to the parking code as set forth in B.R.C. 7-6-13.
- Example of Planter Box:



- For any parklet or dining area placed at the same grade level as adjacent traffic lanes metal planter boxes must be added to the end(s) 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 lane with an unobstructed vertical clearance of 15 feet (and meets all 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.
- 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.
- Use of outdoor dining infrastructure in an alleyway is prohibited.

Size

- 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 is 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 Eligible Business; however, there is no cap on the number of Eligible Businesses allowed to expand or the cumulative amount of private property permitted for expansion.
- All Eligible Businesses 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.
- If new businesses request additional space on a block where the 1,000 sq ft limit has been reached, the city will reassess square footage allotment when it is time for a participant’s permit to be renewed to ensure equal distribution of space.
- Wall 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.





Structures

- High-quality and structurally complete parklets are required for the infrastructure as part of this program. Parklets are defined as modular barrier and platform (when applicable) structures with a painted or stained finish, built with high-quality, durable, and non-reflective materials in order to provide safe and effective spaces for outdoor dining.
- 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,

	<p>but cannot be anchored with stakes in the public right of way (i.e., on streets or sidewalks).</p> <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. Walls, Fencing, railings, or planters of at least 3 feet in height are required to create containment of the alcohol licensed premises. Rope fences, and jersey barriers do not meet the minimum control requirements. • 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.
<p>Accessibility and Mobility</p>	<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 or comply with ADA accessibility standards • 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. • 6’ clearance for adequate pedestrian access is required for sidewalks. Any outdoor dining infrastructure placed on the Pearl Street Mall are subject to larger clearance requirements. • Designated bicycle lanes shall not be obstructed and shall remain open for use.
<p>Use & Furnishings</p>	<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 ○ Sun shades/ shade sails are permissible as long as they are ballast appropriately and have no electrical components attached to them. ○ 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

	<p>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.</p> <ul style="list-style-type: none"> • Outdoor dining areas shall not be used for storage. • No open flames shall be permitted. <p>No outdoor dining area shall include decorations that pose a hazard (e.g., thorns, poisonous plants, sharp edges, tripping hazards, etc.)</p>
<p>Flood and Stormwater</p>	<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.
<p>Electrical & Lighting</p>	<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. <p>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.</p>
<p>Heating</p>	<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

	<p>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.</p> <ul style="list-style-type: none"> ○ 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.
<p>Winter Weather (Snow/Ice)</p>	<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.
<p>Other General Requirements</p>	<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.
<p>Alcohol Requirements</p>	<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 after receiving the city approved permit 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	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 \$300 annual fee.

6. SUBSIDY

Option A – Public Right of Way	Pilot Program compliant infrastructure as determined by the city, purchased individually by Eligible Businesses	Eligible Businesses 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 Eligible Businesses for 5 years	Eligible Business lease reflects up to 50% discount on infrastructure cost
Option C – Private Property	Pilot Program compliant infrastructure as determined by city, purchased individually by Eligible Businesses	Eligible Businesses reimbursed a portion of infrastructure costs (up to \$2,500)

Option A seeks to support Eligible Businesses to become compliant with the Pilot Program requirements while allowing flexibility for coordinating personal purchase of infrastructure. Eligible Businesses would pay a revocable permit fee and 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 Eligible Businesses.

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. Under Option B, Eligible Businesses 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 Businesses. 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 Businesses.

For the purposes of qualifying for an infrastructure subsidy under Option A and Option C, Eligible Businesses will be defined as those that can demonstrate the use of private funds to provide outdoor dining extensions prior to the Pilot Program launch (during the temporary COVID pandemic response program). Eligible Businesses must provide photo evidence of the infrastructure purchased and a cost estimate.

7. MAINTENANCE AND STORAGE: Eligible Businesses 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 Eligible Businesses 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: Eligible Businesses 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. Eligible Businesses 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 rules, conditions, or restrictions.