



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: September 15, 2020

AGENDA TITLE:

Consideration of a motion to accept the summary of the Aug. 25, 2020 Study Session on the Community Benefit and Use Tables and Standards projects.

PRESENTERS:

Jane S. Brautigam, City Manager
Mary Ann Weideman, Interim Director of Planning & Development Services
Charles Ferro, Development Review Manager, Planning
Phil Kleisler, Senior Planner
Jay Sugnet, Senior Housing Planner
Karl Guiler, Senior Planner / Code Amendment Specialist
Andrew Collins, Planner II / Code Amendment Specialist

EXECUTIVE SUMMARY

This agenda item provides a summary of the Aug. 25, 2020 study session on the Community Benefit and Use Standards and Table projects. The purpose of this study session was to:

1. Update City Council on the progress of Phase 2 of the Community Benefit project, including but not limited to the further refinement of the community benefit use definitions and approaches, results of community engagement, and potential options moving forward.
2. Update City Council on the progress of Phase 2 of the Use Standards and Table project, including but not limited to the considerations from the Planning Board subcommittee, results of community engagement, and potential options moving forward.

Key takeaways from the study session discussion on Community Benefit were:

- While one council member questioned the value of moving forward with the three additional community benefit options (i.e., below market rate rent commercial, space for art and cultural uses, and human/social services) as potentially diluting the ability to

get more affordable housing, the majority of the council supported moving forward with the three options.

- The council agreed that the program should be written with predictability and flexibility in mind. There was consensus that the program should be feasible and incentivize developers into taking advantage of the program so that more benefits for the city could be realized.
- Council members agreed that community benefit uses should be required in perpetuity and that penalty fees should be applied when such uses are not replaced after ceasing operation. Council members also agreed that there should be flexibility built into the program to encourage comparable replacement uses consistent with the program.
- The approaches and ideas to updating the Site Review criteria were supported by the council.

Key takeaways from the study session discussion on Use Table and Standards were:

- Council members agreed that further diversification of uses within neighborhood centers made sense, but that office uses need not be changed in the business zoning districts, as this issue was already addressed through the Business Community (BC) code change in 2019.
- There was broad support for changes that would support greater levels of walkability such as limited mixed-use in mostly homogenous zones, but that such changes must be properly vetted with and supported by neighborhoods.
- Review process was discussed with respect to 15-minute neighborhoods with some support for Planning Board review of such applications. The review process could be made easier over time if such uses were supported by residents.
- Council expressed support for some integration of non-industrial uses (e.g., residential, retail etc.) in industrial zones, but cautioned that such new uses should not drive away existing industrial uses either by (1) complaints by new residents about adverse impacts of existing industrial impacts in such areas or (2) increasing land values that may make some employment uses locate elsewhere.
- Council members supported flexibility for creative uses such as live/work units, artist studios, home occupations, and galleries, and small-scale performance venues citywide, as well as further streamlining and simplification of the use tables.

STAFF RECOMMENDATION

Suggested Motion Language:

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

*Motion to accept the summaries (**Attachments A & B**) of the August 25, 2020 Study Session on Community Benefit and Use Tables and Standards.*

NEXT STEPS

Based on the feedback from council, staff will move forward with the options and begin code drafting. Staff anticipates further community outreach on the projects, particularly the Use Standards and Table project, once more detailed changes are developed for consideration. Staff anticipates bringing ordinances before Planning Board and City Council in either the fourth quarter of 2020 or the first quarter of 2021, dependent on the results of further outreach and considering the reduced staffing within Planning and Development Services (P&DS). Due to the complexity and potential need for more intensive outreach, some components of the code changes may occur later in 2021.

ATTACHMENTS

Attachment A: Summary of the Aug. 25, 2020 study session on Community Benefit

Attachment B: Summary of the Aug. 25, 2020 study session on Use Table and Standards

ATTACHMENT A
August 25, 2020 Study Session
Community Benefit Phase 2 Project

PRESENT

City Council: Mayor Sam Weaver, Mayor Pro Tem Bob Yates, Aaron Brockett, Rachel Friend, Junie Johnson, Adam Swetlik, Mark Wallach, and Mary Young.

Staff: Jane S. Brautigam, City Manager; Tom Carr, City Attorney; Chris Meschuk, Deputy City Manager; Charles Ferro, Development Review Manager, Planning; Karl Guiler, Senior Planner / Code Amendment Specialist; Andrew Collins, Planner II / Code Amendment Specialist; Phil Kleisler, Senior Planner, Jay Sugnet, Senior Housing Planner

PURPOSE

The purpose of this study session was to update City Council on the progress of Phase 2 of the Community Benefit project, present results of community engagement and potential options and to get specific City Council direction on land use code change options to allow for code drafting and further economic and legal analysis to begin.

Specific feedback from City Council was requested on preliminary options for defining the three focus community benefits: below market rate rent commercial, space for arts and cultural uses, and human / social services. The options presented related to the approach to reviewing them including process, agreements, penalty fees, etc. as well as the approaches to updating the Site Review criteria.

SUMMARY OF PRESENTATION & DISCUSSION

Charles Ferro introduced the item and the staff team.

Karl Guiler presented information on the background and purpose of the project, the community engagement to date and the results, what was completed in Phase 1, and the Phase 2 options. Following the staff presentation, council's discussion was structured around key questions. Responses from the council members and staff is provided beneath each question.

Council Questions

Council members asked the following questions (staff answers are *italicized*):

- How in lieu fees would be applied?

Staff responded that in lieu fees could either be all allocated to the existing inclusionary housing fund, or funds could be directed to monies benefiting local businesses, the arts community or social services.

- Would the current review process change?

Staff responded that the review process is not anticipated for change. Height modifications or requests for additional intensity (e.g., floor area or density) would still require Planning Board review at a public hearing.

- How will the commercial linkage fees be determined?

Staff responded that the original community benefit percentage above the commercial linkage fee was determined by an analysis done by the economic consultant and that the consultant is currently looking at whether the fee amounts would need to change in light of the additional of three new community benefit options.

- Who would benefit for the reduced rents for the below market rate rent commercial option?

Originally staff was looking to limit qualifying tenants to small local businesses, non-profits and women or minority owned business as was done as part of the 30Pearl restrictive covenant. Staff has learned that restricting to these individual tenants, not including non-profits, within a regulatory context may present some legal challenges and that this is something that needs to be looked into further.

- Is there any data on Phase 1 yet?

Staff responded that the Phase 1 community benefit regulations did not go into effect until January of 2020 and by March 2020, the current pandemic was in full force and as such, 2020 has not been a good trial year for the implementing of Phase 1.

- What was original intent behind the Appendix J map when adopted in 2015?

Staff responded that the Appendix J map was adopted as an interim map that would likely be removed following implementation of a Community Benefit program thereby allowing height modification requests citywide, if they included community benefit pursuant to the program.

QUESTIONS FOR CITY COUNCIL

Community Benefit Uses:

1. Does the City Council agree with the Table 1 staff recommendations for adding **below market rate rent commercial** as community benefit use? Should the Department of Community Vitality provide recommendations on how well the use meets the definition? To encourage more small local business, should additional restrictions on tenant space size, tenant space width, or on national franchises be applied?
2. Does the City Council agree with the Table 2 staff recommendations for adding **arts and cultural uses** as community benefit use? Should the Arts Commission provide recommendations on how well the use meets the definition?

3. Does the City Council agree with the Table 3 staff recommendations for adding **human / social service uses** as a community benefit use? Should Department of Human Services and Initiatives provide recommendations on how well the use meets the definition? Should uses related to Food & Nutrition, Health & Well Being be included on the list? Should all the uses in this category be non-profit to qualify?

Council Comments and Feedback

M. Wallach stated that a more focused program would be better than a diffused one given that a lack of affordable housing is the city's number one problem. Not that the three options are not supported, but having more options would decrease the amount of affordable housing possible. Would pursue a community benefit program that focuses on getting more affordable housing along with a better Site Review process.

S. Weaver disagreed and stated that affordable housing is the entry price for building anything in Boulder. Supports affordable commercial and the other options as there are other needs in the city. Focus on non-profit tenants for affordable commercial space. Would like to see Community Vitality's recommendations.

B. Yates agreed with S. Weaver and noted that if we only do affordable housing, the city would end up with high end market rate commercial and affordable housing.

M. Young stated that she is of two minds on this and understands M. Wallach's point. Thinks 30Pearl is a successful example and that proximity of the community benefit uses and affordable housing locations is an important relationship due to walkability and should be looked at.

A. Swetlik supports moving forward with the Phase 2 options, but is concerned that the affordable commercial could benefit big business and not the small, local business as intended.

R. Friend favors moving forward with Phase 2. Red tape should be minimized and it should be crafted in a way that developers actually do this and the city obtains community benefit. National chains should not be ruled out. Low cost grocery stores would benefit the community and some businesses like big boxes have been driven out to neighboring communities, which has impacted Boulder's tax base.

J. Johnson supports the Phase 2 options. The uses would contribute to a vibrant community and ties in with 15-minute neighborhoods. There are struggling businesses, so there is a need to know which type of tenants would benefit from the affordable benefit option.

A. Brockett agrees with moving forward with the Phase 2 options as the options are critically important. How the uses are defined and how the criteria is written is critical. There must be a balance in predictability and flexibility. Agrees with R. Friend that the program should be feasible.

4. **Minimum duration:** Should community benefit uses be required by agreements to be in operation for a set period of time (e.g., 10 years, 20 years) or should they be required in perpetuity like permanently affordable housing?

Council Comments and Feedback

All council members agreed that the community benefit uses should be required in perpetuity like permanently affordable housing.

5. **Penalty fees:** For community benefit uses that cease operation after approval, should a penalty fee be required until a use of equal benefit is established?

Council Comments and Feedback

S. Weaver expressed that there should be flexibility built in to allow changes in use, but how do we make sure the city gets what is promised? There should be a penalty fee if the use goes away.

M. Wallach asked whether there needed to be a penalty fee or just a prohibition on leasing out of the permitted community benefit use? A tenant that is having trouble leasing out a space is already being penalized.

J. Johnson noted that there needs to be flexibility if a leaser cannot find a tenant. Need to look at when a penalty fee would take effect.

A. Swetlik agreed that a penalty fee would be necessary. Some owners are content to just sit on unleased spaces.

M. Young noted that retail is changing. A way out might be to allow conversion to affordable housing.

R. Friend asked if Phase 1 had a penalty fee associated with it. (*Staff expressed that once housing is built it is less likely to not be used as such, unlike commercial spaces.*)

A. Brockett agreed that penalty fees would be necessary, should have some flexibility, but must be financially crafted to also incentivize the space getting refilled.

6. **Site Review criteria:** Does the City Council agree with the staff Table 5 staff recommendations for updating the Site Review criteria?

Council Comments and Feedback

M. Young supported the proposed changes and thought the categories were outstanding. Process still makes a big difference. Perhaps there could still be a larger role for Concept Plans so that if comments are addressed well, it makes the Site Review process easier. Consider adding an ex-officio member of Design Advisory Board to Planning Board. A subcommittee of the Arts

Commission should be considered in making recommendations rather than projects having to wait for the monthly meetings of the Arts Commission.

A. Brockett agreed and asked staff to coordinate with the Arts Commission on that idea.

S. Weaver commended staff on the suggested changes and noted that the project is really its own project in a way, but appropriate to include in the Community Benefit project. Noted that change can sometimes take a long time and these changes would be an improvement. Pleased to see them updated.

A. Brockett was happy to see this progressing and noted it is on the right track. Likes the maximum width provision, but also need to work in flexibility in certain circumstances (e.g., elevator for senior facility).

ATTACHMENT B
August 25, 2020 Study Session
Use Table and Standards Phase 2 Project

PRESENT

City Council: Mayor Sam Weaver, Mayor Pro Tem Bob Yates, Aaron Brockett, Rachel Friend, Junie Johnson, Adam Swetlik, Mark Wallach, and Mary Young.

Staff: Jane S. Brautigam, City Manager; Tom Carr, City Attorney; Chris Meschuk, Deputy City Manager; Charles Ferro, Development Review Manager, Planning; Karl Guiler, Senior Planner / Code Amendment Specialist; Andrew Collins, Planner II / Code Amendment Specialist.

PURPOSE

The purpose of the this study session was to update the City Council on the progress of Phase 2 of the Use Standards and Table project, present results of community engagement and to get specific City Council direction on the project to allow for the development of specific code change options and code drafting to begin.

Specific feedback from City Council was requested on preliminary options for defining exploring more ways of meeting BVCP policies on mixed-use and neighborhood centers and looking into what changes could foster 15-minute neighborhoods. The options also included ideas for streamlining the use table to be more simplified and understandable.

SUMMARY OF PRESENTATION & DISCUSSION

Andrew Collins presented information on the background and purpose of the project, the progress of the work done by the Planning Board subcommittee, the community engagement to date and results, and potential options for changes to better align the use table with the policies and goals of the Boulder Valley Comprehensive Plan (BVCP). Following the staff presentation, council's discussion was structured around key questions. Responses from the council members and staff is provided beneath each question.

Council Questions:

Council members asked the following questions (staff answers are *italicized*):

- How will neighborhood comment be conducted?

Staff responded that if council was supportive of the ideas for changes moving forward, staff would begin to look at areas where changes could make sense and work with Communications staff to reach out to those areas specifically for feedback. In person meetings are unlikely at the moment, but staff would look to doing more online engagement and Zoom-like meetings to get input.

- Would possible code changes for industrial zones only look at the light-industrial areas?

Staff responded that we would be looking at all of the industrial zones though this project. More comprehensive updates to the industrial zones corresponding to east

Boulder, would likely be an outcome of the East Boulder Subcommunity Planning process.

- Has staff looked at areas on a map that has affordable housing to determine where changes could occur?

Staff responded that this was not done, but certainly could be looked at.

- In single-family home areas, would certain uses still be prohibited?

Staff indicated that there would still be uses that are inappropriate for single-family areas such as small-scale performance venues.

- How would neighborhoods give input for an evolving process? Would the whole neighborhood have to agree?

Staff clarified that like any public process, there would be an assembling of public comments and while it is not expected that all may agree, if the input indicates broad support, this could inform areas that may be more open to changes. In addition, existing tools such as Use Reviews also provide a baseline of discretionary review that could be applied to potential use changes at the time of development.

Questions for City Council:

Do you agree with, disagree with, and/or have other feedback on updating the Use Table and Standards of the Land Use Code to accomplish the following considerations?

1. Allow a greater diversity of uses in the Neighborhoods Center areas as identified in the BVCP to better serve community needs? These areas are typically zoned Business - Commercial (BC) and comprised of older, suburban shopping centers.
 - a. If so, what uses and elements are important to have in a neighborhood center areas to serve residents daily needs?

Council Comments and Feedback

M. Wallach agreed with looking at neighborhood centers and thought that such changes were low hanging fruit. It would be appropriate to reimagine tenant spaces for the centers.

S. Weaver found that the BC-1 and BC-2 nodes are important, but no further changes to office uses in these areas should occur as that was already done through a prior code changes. Focus on allowing uses that are neighborhood serving (e.g., coffee shops).

M. Young agrees with questions 1 through 3. Many of the uses in these areas are businesses that produce lower paying jobs, so consider who is served by the greater level of walkability. If they don't live in the neighborhood, they will be driving to their jobs.

A. Swetlik agrees with S. Weaver and M. Young. Don't need to address office uses again. Try to incorporate affordable housing into walkable neighborhoods.

A. Brockett agrees with the question. Sometimes we have overly restrictive uses in these centers. Neighborhood serving uses may be too narrow.

J. Johnson agreed with everything being said thus far.

2. Allow limited circumstances of walkable and compatible mix of uses (such as small-scale cafes or corner stores) to foster 15-minute neighborhoods in typically homogenous neighborhoods, in appropriate locations?
 - a. If so, should additional use standard criteria and/or zoning restrictions apply to ensure compatibility with surrounding uses?

Council Comments and Feedback

S. Weaver agreed noting that certain cafes and stores would fit nicely but inquired about the level of review. *(Staff indicated that non-residential uses in residential zones currently require Planning Board review and approval and that it would likely be consistent with this option unless a conditional use review at the staff level were created.)*

S. Weaver indicated that Planning Board review would be appropriate for these types of uses but could be made easier over time if it works. *(Staff indicated that management plans could be required with specific hours of operation standards incorporated.)*

A. Brockett big fan of this idea and glad that staff is working on this. Adds to the vitality of the neighborhood. Latin American neighborhoods are very good at this. Look at allowing vendors.

R. Friend expressed that there are some areas of neighborhoods that are unattractive to walk and supports focusing on certain areas to make them more walkable. *(Staff clarified that the change will focus on the use table, but that Transportation staff can be brought in the loop for identified physical changes to help make places more walkable.)*

M. Young stated that neighborhood input should be accommodated.

3. To what degree should additional uses (such as residential, retail, or restaurants) be allowed in light industrial areas, in order to foster mixed-use, walkable neighborhoods, while protecting and minimizing disruption to existing industrial uses?
 - a. If so, should additional use standard criteria and/or zoning restrictions apply to protect and minimize disruption to existing industrial uses?

Council Comments and Feedback

S. Weaver indicated that this is really important, but somewhat difficult. Compatibility is an issue since new residents may later complain about impacts from existing industrial uses, which could drive out the industrial uses. Some examples are marijuana grow facilities, coffee roasting etc. Perhaps covenants are necessary to make new residents aware that they cannot complain

about impacts that were present when they moved in? Protecting existing uses is important. Consider saturation limits on residential development. There is a need for residential and diversification is good, but don't wipe out other uses.

M. Young supportive of S. Weaver's comments. Provide some residential but be careful how it's done. Could result in higher land values that could lead to losing small affordable businesses.

A. Brockett agrees with both points. Fan of getting more restaurants and food uses and allowing some residential in these areas. This is a great project, but don't drive out service industrial uses.

A. Swetlik noted that residential in industrial comes up frequently. It is important to protect the existing uses in these areas. Look into the data about what the trends are and the types of jobs in these areas.

4. Allow greater flexibility for creative uses such as live/work units, artist studios, home occupations, and galleries, and small-scale performance venues citywide?

a. Are there other uses that should have greater flexibility citywide?

Council Comments and Feedback

All council members supported this idea.

5. Streamline the Use Table to simplify similar use categories?

a. Consolidate the existing six office use categories from six down to a smaller number of office use categories?

b. Consolidate and simplify the existing restaurant use categories?

Council Comments and Feedback

All council members supported this idea.

6. What other comments and ideas do you have for updating and improving the Use Table and Standards?

Council Comments and Feedback

S. Weaver was pleased with the progress of the project and the staff's work.

M. Young noted that these issues have been discussed for years and appreciates the work of staff and the board subcommittee.

A. Brockett acknowledged the work of the subcommittee and the participants.