



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: April 2, 2019

AGENDA TITLE

Discussion of potential land use code amendments to Chapter 9-6, "Use Standards," B.R.C. 1981 related to zoning districts within the Opportunity Zone Census Tract 122.03, which is currently subject to a moratorium until June 22, 2020.

PRESENTER/S

Jane S. Brautigam, City Manager
David Gehr, Chief Deputy City Attorney
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EXECUTIVE SUMMARY

The purpose of this item is for City Council to discuss potential code amendments related to the uses in the zoning districts located in within Census Tract 122.03, designated as an opportunity zone. City Council adopted a moratorium ordinance on Dec. 18, 2018 and subsequent amendments based on concerns that incentivized development within Census Tract 122.03 that may result in development projects that are inconsistent with the adopted [Boulder Valley Comprehensive Plan](#). This is because the current Boulder Revised Code Title 9, Use Standards, has not yet been completely updated to reflect recently updated goals and policies to better address identified areas of focus (see pages 12-14 of the [BVCP](#)) issues such as:

- Achieving more housing affordability
- Better mitigating the jobs and housing imbalance, and
- Preserving small local business

- Conditional use (C) requires a relatively expedient staff level review for compliance with specific criteria.
- Use Review (U) is more involved, requires public notice, includes specific discretionary review criteria and may require Planning Board review.
- Prohibited use (*) is explicitly not permitted unless it is an existing non-conforming use (e.g., grandfathered use) that predated the current zoning and has not ceased operation for more than one year.

As part of the [Use Standards and Table project](#), staff is also looking at other ways to simplify and streamline the code. One idea that staff is exploring is the creation of a new use category of “Limited Uses” which would be regulated between an allowed use and a conditional use and designated as (L) in the use table. “L” uses, if implemented, would be allowed through a building permit or business license, but may have one special standard that would ordinarily require a separate submission of a conditional use application. This could save money and time in reviews for uses while also enabling a more effective way to review proposals for compliance with the BVCP’s intent of creating a more appropriate mix of uses in certain areas. This concept could also be applied to other letter categories used where there is only one standard applied to the use (e.g., G uses, which require certain uses on the ground floor facing a street or M uses, which require at least 50% of the floor area of a building to be residential).

In addition, the Limited Use designation will help to streamline the existing Use Table, where multiple variations of the same use often appear with only a square footage differentiation. For example, “Adult Educational Facilities with < 20,000 square feet of floor area” and “Adult Educational Facilities with ≥ 20,000 square feet of floor area” are separate uses listed within the Use Table. Applying the Limited Use category would consolidate these into a single use entry, “Adult Educational Facilities”, and then simply list the 20,000 square foot requirement in the Limited Uses criteria section. This type of consolidation of duplicative uses would occur for multiple uses within the Use Table (see *Figure 1* below), creating more clarity and streamlining the organization and legibility of use standards and table.

Drawing from the goal and intent statements within the BVCP, staff has looked at each zone and use in the Opportunity Zone area with an eye towards achieving the following:

- Encourage new housing and mixed-use neighborhoods in areas close to where people work
- Encourage transit-oriented development in appropriate locations
- Preserve appropriate levels of service commercial uses
- Allow for the conversion of commercial and industrial uses to residential uses in appropriate locations (this analysis excludes residential in industrial zones, which will be addressed as part of the East Boulder subcommunity plan underway)
- Improve regional transportation alternatives
- Mitigate the impacts of traffic congestion

	<ul style="list-style-type: none"> • Make building material sales a limited use (“L”), which allows building material sales 15,000 SF or less by-right, otherwise by Use Review (“U”)² <p><i>Future code change projects will explore new opportunities for residential uses in industrial zones.</i></p>	<p>use category with the relevant requirements to be noted in a Limited Use criteria section.</p> <ol style="list-style-type: none"> 3. This would be a code clean up, as conditional use standards already apply to congregate care uses, yet the table erroneously depicts it as allowed. 4. Restricting residential on the ground floor in the transitional business (BT) zones and business regional (BR) zones would be similar to recent changes made in the business community (BC) zones to incentivize ground floor retail uses. 5. Limits offices to help mitigate the jobs: housing imbalance and encourages permanently affordable housing, supported by BVCP policies. 6. A relatively high impact use in terms of parking and activity that should be addressed through the Use Review process considering the proximity to nearby residential uses 7. Allowing convenience retail as an allowed use would be appropriate within a business zone. 8. This would be a code clean up, as the use is conditionally regulated, but appears as an allowable use in the use table. 9. Limiting financial institutions on the ground floor in the BMS zone would encourage more active, pedestrian friendly uses
IS-1 (Industrial Service 1)	<ul style="list-style-type: none"> • Change convenience retail uses in IS-1 and IS-2 to a Limited use (“L”) as no conditional uses currently exist and the use is a needed use to serve industrial areas. Floor area is limited to 2,000 SF or less.¹ • Make adult educational facilities a limited use (“L”), which allows adult educational facilities less than 20,000 SF by-right, otherwise by Use Review (“U”)² • Make building material sales a limited use (“L”), which allows building material sales 15,000 SF or less by-right, otherwise by Use Review (“U”)² • Make manufacturing uses a limited use (“L”), which allows manufacturing uses 15,000 SF or less by-right, otherwise by Use Review (“U”)² 	
IS-2 (Industrial Service 2)		
IMS (Industrial Mixed Service) *	<ul style="list-style-type: none"> • Consolidate convenience retail uses into a single category and change to an allowable use (“A”) in industrial zones, as no conditional uses currently exist and the use is a needed use to serve industrial areas^{1/2} • Make adult educational facilities a limited use (“L”), which allows adult educational facilities less than 20,000 SF by-right, otherwise by Use Review (“U”)² 	

	<ul style="list-style-type: none"> • Make building material sales a limited use (“L”), which allows building material sales 15,000 SF or less by-right, otherwise by Use Review (“U”)² 	<p>along the streetscape like in the downtown zones.</p> <p>10. It is unknown why a retail use in the business zone would require Use Review. This change would incentivize retail.</p>
BT-1 (Business Transitional 1)	<ul style="list-style-type: none"> • Change Congregate Care from an (“A”) allowable use to a conditional use (“C”) as conditional use standards already apply³ • Modify residential uses as a current (“A”) allowable use to a new limited use (“L”) where they would be limited to above or below the ground floor and if on the ground with Use Review (“U”) approval. The standard could also make residential a conditional use on the ground floor if permanently affordable housing is included in a development project.⁴ • Modify office uses as allowable (“A”) use to a new limited use (“L”) that limits floor area to no more than 25% of a building; up to 50% could be allowed if at least ½ of the required Inclusionary Housing affordable units are provided on-site or no fewer than 2 affordable units or by Use Review (“U”) ⁵ • Require Use Review (“U”) for Indoor Recreation or Athletic Facilities⁶ • Consolidate convenience retail uses into a single category and change convenience retail from a Use Review use to an allowed use (“A”) to incentivize retail⁷ 	<p>11. Incentivizes smaller, more affordable workforce housing</p> <p>12. Prohibiting personal service uses (currently allowed through Use Review) would be more in line with BVCP policies to preserve mobile home parks</p>
BT-2 (Business Transitional 2)		<p>13. Prohibiting offices in a residential zone would reduce the non-residential capacity to offset the jobs: housing imbalance, supported by BVCP policies.</p> <p>14. Bed and Breakfast uses contextually do not seem appropriate in a high density zone of this nature.</p> <p>15. Prohibiting single-family residences would mandate attached housing to increase the housing capacity in the residential high (and Mixed-Use 4) zones to support walkable mixed-use areas, supported by BVCP policies.</p> <p>16. Museums are a public serving use that are currently prohibited that should be permitted through Use Review in Public zones.</p> <p>17. Restaurant uses are currently noted as “Not Applicable N/A” in the use table without other options. This should be changed</p>
BCS (Business Commercial)*	<ul style="list-style-type: none"> • Modify medical or dental laboratories currently as (“A”) 	

	<p>allowable uses to a new limited use (“L”) and move the specific use standards in section 9-6-7 in the BCS zone to a new Table 6-2 for limited uses⁸</p> <ul style="list-style-type: none"> • Consolidate convenience retail uses into a single category and change convenience retail to a limited use (“L”) which allows convenience retail under 2,000 sf by-right, but with Use Review (“U”) above 2,000 sf ^{2/7} • Similar to the BC zones, a Use Review (“U”) should be required for sales and rental of vehicles within 500 feet of a residential use / add “business” to Section 9-6-9(i), B.R.C. 1981⁶ • Modify manufacturing uses from an (“A”) allowable use under 15,000 SF to be a limited use (“L”), which allows manufacturing uses 15,000 SF or less by-right, otherwise prohibited² 	<p>to “Prohibited” for consistency and clarity.</p> <p>18. Converts the conditional allowance (by-right so long as the use is not located on a ground floor facing a street) to a Limited Use, with the requirements to be listed in a Limited Use criteria section.</p>
BMS (Business Main Street)	<ul style="list-style-type: none"> • Modify hotel/motels as a current (“A”) allowable use to a Use Review (“U”) use in BMS⁶ • Modify financial institutions as a currently (“A”) allowable use to a new limited use (“L”) requiring that it not be on the ground floor, but otherwise by Use Review (“U”) in BMS (reference existing standard 9-6-7(a)(4), B.R.C. 1981)⁹ • Require Use Review (“U”) for Indoor Recreation or Athletic Facilities⁶ 	
BR-1 (Business Regional-1)	<ul style="list-style-type: none"> • Change Congregate Care from an (“A”) allowable use to a conditional use (“C”) as 	

	<p>conditional use standards already apply³</p> <ul style="list-style-type: none"> • Modify residential uses as a current (“A”) allowable use to a new limited use (“L”) where they would be limited to above or below the ground floor and if on the ground with Use Review (“U”) approval. The standard could also make residential a conditional use on the ground floor if permanently affordable housing is included in a development project.⁴ • Modify office uses as allowable (“A”) use to a new limited use (“L”) that limits floor area to no more than 25% of a building; up to 50% could be allowed if at least ½ of the required Inclusionary Housing affordable units are provided on-site or no fewer than 2 affordable units or by Use Review (“U”) ⁵ • Change convenience retail from a Use Review use (“U”) to an allowed use (“A”)¹⁰ • Similar to the BC zones, a Use Review (“U”) should be required for sales and rental of vehicles within 500 feet of a residential use / add “business” to Section 9-6-9(i), B.R.C. 1981.⁶ • Change Efficiency Living Units > 20% from a Use Review use (“U”) to an allowable use (“A”) to incentivize smaller units ¹¹ • Require Use Review (“U”) for hotels/motels where they are currently allowable (“A”)⁶ <p><i>Future code change projects will explore new opportunities for residential uses.</i></p>	
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	<p>conditional use standards already apply³</p> <ul style="list-style-type: none"> • Change Efficiency Living Units > 20% from a Use Review use (“U”) to an allowable use (“A”) to incentivize smaller units¹¹ • Prohibit (“*”) single family dwelling uses in RH zones¹⁵ • Prohibit (“*”) office uses in all residential zones¹³ 	
MU-4 (Mixed Use 4)	<ul style="list-style-type: none"> • Change Efficiency Living Units > 20% from a Use Review use (“U”) to an allowable use (“A”) to incentivize smaller units¹¹ • Prohibit (“*”) single family dwelling uses in MU-4 zones¹⁵ • Make manufacturing uses a limited use (“L”), which allows manufacturing uses 15,000 SF or less by-right, otherwise by Use Review (“U”)² 	
P (Public)	<ul style="list-style-type: none"> • Museums are currently a (“*”) prohibited use. Modify to allow museums through the Use Review (“U”) process¹⁶ 	
A (Agricultural)	<ul style="list-style-type: none"> • Modify restaurants to be (“*”) prohibited uses in A zones¹⁷ <p><i>This change would only restrict traditional bricks and mortar restaurants and not farm to table operations that would be an accessory use to agriculture. Further, as part of the Use Standards and Table project, staff will be exploring the possibility of allowing Community Supported Agriculture (CSAs) in agricultural areas (e.g., farm stands for people selling fruits and vegetables at community gardens etc.)</i></p>	

<p>DT (Downtown) zones</p>	<ul style="list-style-type: none"> • Change Congregate Care from an (“A”) allowable use to a conditional use (“C”) as conditional use standards already apply³ • Make financial institutions a new limited use (“L”) requiring that it not be on the ground floor, but otherwise by Use Review (“U”) in DT-2, DT-4 and DT-5 (reference existing standard 9-6-7(a)(4), B.R.C. 1981)¹⁸ 	
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**located in Boulder Junction and technically exempt from Opportunity Zone moratorium.

NEXT STEPS

Following council input, staff will move forward with the preparation of an ordinance or multiple ordinances that will make the proposed changes to better align with the BVCP and upon adoption will remove each applicable zoning district from the limitations created as part of the moratorium ordinances and amendments. Additional public outreach on the proposed changes will be conducted.

A broader discussion of the associated [Use Standards and Table project](#) is scheduled as a study session with City Council on May 28, 2019.