



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: June 2, 2015

AGENDA TITLE: Second reading and consideration of a motion to adopt and order published by title only, Ordinance No. 8048 amending Section 9-6-5, “Temporary Lodging, Dining, Entertainment, and Cultural Uses,” B.R.C. 1981, by providing the city manager with authority to waive requirement that mobile food vehicles be 150 feet from restaurants if the restaurants approve, waiving the requirement for Planning Board review of this ordinance and setting forth related details;

or in the alternative,

Second reading and consideration of a motion to adopt and order published by title only, Ordinance No. 8049 amending Section 9-6-5, “Temporary Lodging, Dining, Entertainment, and Cultural Uses,” B.R.C. 1981, by providing the city manager with authority to waive requirement that mobile food vehicles be 150 feet from restaurants if the restaurants approve, only in the BC-1 zone district, waiving the requirement for Planning Board review of this ordinance and setting forth related details.

PRESENTER/S

Jane S. Brautigam, City Manager

Tom Carr, City Attorney

Bob Eichem, Chief Financial Officer

David Driskell, Executive Director, Community Planning and Sustainability

Molly M. Winter, Director, Downtown & University Hill Management

Division/Parking Services

Sandra Llanes, Senior Assistant City Attorney

Mishawn Cook, Tax and License Manager, Finance Department

EXECUTIVE SUMMARY

The purpose of this council agenda item is to amend the city’s mobile food vehicle regulations to allow the city manager authority to waive the restaurant separation requirement if any restaurant within 150 feet supports the mobile food vehicle permit

application. Under the proposed ordinance, the mobile food vehicle operator would be required to provide a written statement of such support at the time of application and at each renewal. Under the current code, a permit is valid for 12 months or for such other time as established by the city manager.

STAFF RECOMMENDATION

Suggested Motion Language:

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

Motion to adopt on second reading and order published by title only, Ordinance No. 8048 amending Section 9-6-5, "Temporary Lodging, Dining, Entertainment, and Cultural Uses," B.R.C. 1981, by providing the city manager with authority to waive requirement that mobile food vehicles be 150 feet from restaurants if the restaurants approve, waiving the requirement for Planning Board review of this ordinance and setting forth related details;

or in the alternative

Motion to adopt on second reading and order published by title only, Ordinance No. 8049 amending Section 9-6-5, "Temporary Lodging, Dining, Entertainment, and Cultural Uses," B.R.C. 1981, by providing the city manager with authority to waive requirement that mobile food vehicles be 150 feet from restaurants if the restaurants approve, only in the BC-1 zone district, waiving the requirement for Planning Board review of this ordinance and setting forth related details

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic: Mobile food vehicles collect and remit required sales tax in accordance with the city's standard operating procedure.
- Environmental: Availability of food in city park locations would provide options that dissuade community members from driving out to purchase meal selections, then returning.
- Social: Mobile food vehicles providing goods and services at city owned facilities may lead to a greater sense of community, offering options for neighbors to gather inclusively and with fewer economic barriers to entry.

OTHER IMPACTS

Fiscal – None.

Staff Time – Implementation of this ordinance should be accomplished within the existing work plan with no additional staff resources.

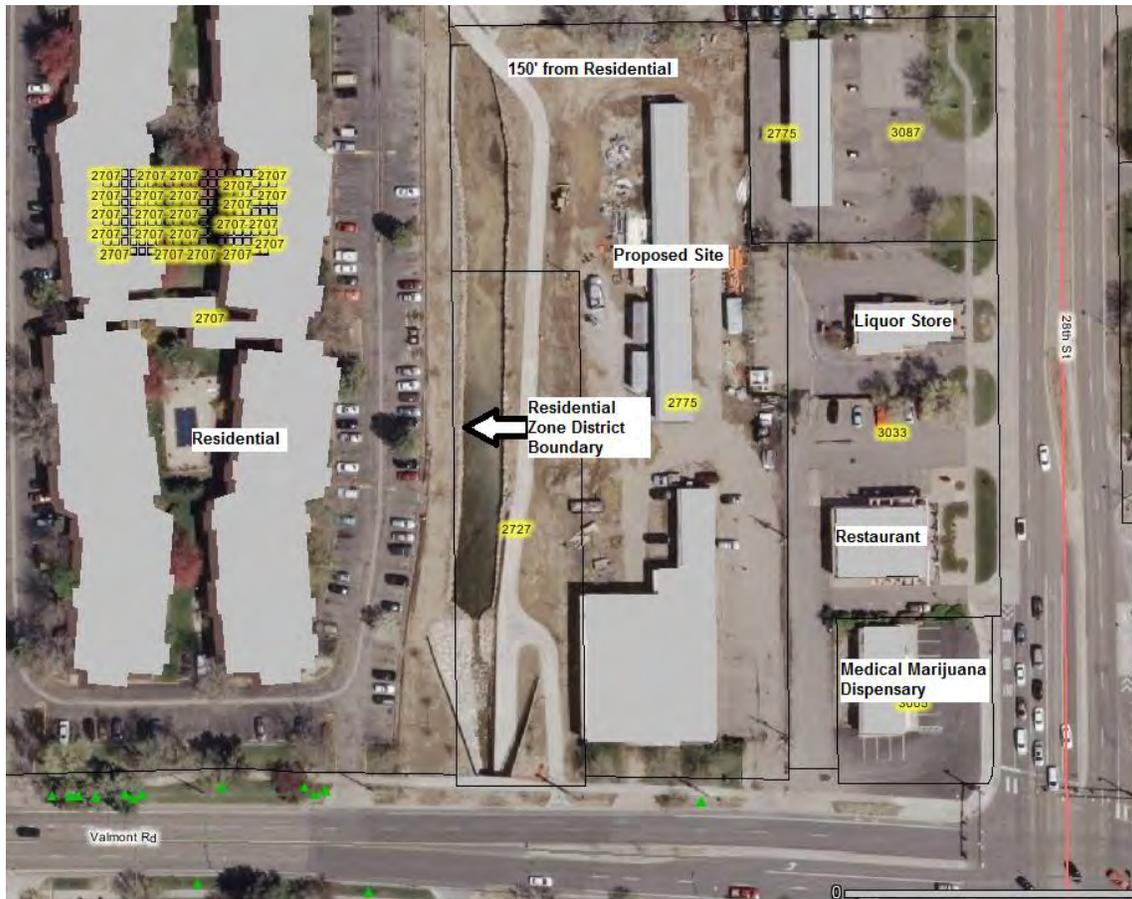
BOARD AND COMMISSION FEEDBACK

None. The ordinance provides an exemption from § 9-1-5 B.R.C. 1981 requiring planning board review of changes to title 9.

BACKGROUND

At the May 5, 2015 council meeting two individuals spoke during the open comment period regarding their business plan to open a tavern, which would have mobile food vehicles in an adjacent parking area. The proposed site for their establishment is within 150 feet of a restaurant. According to the presenters, the restaurant supports the new establishment and the mobile food vehicles associated with the business. Council directed staff to prepare an ordinance providing the city manager with authority to exempt mobile food vehicles from the 150-foot restaurant separation requirement when all restaurants within 150 feet consent. Council also instructed staff to bring the ordinance directly to council without seeking a planning board recommendation. The ordinance includes a finding that planning board review under Section 9-1-5, “Amendments and Effect of Pending Amendments,” B.R.C. 1981, is not required.

The proposal triggering the change is seeking to establish a tavern and mobile food vehicle park at the former Rayback Plumbing Building on 2775 Valmont Road. The proposal is to create a tavern in the building with a mobile food vehicle park adjacent. The site is as follows:

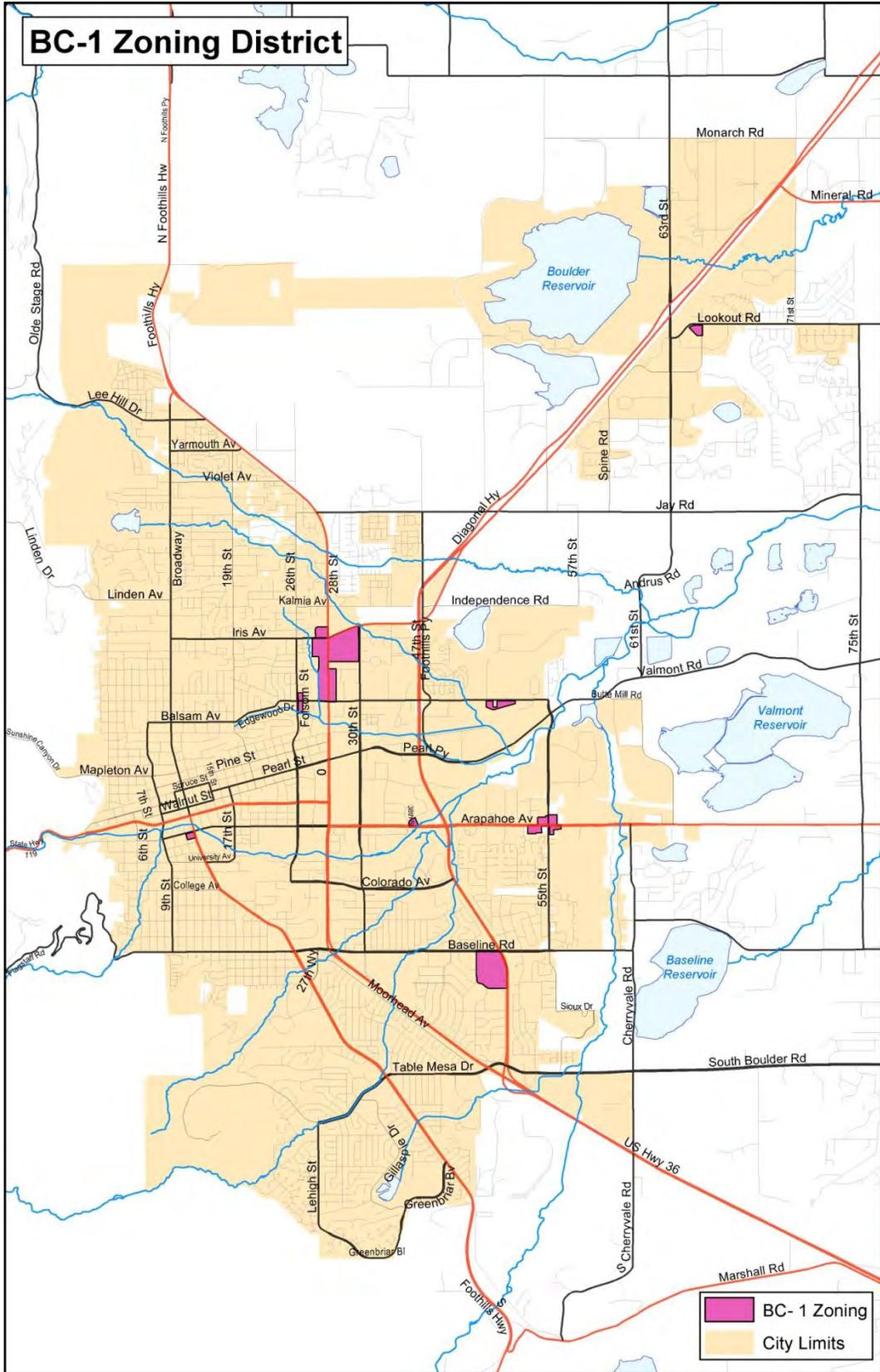


The site borders a residential zone district. Current code prohibits mobile food vehicles within 150 feet of a residential district. Under the code, the distance is measured as follows:

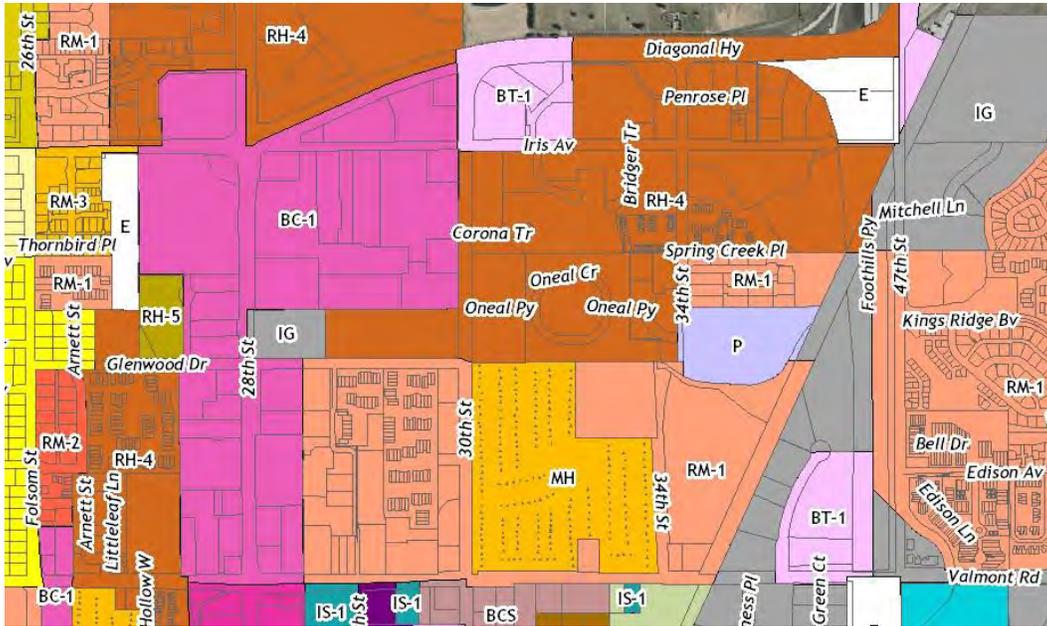
Distances shall be measured by the city on official maps as the radius from the closest points on the perimeter of the applicant's mobile food vehicle to the closest point of the designated residential zone or property of the restaurant.

§ 9-6-5(d)(1)(A). It appears that the plan is to park the vehicles at least 150 feet from the residential zone district boundary to the west. This would require that all food trucks be parked on the east side of the building. The east edge of the building is approximately 150 feet from the border of the residential zone district.

The proposed ordinance would apply city-wide. At first reading, council passed an alternative proposed ordinance limiting the application of the change to the BC-1 zone district. Business Community 1 is a mixed use zone district which along with Business Community 2 is defined as “Business areas containing retail centers serving a number of neighborhoods, where retail-type stores predominate.” § 9-5-2(c)(2)(g). Council requested that staff provide some information about the other BC-1 zone districts in the city. There are six BC-1 Districts in the city. The following map shows all of the BC-1 zone districts in the city:



The proposed site is in a BC-1 district located roughly between Valmont and Iris on both sides of 28th Street. In addition to Thai Shi Restaurant, there are twenty-one other restaurants in this zone district. This BC-1 district is depicted on the map below:

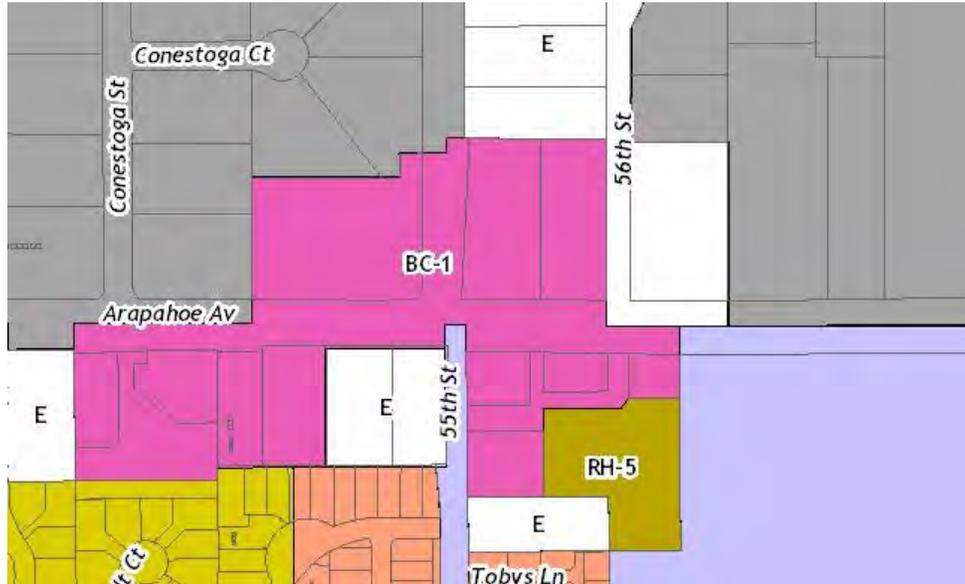


The other BC-1 zone districts are as follows:

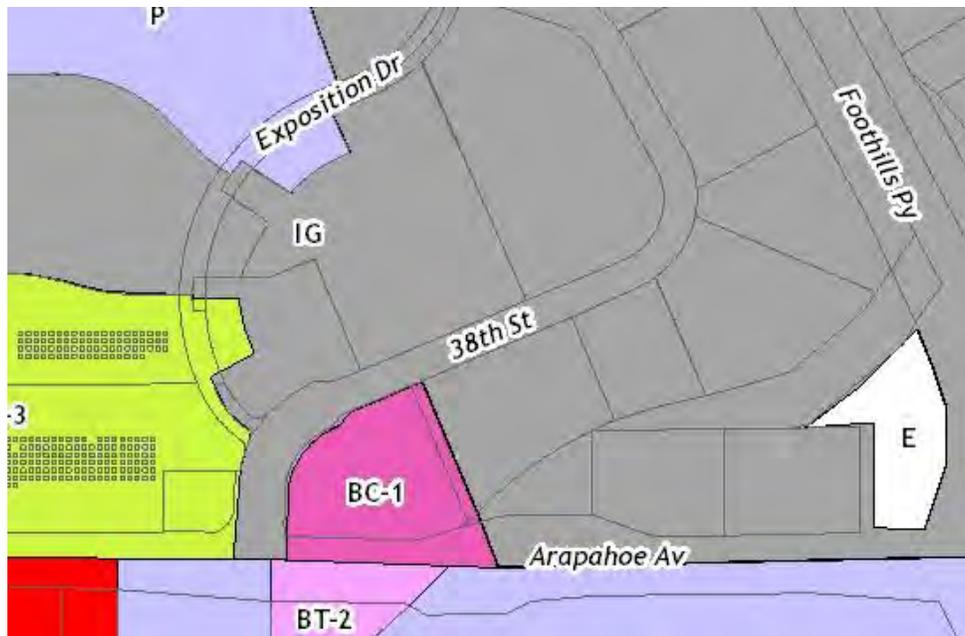
1. South of Valmont, west of 55th. There does not appear to be any restaurants in or near this zone district.



2. At the intersection of Arapahoe and 55th. There is a Wendy's Restaurant in this zone district.



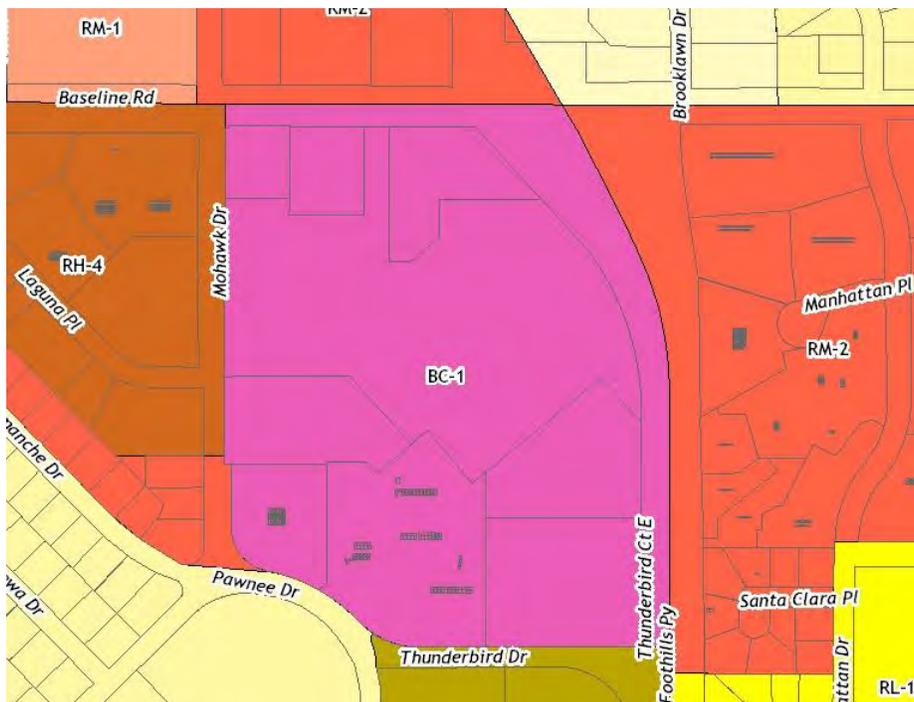
3. At the intersection of Arapahoe and 38th. Fate Brewing Company is in this zone district.



4. At the intersection of Broadway and Arapahoe. Alfalfa's café is in this zone district and there are three restaurants across the street.



5. South of Baseline, east of Mohawk. Glacier's Homemade Ice Cream and a Subway Restaurant are located in this zone district.



Council Options:

1. No Action
2. Adopt Ordinance Number 8048, with citywide application
3. Adopt Ordinance Number 8049, applying only to BC-1 zone districts.

ATTACHMENTS

Attachment A – Ordinance 8048 (citywide)

Attachment B – Ordinance 8049 (BC-1 zones)

ORDINANCE NO. 8048

AN ORDINANCE REGARDING MOBILE FOOD VEHICLE SALES, AMENDING SECTION 9-6-5, "TEMPORARY LODGING, DINING, ENTERTAINMENT, AND CULTURAL USES," B.R.C. 1981, BY PROVIDING THE CITY MANAGER AUTHORITY TO ISSUE A PERMIT ALLOWING A FOOD TRUCK WITHIN 150 FEET OF A RESTURANT WITH THE RESTAURANT'S PERMISSION, WAIVING THE REQUIREMENTS OF SECTION 9-1-5(a) "AMENDMENTS AND EFFECT OF PENDING AMENDMENTS" AND SETTING FORTH RELATED DETAILS.

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

Section 1. Section 9-6-5(d), B.R.C. 1981, is amended to read:

9-6-5 Temporary Lodging, Dining, Entertainment, and Cultural Uses.

...

(d) Mobile Food Vehicle Sales. The following criteria apply to any mobile food vehicle sales use:

(1) Standards: The city manager will permit mobile food vehicle sales on private property, public property, or in the public right of way if the use is permitted in the applicable zoning district and meets the following standards and conditions:

(A) The use shall be located at least:

(i) one hundred fifty feet from any residential zone districts, except as provided in subsection (d)(1)(C) below;

(ii) one hundred fifty feet from any existing restaurant except as provided in subsection (d)(1)(F) below; and

(iii) two hundred feet from any other mobile food vehicle with regard to public right of way sales, no more than four mobile food vehicles per private property in the MU-1, MU-2, MU-3, BT-1, BT-2, BMS, BC-1, BC-2, BCS, BR-1, BR-2, DT-1, DT-2, DT-3, DT-4, DT-5 zone districts, and no limitation on the number of mobile food vehicles per private property with owner's permission in the Industrial zone districts.

1 Distances shall be measured by the city on official maps as the
 2 radius from the closest points on the perimeter of the applicant's
 3 mobile food vehicle to the closest point of the designated
 4 residential zone or property of the restaurant. For purposes of this
 5 section, the term restaurant shall include "eating places" and "retail
 6 bakeries" as defined by the Standard Industrial Classification
 7 Manual, the edition of which shall be determined by the city
 8 manager. With regard to measurement between two or more
 9 mobile food vehicles in the public right of way, measurement shall
 10 be in the form of standard measuring devices, including and not
 11 limited to, a tape measure.

- 12 (B) No person shall operate a mobile food vehicle in a public zone district
 13 unless in connection with an organized event pursuant to Section 4-18-2,
 14 "Public Property Use Permits," B.R.C. 1981, or at the Boulder Municipal
 15 Airport ("Airport") in such areas and manner within the Airport property
 16 as approved by the city manager pursuant to Section 11-4-4, "Special
 17 Airport Activity Permits," B.R.C. 1981. For purposes of this section, the
 18 Airport property shall be defined as Lot 2, Airport South Subdivision.
- 19 (C) No person shall operate a mobile food vehicle in a residential zone district
 20 except with prior approval by the city manager in the parking lot or the
 21 public right of way adjacent to North Boulder Park or in any other park as
 22 approved by the manager.
- 23 (D) No person shall operate a mobile food vehicle sales use without a permit
 24 or in violation of the conditions of a permit. The permit will be valid for
 25 twelve consecutive months, or such other time as the city manager may by
 rule designate. Such application shall meet the following requirements:
- (i) provide proof of, and maintain, a valid driver's license, vehicle
 registration, and current motor vehicle insurance;
 - (ii) provide proof of, and maintain, a Colorado retail food license for a
 mobile unit;
 - (iii) provide proof of, and maintain, a valid sales use tax license;
 - (iv) provide payment of the fee prescribed by Section 4-20-66, "Mobile
 Food Vehicle Sales," B.R.C. 1981.
- (E) As a condition of accepting the permit, the applicant shall sign an
 agreement, in a form acceptable to the city manager, in which the
 applicant agrees to meet all requirements under this section and Chapter 4-
 1, "General Licensing Provisions," B.R.C. 1981, and assume responsibility
 for the actions and omissions of its agents and employees in the
 performance of or failure to perform its obligation under the permit.

(F) The city manager may, in his or her discretion, waive the requirements of subsection (d)(1)(a)(ii) above if the applicant at the time of issuance, and each renewal of the permit, submits to the city manager signed statements supporting the issuance of the permit from every restaurant within 150 feet of the proposed food truck location. The city manager may deny a request for waiver for any reason, with or without good cause.

Section 2. 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 3. 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.

Section 4. The City councils finds that time is of the essence for the passage of this ordinance and therefore review by the Planning Board would unreasonably delay adoption. Therefore the provisions of section 9-1-5(a) "Amendments and Effect of Pending Amendments," B.R.C. 1981, shall not apply to this ordinance.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 19th day of May, 2015.

Mayor

Attest:

City Clerk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED

PUBLISHED BY TITLE ONLY this 2nd day of June, 2015.

Mayor

Attest:

City Clerk

ORDINANCE NO. 8049

AN ORDINANCE REGARDING MOBILE FOOD VEHICLE SALES, AMENDING SECTION 9-6-5, "TEMPORARY LODGING, DINING, ENTERTAINMENT, AND CULTURAL USES," B.R.C. 1981, BY PROVIDING THE CITY MANAGER AUTHORITY TO ISSUE A PERMIT ALLOWING A FOOD TRUCK WITHIN 150 FEET OF A RESTURANT WITH THE RESTAURANT'S PERMISSION, ONLY IN THE BC-1 ZONE DISTRICT, WAIVING THE REQUIREMENTS OF SECTION 9-1-5(a) "AMENDMENTS AND EFFECT OF PENDING AMENDMENTS" AND SETTING FORTH RELATED DETAILS.

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

Section 1. Section 9-6-5(d), B.R.C. 1981, is amended to read:

9-6-5 Temporary Lodging, Dining, Entertainment, and Cultural Uses.

(d) Mobile Food Vehicle Sales. The following criteria apply to any mobile food vehicle sales use:

(1) Standards: The city manager will permit mobile food vehicle sales on private property, public property, or in the public right of way if the use is permitted in the applicable zoning district and meets the following standards and conditions:

(A) The use shall be located at least:

- (i) one hundred fifty feet from any residential zone districts, except as provided in subsection (d)(1)(C) below;
- (ii) one hundred fifty feet from any existing restaurant except as provided in subsection (d)(1)(F) below; and
- (iii) two hundred feet from any other mobile food vehicle with regard to public right of way sales, no more than four mobile food vehicles per private property in the MU-1, MU-2, MU-3, BT-1, BT-2, BMS, BC-1, BC-2, BCS, BR-1, BR-2, DT-1, DT-2, DT-3, DT-4, DT-5 zone districts, and no limitation on the number of mobile food vehicles per private property with owner's permission in the Industrial zone districts.

1 Distances shall be measured by the city on official maps as the
 2 radius from the closest points on the perimeter of the applicant's
 3 mobile food vehicle to the closest point of the designated
 4 residential zone or property of the restaurant. For purposes of this
 5 section, the term restaurant shall include "eating places" and "retail
 6 bakeries" as defined by the Standard Industrial Classification
 7 Manual, the edition of which shall be determined by the city
 8 manager. With regard to measurement between two or more
 9 mobile food vehicles in the public right of way, measurement shall
 10 be in the form of standard measuring devices, including and not
 11 limited to, a tape measure.

- 12 (B) No person shall operate a mobile food vehicle in a public zone district
 13 unless in connection with an organized event pursuant to Section 4-18-2,
 14 "Public Property Use Permits," B.R.C. 1981, or at the Boulder Municipal
 15 Airport ("Airport") in such areas and manner within the Airport property
 16 as approved by the city manager pursuant to Section 11-4-4, "Special
 17 Airport Activity Permits," B.R.C. 1981. For purposes of this section, the
 18 Airport property shall be defined as Lot 2, Airport South Subdivision.
- 19 (C) No person shall operate a mobile food vehicle in a residential zone district
 20 except with prior approval by the city manager in the parking lot or the
 21 public right of way adjacent to North Boulder Park or in any other park as
 22 approved by the manager.
- 23 (D) No person shall operate a mobile food vehicle sales use without a permit
 24 or in violation of the conditions of a permit. The permit will be valid for
 25 twelve consecutive months, or such other time as the city manager may by
 rule designate. Such application shall meet the following requirements:
- (i) provide proof of, and maintain, a valid driver's license, vehicle
 registration, and current motor vehicle insurance;
 - (ii) provide proof of, and maintain, a Colorado retail food license for a
 mobile unit;
 - (iii) provide proof of, and maintain, a valid sales use tax license;
 - (iv) provide payment of the fee prescribed by Section 4-20-66, "Mobile
 Food Vehicle Sales," B.R.C. 1981.
- (E) As a condition of accepting the permit, the applicant shall sign an
 agreement, in a form acceptable to the city manager, in which the
 applicant agrees to meet all requirements under this section and Chapter 4-
 1, "General Licensing Provisions," B.R.C. 1981, and assume responsibility
 for the actions and omissions of its agents and employees in the
 performance of or failure to perform its obligation under the permit.

(F) The city manager may, in his or her discretion, waive the requirements of subsection (d)(1)(a)(ii) above if the applicant at the time of issuance, and each renewal of the permit, submits to the city manager signed statements supporting the issuance of the permit from every restaurant within 150 feet of the proposed food truck location. The city manager may waive such requirements only for the BC-1 zone district. The city manager may deny a request for waiver for any reason, with or without good cause.

Section 2. 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 3. 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.

Section 4. The City councils finds that time is of the essence for the passage of this ordinance and therefore review by the Planning Board would unreasonably delay adoption. Therefore the provisions of section 9-1-5(a) "Amendments and Effect of Pending Amendments," B.R.C. 1981, shall not apply to this ordinance.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 19th day of May, 2015.

Mayor

Attest:

City Clerk

1 READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED

2 PUBLISHED BY TITLE ONLY this 2nd day of June, 2015.

3
4 _____
Mayor

5 Attest:

6 _____
7 City Clerk