Outdoor Places
Private Property Strategy
Planning Board Draft
4.12.2023
DENVER
THE MILE HIGH CITY
Patos at Ace Eat Serve, Colorado Plus Brewpub (Wheat Ridge) and Tacos Jalisco.
Introduction

During COVID-19, indoor capacity limits, social distancing requirements and a reluctance about being indoors devastated the city's food and beverage industry. In response, the city created the Emergency Temporary Outdoor Expansion Program (hereafter referred to as the Emergency Program), which provided significant regulatory flexibility for businesses to expand seating outdoors. In addition to providing economic relief, patio spaces on private property and within the right-of-way made the city more vibrant and created new opportunities for social gathering. These placemaking and business benefits led the city to begin rethinking the way patios are reviewed, regulated and encouraged in Denver.

Outdoor Places

Outdoor Places is a multi-agency effort by the City and County of Denver to establish a permanent program for review, permitting and management of outdoor patios in the right-of-way and on private property. The Program will build from the city's pre-pandemic patio regulations, respond to lessons learned under the Emergency Program and draw inspiration from best practices research.

Purpose of this Document

This document describes a proposed strategy for regulating and encouraging patios on private property. It contains zoning recommendations and outlines an optional design review program. This Strategy seeks to support our local businesses, contribute to great neighborhoods and promote safety.

Intent and Objectives

This section identifies the high-level intent and objectives for patios on private property. These qualitative statements inform the more detailed recommendations that follow.

Business Support

- Create opportunities for gathering spaces for many types of businesses
- Reduce regulatory barriers
- Expand patio design options
- Create flexible regulations that respond to case-by-case conditions
- Streamline review processes

Placemaking and Neighborhood Integration

- Mitigate impacts of patios on adjacent sensitive uses
- Activate streets, public ways and semi-public spaces
- Create visual interest
- Encourage social gathering spaces
- Encourage design excellence and creativity

Safety

- Protect patio users from adjacent vehicular activities
- Ensure patios do not conflict with pedestrians

Draft Outdoor Places Program Vision

Outdoor Places will be an efficient, accessible, and equitable program that allows the community to activate streets and private property with safe and vibrant spaces that contribute to Denver’s great neighborhoods.
Private Property
Patio Types

The Outdoor Places team conducted a design analysis to explore the range of patios that may need to be addressed. The objective was to consider the unique issues and opportunities that different patio types present. Patios on private property contribute to placemaking differently based on numerous factors, including location, configuration, scale, adjacent elements, and interface with public and semi-public spaces.

Type 1: Not Visible

A Type 1 patio is not visible from the street or key publicly accessible elements of private property (internal sidewalks, open space, etc.). These spaces have less external placemaking impact than other Patio Types and are typically oriented toward a single business. They are often located at the rear of or internal to an individual business, either within a fenced courtyard or behind a building. Due to their internal private nature, Type 1 patios are not visually impactful on pedestrians on the street or patrons of adjacent businesses.

Type 2: Internal

A Type 2 patio is internal to a site but is highly visible from key publicly accessible elements of private property, like internal sidewalks, integrated parking areas and common open spaces. A Type 2 patio is impactful to the experience of those visiting a property but does not impact fully public areas like streets or public parks. Examples include a patio within a large shopping center that faces a shared parking area or a patio along a private paseo between two buildings.

Type 3: Public Oriented

A Type 3 patio is next to and highly visible from a street, park or other fully public space. A Type 3 patio significantly impacts the experience within the public realm. Type 3 patios have the potential to activate and add visual interest to Denver’s streets and public spaces. Examples include patios abutting the public right-of-way and patios that are moderately set back from the public right-of-way but are still highly visible and impactful to one’s experience in the public realm. A patio that is immediately adjacent, highly visible from, and/or in proximity to a public space presents the greatest opportunity to enhance placemaking to the benefit of all.
Private Property Patio Types

Type 1: Not Visible

Type 2: Internal

Type 3: Public Oriented
Draft

Recommendations

This section identifies issues and recommendations for patios on private property. Recommendations would be implemented through amendments to the Denver Zoning Code and adoption of rules and regulations by the Executive Director of Community Planning and Development.

Create a Regulatory Path to Patios for All Nonresidential Uses

Issues and Opportunities

- Under current city rules, only restaurant/bars (eating and drinking establishments) are allowed to have an accessory patio.
- However, like those associated with restaurants/bars, patios accessory to uses like retail or services have the potential to benefit businesses and elevate placemaking.
- Furthermore, neighborhood impacts of patios of these additional uses are likely to be equal or lesser than those of restaurants/bars since they typically close earlier in the evening.
- Many types of businesses may wish to establish a patio for gathering, socializing, eating and drinking, queuing, waiting or other similar activities. Examples could include a space to eat lunch or wait for an appointment, tables and chairs to enjoy the outdoors before or after a gym class, seating outside of a grocery store for consuming purchased food, or a place for people to gather and socialize outside of an art gallery.

Recommendations

- Modify the Denver Zoning Code to establish a new Outdoor Gathering Area use to permit accessory patios for all nonresidential primary uses.
- Apply a universal set of design standards to a patio regardless of which Primary Use it accompanies.
- Limit activities on patios to socializing, gathering, waiting or queuing, served or unserved eating and drinking, and other similar activities. Outdoor entertainment, outdoor display of goods or other activities would not be permitted under this newly created Outdoor Gathering Area use.

Patios like this one (an amenity for Barry’s Gym in Cherry Creek), would be allowed and encouraged under the recommendations of this Strategy.
Case Study: Chakra Tattoo

A small patio in the right-of-way adjacent to Chakra Tattoo parlor was used by the business for employee lunches and breaks and as a customer waiting area. The patio, delineated by fixed railings and permitted under the pre-pandemic Tables, Chairs and Railings (TCR) Program, contributed positively to the streetscape and coordinated well with other patio installations along the block. Recently, the business was required to remove their patio, because patios in the right-of-way are only allowed where the patio use would be permitted by zoning, and currently a patio is not allowed as an accessory use to a tattoo parlor. The proposed text amendment would provide a path to approval for a patio such as this.

Image Source: Google Maps Street View
Streamline the Review Process for Patios Near Protected Districts

Issues and Opportunities

- Currently, all applications for a proposed patio within 50 feet of a Protected District are referred to the Zoning Board of Adjustment (BoA).
- The process requires a public hearing, and the BoA makes the ultimate decision on approvals and establishing special conditions, but CPD staff is heavily involved in review and makes a formal recommendation to the BoA.
- This process can be onerous for an applicant.

BoA Data and Research

- Few patios are denied at the BoA. Only one application was denied between 2018 and 2022, and the denial was consistent with a recommendation of denial from CPD staff.
- CPD requires pre-application meetings for patios within 50 feet of a Protected District. In practice, the pre-application process serves as a de-facto screening process prior to applicants choosing to enter the BoA review process.
- The result is that the BoA's final decisions are almost always aligned with CPD's recommendations.
- This analysis suggests that a more streamlined administrative review process may be more appropriate.

Recommendations

- Review patios within 50 feet of a Protected District administratively.
- Utilize the established Zoning Permit Review with Informational Notice (ZPIN) process instead of the currently applicable Zoning Permit with Special Exception Review (ZPSE) process that requires BoA approval. The ZPIN process would remove the current requirement for a public hearing at the BoA and transfer the review and approval authority to CPD but would continue to allow for neighborhood input, maintain the mandatory pre-application meeting, councilmember and RNO notification, and posted notice on the property as required under the current process.
- If this recommendation were implemented, CPD decisions could still be appealed to the BoA.

Protected District

A Protected District is a term used in the Denver Zoning Code to refer to low density residential zones. This primarily includes single and two unit zone districts but also includes rowhome and multi-unit zones up to three stories in some contexts. See Section 13.3 of the Denver Zoning Code for more information.
Introduce Additional Design Flexibility

Issues and Opportunities

The Emergency Program showed that some patios that would violate current zoning standards could still be functional, safe, and in some cases elevate placemaking. As such, the Outdoor Places team assessed existing zoning standards applicable to accessory patios to identify opportunities for increased flexibility. The below existing requirements were commonly ignored by Emergency Program participants but had few negative impacts.

- **Contiguity.** The existing Denver Zoning Code requires an outdoor patio to be contiguous to the primary use. This prevents a permanent patio from being separated from businesses by a sidewalk, drive lane, parking, plaza or other use. Removing this requirement would allow greater flexibility for a patio with a greater variety of site conditions. While most operators may wish to continue to locate a patio as close to indoor operations as possible, this regulation could be overly restrictive in some conditions.

- **Delineation.** The current code requires a patio to be clearly marked by fences, walls or plant materials up to 42 inches in height. Patios participating in the Emergency Program program showed that non-delineated patios could be well integrated into a site and in some cases enhance the public realm through street activation and added visual interest. Furthermore, non-delineated patios can be less expensive and easier to create.

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**Delineating Element**

A Delineating Element is a vertical element that defines the perimeter of a permitted patio. Examples include railings, raised planters, bollards and walls.
Recommendations

- Eliminate the contiguity requirement.
- Allow partially delineated and non-delineated patios.
- If the patio is delineated, maintain the existing maximum height of 42 inches, but clarify that this maximum includes any plantings that may be integrated.
- To address potential conflicts between patio users and vehicles, require a patio to be set back from a drive aisle and require vertical delineation between a patio and a drive aisle when the patio is in the same vertical plane or level as the drive aisle.
- Require a patio to be set back from a parking space to allow space for vehicle doors to open.
- Require a patio to be set back from pedestrian walkways and sidewalks or separated from such elements by a Delineating Element.

The patio at Marczyk Fine Foods has open seating with no delineation and enhances the public realm by adding activation and visual interest.

Recommended design standards to address potential vehicle conflicts. Note additional setback distance would be required where a Delineating Element is not provided between a parking space and seating.
Fully Enclosed Patios

The Denver Zoning Code treats outdoor patios as accessory uses, which are held to a lower level of regulation because they are incidental and subordinate to the primary use. In the case of a restaurant, the primary use is the enclosed kitchen and dining space, and the patio is an accessory use. Allowing enclosure elements on a patio long-term poses a zoning challenge because an enclosed patio space operates year-round, which generates a different impact than an accessory outdoor patio that is only being used seasonally. A year-round patio functions similarly to a primary use, which triggers building design and off-street parking requirements in addition to other rules.

Some enclosed structures allowed during the pandemic also present challenges related to urban design, safety and permitting when considered for inclusion in the permanent program. Many enclosures are temporary in appearance, and opaque tents inhibit outdoor visibility and sight lines. Additional review is necessary for heating elements, electrical and utility connections, wind and snow loads, carbon monoxide mitigation, fire protection and other technical considerations to ensure enclosure safety long-term.

The text amendment proposes to allow enclosures as part of an Outdoor Gathering Area provided capacity is no greater than 20 percent of the occupancy of the adjacent primary use in order to maintain the intention of the accessory use classification. The enclosure must also be designed consistent with design guidelines as determined through a design review process with city staff. See section "Encourage Good Design Through Optional Design Review" on pages 13-14 of this document for more information. Design guidelines for enclosures are proposed to include topics such as location, visibility and sight lines, scale, integration with adjacent architecture, safety and access, transparency, and materials. Additionally, an enclosed accessory structure will require permits from Denver’s Building and/or Fire Departments.
Create Significant Design Flexibility for Type 1 Patios

Issues and Opportunities

- The Denver Zoning Code currently establishes a one-size-fits-all approach to patio design.
- However, Type 1 patios, as described above, do not impact the public street or key public elements of a private site, so their design is less critical than more public-facing Patio Types.
- There is an opportunity to provide more design flexibility to businesses that want to have an internal patio.

Recommendations

- Provide an option for an applicant to request flexibility from design standards for Type 1 patios only.
- This would be accomplished by establishing a new Administrative Adjustment option for a patio that is determined by the city’s Zoning Administrator to not be visible from a street or other public areas (excluding alleys) or from primary publicly accessible elements of a private site, such as shared internal paths or internal common amenity spaces.
- Type 1 patios would be eligible for zoning flexibility related to design of structures and delineating elements.

↑ This Type 1 patio could be afforded greater design flexibility since it is internally focused and not visible from the street or other public areas.
Encourage Good Design Through Optional Design Review

This section provides background and recommendations related to encouraging good patio design. It also addresses opportunities for additional regulatory flexibility beyond that described in the sections above, including strategies related to allowances for a patio to remove required off-street vehicle parking.

**Issues and Opportunities**

- Zoning is the appropriate tool for regulating patios on private property, but it lacks the qualitative design standards needed to pursue optimal design outcomes and respond to case-by-case constraints and opportunities. Even if design flexibility is added to zoning as recommended in the previous sections of this document, the remaining design standards will sometimes prevent optimal design outcomes.
- As seen under the Emergency Program, one of the easiest ways for a business to create an outdoor patio was to place it in an existing off-street parking area. However, current zoning regulations that are recommended to remain in place prohibit removing required off-street parking spaces.
- The Emergency Program allowed full use of required off-street parking for patio installations, and very few reported issues or complaints have been received by the city. Neighborhood outreach to-date suggests strong support for flexibility around parking requirements to facilitate social gathering space.
- Outdoor Places, as a Denver program exclusively focused on patios, presents an opportunity to pursue better design outcomes while also building more flexibility into regulations.

*A variety of Type 3 patios*
Recommendations

- Revise zoning to authorize an optional design review path to promote patios that contribute positively to placemaking.
- Prepare qualitative design guidelines to facilitate design review.
- Focus design guidelines on:
  - Creating visual interest and activation along the street and other publicly accessible areas
  - Thoughtful integration of patio elements with site and building elements
  - Ensuring visibility into the patio from outside
  - Ensuring the patio is designed to be visually subordinate to the primary structure
  - Integration of landscape elements
  - Utilization of durable materials
  - Sustainable patio design
  - Integration of creative lighting solutions
  - Integration of artistic or stylistic elements that add visual interest
  - Increasing access for people of all abilities
- The optional design review component would be used in a variety of ways:
  - Voluntary. The design guidelines will be made available to applicants to use on their own or an applicant may request design review with city staff for a patio as part of their zoning permit application.

- **Relief from Zoning Standards.** An applicant seeking relief from prescriptive zoning, such as standards for maximum height of delineation elements or roof coverage requirements including flexibility on open to the sky requirements in order to allow patio enclosures, may apply to deviate from the code’s rules provided that the alternative design is consistent with the zoning intent and meets or exceeds the design guidelines. The design review process would be used to ensure this criteria has been met prior to granting the requested regulatory relief.

- **Parking Removal Allowance.** An allowance to remove otherwise required off-street parking spaces may be granted provided that the patio is designed consistent with the design guidelines as determined through a design review process with city staff. Specific recommendations for parking removal include:
  - Allow a patio(s) to remove up to 5 required parking spaces per property (zone lot) or up to a maximum percentage of required parking, whichever is greater.
  - Allow a higher maximum percentage in urban zone districts where parking requirements are lower and a proportionately lower maximum percentage in areas with higher parking requirements.
  - Allow parking removal only for a patio that is accessory to a restaurant or bar.
  - On multi-tenant lots, require a letter of approval from the landlord.
  - Prohibit removal of required accessible parking spaces.
Case Study: Denver Art Museum

A proposed louver structure over a seating area in front of the Denver Art Museum Welcome Center (the Landis J & Sharon Martin Building) was prohibited by zoning because the louvers composing its roof were angled such that less than 50% of the roof structure was open to the sky. The Denver Art Museum requested a variance because the light reflecting off the glass element of the structure above the patio was making the patio itself uncomfortable and unusable. The louvered structure was approved by a variance but had to undergo CPD review and a public hearing with the Zoning Board of Adjustment. If the recommendations in this document are implemented, a pergola or shade structure that does not meet the prescriptive requirements of the Denver Zoning Code could be approved through the Outdoor Places design review process administratively.
Related Documents and Next Steps

**Denver Zoning Code Text Amendment**
The strategies proposed above would require amendments to the Denver Zoning Code, which regulates uses and design on private property. See separate Planning Board Draft Outdoor Places Denver Zoning Text Amendment for more details.

**Private Property Patio Design Guidelines**
Design guidelines would be needed to implement recommendations for optional design review. See separate Planning Board Draft Private Property Patio Design Guidelines for more details.

**Next Steps for Private Property**

**Public Hearing Process**
The public hearing process will begin with a Planning Board Hearing currently scheduled for April 19, 2023 and conclude with a City Council public hearing currently scheduled for June 12, 2023.