

What is fair?

By Bob Yates

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When I was growing up in the 1960s, one of seven children, it was not unusual for us kids to look over our shoulders to make sure that none of our siblings was getting some sort of advantage, some special treatment from our parents. If we saw something we thought was inequitable, we would whine—as kids do—“It’s not fair.” My father’s simple response to this complain was invariably, “It’s not unfair.” To this day, I don’t know what that meant. But, it shut us up.

At a meeting on April 19, Boulder’s city council and city staff will grapple with how the community should share public space for outdoor dining in ways that are fair, or at least not unfair. During the height of the Covid panic, when patrons couldn’t eat indoors at restaurants, and restaurants were teetering on the brink of extinction, we threw out the rule books and let restaurants set up tables outside, on sidewalks, in parking spaces, in the street.

There were no minimum requirements for tables and chairs. They could be fancy and sturdy, they could be picnic tables, they could be cheap plastic furniture from Target. Divisions between restaurants and demarcation of alcohol zones varied from well-constructed fences and planters to twine strung between flimsy sticks imbedded in bales of hay. It was truly the Wild West, especially on West Pearl, where the throughway between 11th and 9th was closed to car traffic and more than a dozen restaurants simply took over street.

Now that the Covid crisis is seemingly ending, or at least stabilizing, Boulder city staff is drawing up rules to govern outdoor dining into the future. There’s no doubt that the community loves to eat outside when the weather is nice. That won’t end with the passage of the health crisis, when people can safely eat indoors if they want. But, we need to recognize that outdoor dining often involves the commercial, for-profit use of public space, our sidewalks, streets, and parking spaces. We need to ponder what is fair use of this public property, to the exclusion of community members who are not dining, as well as nearby businesses who don’t serve food.

Leading this balancing act is the city’s Director of Community Vitality, Cris Jones. Cris has the unenviable task of listening to the opinions of dozens of restaurant owners; the staffs of the Colorado Restaurant Association, the Boulder Chamber, and Downtown Boulder Partnership; non-retail businesses near restaurants; community members; and city departments as diverse as the Fire, Police, Transportation, Public Utilities, Legal, and Beverage Licensing. To say that interests and opinions diverge would be an understatement.

To organize all of this input and to come up with a set of long-term rules that is more or less fair, Cris considers four principles: Safety, accessibility, operations, and equity. On April 19, Cris and other city staff members will present to council and the community a framework for outdoor dining regulations to go into effect at the end of the summer which honors these four guiding principles.

At the top of the list of the four principles is safety. While there have been no serious incidents so far, Cris and his city staff colleagues worry about situations where vulnerable people are dining mere inches away from cars whizzing by, with only flimsy plywood to protect them. Protecting outdoor diners from strong wind or snow loads sometimes has been an afterthought. Electrical cords running from the restaurants to outdoor dining tables are more or less taped down. And propane heaters are occasionally placed where they are needed, rather than where they are safest.

Cris observes that, during the Covid emergency, Boulder allowed a “permissive state” to exist, with few safety or quality standards for outdoor dining infrastructure. As the Covid crisis passes, many cities, like [San Francisco](#), are looking to require more durable and sturdy structures to protect diners from cars, and to place electrical wiring and heating in places that minimize risks. These better structures can either be built by the restaurants themselves in compliance with published standards, or the restaurants can buy or lease structures from companies who specialize in outdoor dining equipment that meets safety requirements.

The second guiding principle as we consider long-term outdoor dining is accessibility. Many of the temporary outdoor dining arrangements that have popped up over the last two years simply don’t meet ADA requirements. And, some of them block rights-of-way where people who have mobility challenges used to get around. Finally, some outdoor dining tables are set up in handicapped parking spaces, denying those who need them access to stores and community spaces, even when they aren’t dining. The new standards to be developed over the coming months will ensure that public space is accessible, regardless of physical ability.

The third area that city planners must consider are the basics of operations. If restaurants are allowed to operate in community rights-of-way, how will sidewalks be swept and streets plowed? How will fire and police vehicles gain access during emergency events? What if the utilities folks need to access water, sewer, or electric cables that lie under outdoor dining tables? Should outdoor dining be seasonal or year-round? If seasonal, who will remove tables, chairs, and structures in the fall, and where will they be stored during the winter?

Fourth, there’s the equity component. What is fair? What are the interests of restaurant owners in relationship to the rights of adjoining stores and property owners who don’t operate restaurants? What happens when a downtown special event—like Bands on the Bricks or Fall Fest—needs space being used by restaurants? Should outdoor dining be limited to downtown, or should it include University Hill and the rest of the city? Should the city subsidize the infrastructure costs of restaurants complying with new safety and accessibility standards and, if so, with whose money? Should restaurants pay for the rental of sidewalk, street, or parking spaces and, if so, how much? What is the limit of what restaurants can pay and still operate their businesses profitably? As the city considers subsidies to restaurants, should the city factor in “return on investment,” as food and beverage taxes from successful restaurants replenish city coffers?

Finally, there is the 800-pound gorilla: What to do about West Pearl. Should the street remained closed indefinitely, effectively extending the Mall by two more blocks? Should it revert to pre-Covid conditions, with two-way traffic and on-street parking? Or, is there a hybrid

that would allow some vehicle access but still provides for “parklet” dining in some of the West Pearl parking spaces? As city council takes up the future of outdoor dining across the city, we will need to make an intentional decision about what to do with West Pearl in the long term.

A lot of these considerations probably sound like faceless city bureaucrats being fun-haters. That would be an easy (and lazy) conclusion to draw. The truth is, our city employees are caring, fun people, who actually enjoy outdoor dining themselves. But, they have the responsibility of balancing what is seemingly fun and good against the interests of the entire community to use public spaces, safely and equitably.

As always, your input is critically important. In advance of our April 19 city council meeting when we will grapple with these issues, please [tell](#) city council and city staff what you think is fair. We will listen to you. And we will work very hard to make sure that whatever we come up with is not unfair.