

BY AUTHORITY

RESOLUTION NO. CR12-0938
SERIES OF 2012

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

A RESOLUTION

Granting a revocable permit to Sam’s No. 3 – On Curtis, Inc. to encroach into the right-of-way with an enclosed outdoor patio at 1500 Curtis Street.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. The City and County of Denver hereby grants to Sam’s No. 3 – On Curtis, Inc. and its successors and assigns (“Permittee”), a revocable permit to encroach into the right-of-way with an enclosed outdoor patio (“Encroachments”) at 1500 Curtis Street in the following described area (“Encroachment Area”):

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PARCEL DESCRIPTION ROW 2012-0305-01-001

A PARCEL OF LAND BEING PART OF THE EXISTING RIGHT-OF-WAY OF CURTIS STREET AND 15TH STREET, LOCATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, IN THE CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE EASTERLY RIGHT-OF-WAY LINE OF 15TH STREET, SAID LINE ALSO BEING THE WESTERLY LINE OF LOT 16, BLOCK 107 OF DENVER EAST (BOYD'S) SUBDIVISION, BEARING N45°00'00"W BETWEEN THE SOUTH CORNER OF LOT 16 AND THE WEST CORNER OF LOT 16.

BEGINNING AT THE SOUTHERLY CORNER OF SAID LOT 16 (POB);

THENCE N45°00'00"W ALONG THE EASTERLY RIGHT-OF-WAY OF 15TH STREET, SAID LINE ALSO BEING THE WESTERLY LINE OF SAID LOT 16, A DISTANCE OF 125.00 FEET TO THE WESTERLY CORNER OF SAID LOT 16, SAID CORNER ALSO BEING THE INTERSECTION OF RIGHTS-OF-WAY OF 15TH STREET AND CURTIS STREET;

THENCE N45°00'00"E DEPARTING THE RIGHT-OF-WAY OF 15TH STREET AND ALONG THE SOUTHERLY RIGHT-OF-WAY OF CURTIS STREET, SAID LINE ALSO BEING THE NORTHERLY LINE OF LOT 16 AND LOT 15, BLOCK 107 OF DENVER EAST (BOYD'S) SUBDIVISION, A DISTANCE OF 50.00 FEET;

THENCE N45°00'00"W DEPARTING SAID RIGHT-OF WAY LINE, A DISTANCE OF 9.00 FEET;

THENCE S45°00'00"W ALONG A LINE 9.00 FEET DISTANT FROM AND PARALLEL WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF CURTIS STREET, A DISTANCE OF 58.00 FEET;

THENCE S45°00'00"E ALONG A LINE 8.00 FEET DISTANT FROM AND PARALLEL WITH THE EASTERLY RIGHT-OF-WAY LINE OF 15TH STREET, A DISTANCE OF 134.00 FEET;

THENCE N45°00'00"E, A DISTANCE OF 8.00 FEET, TO THE **POINT OF BEGINNING (POB)**.

THE ABOVE DESCRIBED EASEMENT CONTAINS 1388 SQUARE FEET (0.0319 ACRES), MORE OR LESS.

Section 2. The revocable permit ("Permit") granted by this Resolution is expressly granted upon and subject to each and all of the following terms and conditions:

(a) Permittee shall obtain a street occupancy permit from Public Works Permit Operations at 2000 West 3rd Avenue, 303-446-3759, prior to commencing construction.

(b) Permittee shall be responsible for obtaining all other permits and shall pay all costs that are necessary for installation and construction of items permitted herein.

(c) If the Permittee intends to install any underground facilities in or near a public road, street, alley, right-of-way or utility easement, the Permittee shall join the Statewide Notification Association of Owners and Operators of Underground Facilities by contacting the Utility Notification Center of Colorado, 12600 West Colfax Avenue, Suite B-310, Lakewood, Colorado 80215, at 303-

1 232-1991. Further, Permittee shall contact the Utility Notification Center at 1-800-922-1987 to locate
2 underground facilities prior to commencing any work under this permit.

3 (d) Permittee is fully responsible for any and all damages incurred to facilities of the Water
4 Department and/or drainage facilities for water and sewage of the City and County of Denver due to
5 activities authorized by the permit. Should the relocation or replacement of any drainage facilities for
6 water and sewage of the City and County of Denver become necessary as determined by the
7 Manager of Public Works, in the Manager's sole and absolute discretion, Permittee shall pay all cost
8 and expense of the portion of the sewer affected by the permitted structure. The extent of the
9 affected portion to be replaced or relocated by Permittee shall be determined by the Manager of
10 Public Works. Any and all replacement or repair of facilities of the Water Department and/or drainage
11 facilities for water and sewage of the City and County of Denver attributed to the Permittee shall be
12 made by the Water Department and/or the City and County of Denver at the sole expense of the
13 Permittee. In the event Permittee's facilities are damaged or destroyed due to the Water
14 Department's or the City and County of Denver's repair, replacement and/or operation of its facilities,
15 repairs will be made by the Permittee at its sole expense. Permittee agrees to defend, indemnify and
16 save the City harmless and to repair or pay for the repair of any and all damages to said sanitary
17 sewer, or those damages resulting from the failure of the sewer to properly function as a result of the
18 permitted structure.

19 (e) Permittee shall comply with all requirements of affected utility companies and pay for all
20 costs of removal, relocation, replacement or rearrangement of utility company facilities. Existing
21 telephone facilities shall not be utilized, obstructed or disturbed.

22 (f) All construction in, under, on or over the Encroachment Area shall be accomplished in
23 accordance with the Building Code of the City and County of Denver. Plans and Specifications
24 governing the construction of the Encroachments shall be approved by the Manager of Public Works
25 and the Director of Building Inspection Division prior to construction. Upon completion, a reproducible
26 copy of the exact location and dimensions of the Encroachments shall be filed with the Manager of
27 Public Works.

28 (g) The sidewalk and street/alley over the Encroachment Area shall be capable of
29 withstanding an HS-20 loading in accordance with the latest AASHTO Specifications. The
30 installations within the Encroachment Area shall be constructed so that the paved section of the
31 street/alley can be widened without requiring additional structural modifications. The sidewalk shall
32 be constructed so that it can be removed and replaced without affecting structures within the
33 Encroachment Area.

1 (h) Permittee shall pay all costs of construction and maintenance of the Encroachments.
2 Upon revocation of the permit or upon abandonment, Permittee shall pay all costs of removing the
3 Encroachments from the Encroachment Area and return the Encroachment Area to its original
4 condition under the supervision of the City Engineer.

5 (i) Permittee shall remove and replace any and all street/alley paving, sidewalks, and curb
6 and gutter, both inside the Encroachment Area and in the rights-of-way adjacent thereto, that become
7 broken, damaged or unsightly during the course of construction. In the future, Permittee shall also
8 remove, replace or repair any street/alley paving, sidewalks, and curb and gutter that become broken
9 or damaged when, in the opinion of the City Engineer, the damage has been caused by the activity of
10 the Permittee within the Encroachment Area. All repair work shall be accomplished without cost to
11 the City and under the supervision of the City Engineer.

12 (j) The City reserves the right to make an inspection of the Encroachments contained
13 within the Encroachment Area. An annual fee, subject to change, of \$200.00 shall be assessed.

14 (k) This revocable permit shall not operate or be construed to abridge, limit or restrict the
15 City and County of Denver in exercising its right to make full use of the Encroachment Area and
16 adjacent rights-of-way as public thoroughfares nor shall it operate to restrict the utility companies in
17 exercising their rights to construct, remove, operate and maintain their facilities within the
18 Encroachment Area and adjacent rights-of-way.

19 (l) During the existence of the Encroachments and this permit, Permittee, its successors
20 and assigns, at its expense, and without cost to the City and County of Denver, shall procure and
21 maintain a single limit comprehensive general liability insurance policy with a limit of not less than
22 \$500,000.00. All coverages are to be arranged on an occurrence basis and include coverage for
23 those hazards normally identified as X.C.U. during construction. The insurance coverage required
24 herein constitutes a minimum requirement and such enumeration shall in no way be deemed to limit
25 or lessen the liability of the Permittee, its successors or assigns, under the terms of this permit. All
26 insurance coverage required herein shall be written in a form and by a company or companies
27 approved by the Risk Manager of the City and County of Denver and authorized to do business in the
28 State of Colorado. A certified copy of all such insurance policies shall be filed with the Manager of
29 Public Works, and each such policy shall contain a statement therein or endorsement thereon that it
30 will not be canceled or materially changed without written notice, by registered mail, to the Manager of
31 Public Works at least thirty (30) days prior to the effective date of the cancellation or material change.

32 All such insurance policies shall be specifically endorsed to include all liability assumed by the
33 Permittee hereunder and shall name the City and County of Denver as an additional insured.

1 (m) Permittee shall comply with the provisions of Article IV (Prohibition of Discrimination in
2 Employment, Housing and Commercial Space, Public Accommodations, Educational Institutions and
3 Health and Welfare Services) of Chapter 28 (Human Rights) of the Revised Municipal Code of the
4 City and County of Denver. The failure to comply with any such provision shall be a proper basis for
5 revocation of this permit.

6 (n) The right to revoke this permit is expressly reserved to the City and County of Denver.

7 (o) Permittee shall agree to indemnify and always save the City and County of Denver
8 harmless from all costs, claims or damages arising, either directly or indirectly, out of the rights and
9 privileges granted by this permit.

10 **Section 3.** That the Permit hereby granted shall be revocable at any time that the Council of
11 the City and County of Denver shall determine that the public convenience and necessity or the public
12 health, safety or general welfare require such revocation, and the right to revoke the same is hereby
13 expressly reserved to the City and County of Denver; provided however, at a reasonable time prior to
14 Council action upon such revocation or proposed revocation, opportunity shall be afforded to
15 Permittee, its successors and assigns, to be present at a hearing to be conducted by the Council
16 upon such matters and thereat to present its views and opinions thereof and to present for
17 consideration action or actions alternative to the revocation of such Permit.

18 COMMITTEE APPROVAL DATE: December 13, 2012 [by consent]

19 MAYOR-COUNCIL DATE: December 18, 2012

20 PASSED BY THE COUNCIL: _____, 2012

21 _____ - PRESIDENT

22 ATTEST: _____ - CLERK AND RECORDER,
23 EX-OFFICIO CLERK OF THE
24 CITY AND COUNTY OF DENVER

25
26 PREPARED BY: Brent Eisen, Assistant City Attorney DATE: December 20, 2012

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28 Pursuant to section 13-12, D.R.M.C., this proposed resolution has been reviewed by the office of the
29 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
30 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to §
31 3.2.6 of the Charter.

32
33 Douglas J. Friednash, Denver City Attorney

34 BY: _____, Assistant City Attorney DATE: _____, 2012