

BY AUTHORITY

RESOLUTION NO. CR16-0788
SERIES OF 2016

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

A RESOLUTION

Granting a revocable permit to Toshi Kizaki d/b/a Hiro & Co., Inc., to encroach into the right-of-way at 1487 South Pearl Street.

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

Section 1. The City and County of Denver ("City") hereby grants to Toshi Kizaki d/b/a Hiro & Co., Inc., and their successors and assigns ("Permittee"), a revocable permit to encroach into the right-of-way with one (1) raised patio and one (1) raised planter ("Encroachments") at 1487 South Pearl Street in the following described area ("Encroachment Area"):

PARCEL DESCRIPTION ROW NO. 2016-ENCROACHMENT-0000043-001:

PARCELS 1 AND 2, LYING EASTERLY OF LOTS 26 AND 27, BLOCK 30, SHERMAN SUBDIVISION, PER BOOK 3, PAGE 4, FILED IN ARAPAHOE COUNTY, LOCATED IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE TWENTY (20) FOOT RANGE LINE OF EAST FLORIDA AVENUE TO BEAR SOUTH 89°48'00" EAST, A DISTANCE OF 325.00 FEET BETWEEN THE INTERSECTION OF S. PENNSYLVANIA STREET AND EAST FLORIDA AVENUE AND THE INTERSECTION OF SOUTH PEARL STREET AND EAST FLORIDA AVENUE, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24, BLOCK 30, OF SAID SHERMAN SUBDIVISION; THENCE NORTH 00°00'00" EAST, ALONG THE WESTERLY RIGHT OF WAY LINE OF SOUTH PEARL STREET, A DISTANCE OF 51.42 FEET TO THE POINT OF BEGINNING FOR PARCEL 1; THENCE CONTINUING ALONG SAID WESTERLY RIGHT OF WAY LINE, NORTH 00°00'00" EAST, A DISTANCE OF 15.83 FEET, TO POINT 'A'; THENCE NORTH 90°00'00" EAST, A DISTANCE OF 3.00 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 15.83 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 3.00 FEET, MORE OR LESS, TO A POINT ON SAID WESTERLY RIGHT OF WAY LINE AND THE POINT OF BEGINNING OF PARCEL 1.

SAID PARCEL 1 CONTAINING 47.5 SQ.FT., MORE OR LESS.

COMMENCING AT POINT 'A', SAID POINT BEING ON SAID WESTERLY RIGHT OF WAY LINE OF SOUTH PEARL STREET; THENCE NORTH 00°00'00" EAST, ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 9.00 FEET TO THE POINT OF BEGINNING FOR PARCEL 2; THENCE CONTINUING ALONG SAID WESTERLY RIGHT OF WAY LINE NORTH 00°00'00" EAST, A DISTANCE OF 15.83 FEET; THENCE NORTH 90°00'00" EAST, A DISTANCE OF 3.00 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 15.83 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 3.00 FEET, MORE OR LESS, TO A POINT ON SAID WESTERLY RIGHT OF WAY LINE AND THE POINT OF BEGINNING OF PARCEL 2.

1 SAID PARCEL 2 CONTAINING 47.5 SQ.FT., MORE OR LESS.

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

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

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

8 (c) If the Permittee intends to install any underground facilities in or near a public road,
9 street, alley, right-of-way or utility easement, the Permittee shall join the Statewide Notification
10 Association of Owners and Operators of Underground Facilities by contacting the Utility Notification
11 Center of Colorado, 12600 West Colfax Avenue, Suite B-310, Lakewood, Colorado 80215, at 303-
12 232-1991. Further, Permittee shall contact the Utility Notification Center at 1-800-922-1987 to
13 locate underground facilities prior to commencing any work under this Permit.

14 (d) Permittee is fully responsible for any and all damages incurred to facilities of the Water
15 Department and/or drainage facilities for water and sewage of the City due to activities authorized
16 by the Permit. Should the relocation or replacement of any drainage facilities for water and sewage
17 of the City become necessary as determined by the City’s Executive Director of Public Works
18 (“Executive Director”), in the Executive Director’s sole and absolute discretion, Permittee shall pay
19 all cost and expense of the portion of the sewer affected by the permitted structure. The extent of
20 the affected portion to be replaced or relocated by Permittee shall be determined by the Executive
21 Director. Any and all replacement or repair of facilities of the Denver Water and/or drainage facilities
22 for water and sewage of the City attributed to the Permittee shall be made by the Denver Water
23 and/or the City at the sole expense of the Permittee. In the event Permittee’s facilities are damaged
24 or destroyed due to the Denver Water or the City’s repair, replacement and/or operation of its
25 facilities, repairs will be made by the Permittee at its sole expense. Permittee agrees to defend,
26 indemnify and save the City harmless and to repair or pay for the repair of any and all damages to
27 said sanitary sewer, or those damages resulting from the failure of the sewer to properly function
28 as a result of the permitted structure.

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

32 (f) All construction in, under, on or over the Encroachment Area shall be accomplished
33 in accordance with the Building Code of the City. Plans and specifications governing the

1 construction of the Encroachments shall be approved by the Executive Director and the Director of
2 Building Inspection Division prior to construction. Upon completion, a reproducible copy of the exact
3 location and dimensions of the Encroachments shall be filed with the Executive Director.

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

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

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

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

23 (k) This revocable Permit shall not operate or be construed to abridge, limit or restrict the
24 City in exercising its right to make full use of the Encroachment Area and adjacent rights-of-way as
25 public thoroughfares nor shall it operate to restrict the utility companies in exercising their rights to
26 construct, remove, operate and maintain their facilities within the Encroachment Area and adjacent
27 rights-of-way.

28 (l) During the existence of the Encroachments and this Permit, Permittee, its successors
29 and assigns, at its expense, and without cost to the City, shall procure and maintain a single limit
30 comprehensive general liability insurance policy with a limit of not less than \$500,000.00. All
31 coverages are to be arranged on an occurrence basis and include coverage for those hazards
32 normally identified as X.C.U. during construction. The insurance coverage required herein
33 constitutes a minimum requirement and such enumeration shall in no way be deemed to limit or

1 lessen the liability of the Permittee, its successors or assigns, under the terms of this Permit. All
2 insurance coverage required herein shall be written in a form and by a company or companies
3 approved by the Risk Manager of the City and authorized to do business in the State of Colorado.
4 A certified copy of all such insurance policies shall be filed with the Executive Director, and each
5 such policy shall contain a statement therein or endorsement thereon that it will not be canceled or
6 materially changed without written notice, by registered mail, to the Executive Director at least thirty
7 (30) days prior to the effective date of the cancellation or material change. All such insurance
8 policies shall be specifically endorsed to include all liability assumed by the Permittee hereunder
9 and shall name the City as an additional insured.

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

15 (n) The right to revoke this Permit is expressly reserved to the City.

16 (o) Permittee shall agree to indemnify and always save the City harmless from all costs,
17 claims or damages arising, either directly or indirectly, out of the rights and privileges granted by
18 this Permit.

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

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28 **[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**
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1 COMMITTEE APPROVAL DATE: September 15, 2016, by consent

2 MAYOR-COUNCIL DATE: September 13, 2016

3 PASSED BY THE COUNCIL: _____

4 _____ - PRESIDENT

5 ATTEST: _____ - CLERK AND RECORDER,
6 EX-OFFICIO CLERK OF THE
7 CITY AND COUNTY OF DENVER

8 PREPARED BY: Brent A. Eisen, Assistant City Attorney DATE: September 22, 2016

9 Pursuant to section 14-12, D.R.M.C., this proposed resolution has been reviewed by the office of
10 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
11 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to
12 § 3.2.6 of the Charter.

13
14 Denver City Attorney

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16 BY: _____, Assistant City Attorney DATE: _____