

**REQUEST FOR RESOLUTION FOR MAJOR ENCUMBRANCE PERMIT**

**TO:** Stan Lechman, City Attorney's Office

**FROM:** Robert J. Duncanson, P.E.  
Director, PW Right of Way Services

**ROW NO.:** 2015-ENCROACHMENT-0000033

**DATE:** November 3, 2015

**SUBJECT:** Request for a Resolution granting a revocable permit, subject to certain terms and conditions, to The Robert L. Naiman CO., LLC, their successors and assigns, to encroach into the right-of-way with handicap ramp, steps with railing, landing, three benches, exit door swings, gate swings, patio with railing, tables, and chairs at 4040 Tennyson Street.

**It is requested that the above subject item be placed on the next available Mayor Council Agenda.**

This office has investigated the request from Theodore Schultz of Theodore Schultz, Architect, LLC dated 8/18/2015, on behalf of The Robert L. Naiman CO., LLC for the granting of the above-subject permit.

This matter has been checked by this office and has been coordinated with Asset Management; Colorado Department of Transportation (if required); Comcast Corporation; Commission For People With Disabilities; Councilperson Espinoza; CPD: Building & Construction Services, Planning Services, and Zoning & Development Review; Denver Water Board; Environmental Services (if required); Fire Department (if required); Metro Wastewater Reclamation District; Office of Emergency Management; Office of Telecommunications; Parks and Recreation; Public Works: City Engineer, DES Construction Engineering, DES Engineering, DES Survey, IPP Infrastructure Engineering, and Street Maintenance; Qwest Corporation; Regional Transportation District; and Xcel Energy, all of whom have returned our questionnaires indicating their agreement.

As a result of the investigations, it has been determined that there is no objection to the granting of the revocable permit.

Therefore, you are requested to initiate Council action for the granting of a revocable permit, subject to certain terms and conditions, to The Robert L. Naiman CO., LLC, their successors and assigns, to encroach with handicap ramp, steps with railing, landing, three benches, exit door swings, gate swings, patio with railing, tables, and chairs at 4040 Tennyson Street.

**INSERT PARCEL DESCRIPTION ROW 2015-ENCROACHMENT-0000033-001 HERE**

## **STANDARD PROVISIONS**

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 3<sup>rd</sup> Avenue, 303.446.3759, and 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 Ave, Suite B-310, Lakewood, Colorado, 80215 at 303.232.1991. Further, Permittee shall contact the Utility Notification Center at 1-800-922-1987 to locate underground facilities prior to commencing any work under this permit.
- (d) Permittee is fully responsible for any and all damages incurred to facilities of the Water Department and/or drainage facilities for water and sewage of the City and County of Denver due to activities authorized by the permit. Should the relocation or replacement of any drainage facilities for water and sewage of the City and County of Denver become necessary as determined by the Manager of Public Works, in the Manager's sole and absolute discretion, Permittee shall pay all cost and expense of the portion of the sewer affected by the permitted structure. The extent of the affected portion to be replaced and relocated by Permittee shall be determined by the Manager of Public Works. Any and all replacement or repair of facilities of the Water Department and/or drainage facilities for water and sewage of the City and County of Denver attributed to the Permittee shall be made by the Water Department and/or the City and County of Denver at the sole expense of the Permittee. In the event Permittee's facilities are damaged or destroyed due to the Water Department's or the City and County of Denver's repair, replacement and/or operation of its facilities, repairs will be made by Permittee at its sole expense. Permittee agrees to defend, indemnify and save the City harmless and to repair or pay for the repair of any and all damages to said sanitary sewer, or those damages resulting from the failure of the sewer to properly function as a result of the permitted structure.
- (e) Permittee shall comply with all requirements of affected utility companies and pay for all costs of removal, relocation, replacement or rearrangement of utility company facilities. Existing telephone facilities shall not be utilized, obstructed or disturbed.
- (f) All construction in, under, on or over the Encroachment Area shall be accomplished in accordance with the Building Code of the City and County of Denver. Plans and Specifications governing the construction of the Encroachments shall be approved by the Manager of Public Works and the Director of the Building Inspection Division prior to construction. Upon completion, a reproducible

copy of the exact location and dimensions of the Encroachments shall be filed with the Manager of Public Works.

- (g) The sidewalk and street/alley over the Encroachment Area shall be capable of withstanding an HS-20 loading in accordance with the latest AASHTO Specifications. The installations within the Encroachment Area shall be constructed so that the paved section of the street/alley can be widened without requiring additional structural modifications. The sidewalk shall be constructed so that it can be removed and replaced without affecting structures within the Encroachment Area.
- (h) Permittee shall pay all costs of construction and maintenance of the Encroachment. Upon revocation of the permit or upon abandonment, Permittee shall pay all costs of removing the Encroachment from the Encroachment Area, and return the Encroachment Area to its original condition under the supervision of the City Engineer.
- (i) Permittee shall remove and replace any and all street/alley paving, sidewalks, and curb and gutter, both inside the Encroachment Area and in the rights-of-way adjacent thereto, that become broken, damaged or unsightly during the course of construction. In the future, Permittee shall also remove, replace or repair any street/alley paving, sidewalks, and curb and gutter that become broken or damaged when, in the opinion of the City Engineer, the damage has been caused by the activity of the Permittee within the Encroachment Area. All repair work shall be accomplished without cost to the City and under the supervision of the City Engineer.
- (j) The City reserves the right to make an inspection of the Encroachments contained within the Encroachment Area. An annual fee, subject to change, of \$200.00 shall be assessed.
- (k) This revocable permit shall not operate or be construed to abridge, limit or restrict the City and County of Denver in exercising its right to make full use of the Encroachment Area and adjacent rights-of-way as public thoroughfares nor shall it operate to restrict the utility companies in exercising their rights to construct, remove, operate and maintain their facilities within the Encroachment Area and adjacent rights-of-way.
- (l) During the existence of the Encroachments and this permit, Permittee, its successors and assigns, at its expense, and without cost to the City and County of Denver, shall procure and maintain a single limit comprehensive general liability insurance policy with a limit of not less than \$500,000.00. All coverage's are to be arranged on an occurrence basis and include coverage for those hazards normally identified as X.C.U. during construction. The insurance coverage required herein constitutes a minimum requirement and such enumeration shall in no way be deemed to limit or lessen the liability of the Permittee, its successors or assigns, under the terms of this permit. All insurance coverage required herein shall be written in a form and by a company or companies approved by the Risk Manager of the City and County of Denver and authorized to do business in the State of Colorado. A certified copy of all such insurance policies shall be filed with the Manager of Public Works, and each such policy shall contain a statement therein or

endorsement thereon that it will not be canceled or materially changed without written notice, by registered mail, to the Manager of Public Works at least thirty (30) days prior to the effective date of the cancellation or material change. All such insurance policies shall be specifically endorsed to include all liability assumed by the Permittee hereunder and shall name the City and County of Denver as an additional insured.

- (m) Permittee shall comply with the provisions of Article IV (Prohibition of Discrimination in Employment, Housing and Commercial Space, Public Accommodations, Educational Institutions and Health and Welfare Services) of Chapter 28 (Human Rights) of the Revised Municipal Code of the City and County of Denver. The failure to comply with any such provision shall be a proper basis for revocation of this permit.
- (n) The right to revoke this permit is expressly reserved to the City and County of Denver.
- (o) Permittee shall agree to indemnify and always save the City and County of Denver harmless from all costs, claims or damages arising, either directly or indirectly, out of the rights and privileges granted by this permit.

#### **SPECIAL CONDITIONS FOR THIS PERMIT**

- (p) None.

A map of the area is attached hereto.

RJD: vlw

cc: Asset Management, Steve Wirth  
City Council Office, Shelley Smith  
Councilperson Espinoza and Aides  
Department of Law, Karen Aviles  
Department of Law, Brent Eisen  
Department of Law, Shaun Sullivan  
Department of Law, Caroline Martin  
Department of Law, Adam Hernandez  
City Attorney Office, Angela Garcia  
Public Works, Alba Castro  
Public Works, Angela Casias  
Project File

Property Owner:  
The Robert L. Naiman  
CO., LLC  
910 16<sup>th</sup> St.  
Ste. 500  
Denver, CO 80202

Agent:  
Theodore Shultz  
Theodore Schultz, Architect,  
LLC  
863 Santa Fe Dr.  
Denver, CO 80241



## ORDINANCE/RESOLUTION REQUEST

Please email requests to Angela Casias  
at [angela.casias@DenverGov.org](mailto:angela.casias@DenverGov.org) by **12:00 pm on Monday.**

*\*All fields must be completed.\*  
Incomplete request forms will be returned to sender which may cause a delay in processing.*

Date of Request: 11/3/2015

Please mark one: ☐ Bill Request or ☒ Resolution Request

1. Has your agency submitted this request in the last 12 months?

☐ Yes ☒ No

If yes, please explain:

2. **Title:** (Include a concise, one sentence description – please include name of company or contractor and contract control number – that clearly indicates the type of request: **grant acceptance, contract execution, contract amendment, municipal code change, supplemental request, etc.**)

Request for a Resolution granting a revocable permit, subject to certain terms and conditions, to The Robert L. Naiman CO., LLC, their successors and assigns, to encroach into the right-of-way with handicap ramp, steps with railing, landing, three benches, exit door swings, gate swings, patio with railing, tables, and chairs at 4040 Tennyson Street.

3. **Requesting Agency:** Public Works Engineering and Regulatory & Analytics

4. **Contact Person:** (With actual knowledge of proposed ordinance/resolution.)

- **Name:** Vanessa West
- **Phone:** 720-913-0719
- **Email:** [vanessa.west@denvergov.org](mailto:vanessa.west@denvergov.org)

5. **Contact Person:** (With actual knowledge of proposed ordinance/resolution who will present the item at Mayor-Council and who will be available for first and second reading, if necessary.)

- **Name:** Angela Casias
- **Phone:** 720-913-8529
- **Email:** [angela.casias@denvergov.org](mailto:angela.casias@denvergov.org)

6. **General description/background of proposed ordinance including contract scope of work if applicable:**

A Resolution granting a revocable permit, to The Robert L. Naiman CO., LLC, to encroach into the right-of-way with handicap ramp, steps with railing, landing, three benches, exit door swings, gate swings, patio with railing, tables, and chairs at 4040 Tennyson Street.

**\*\*Please complete the following fields:** (Incomplete fields may result in a delay in processing. If a field is not applicable, please enter N/A for that field – please do not leave blank.)

- a. **Contract Control Number:** N/A
- b. **Contract Term:** Renewed annually
- c. **Location:** 4040 Tennyson Street
- d. **Affected Council District:** D1 Espinoza
- e. **Benefits:** N/A
- f. **Contract Amount (indicate amended amount and new contract total):** N/A

7. **Is there any controversy surrounding this ordinance?** (Groups or individuals who may have concerns about it?) **Please explain.**

None.

To be completed by Mayor's Legislative Team:

SIRE Tracking Number: \_\_\_\_\_

Date Entered: \_\_\_\_\_



## **TIER III ENCROACHMENT EXECUTIVE SUMMARY**

**What is an Encroachment:** A privately owned improvement that is located in, or project over or under the public Right-of-Way.

**Project Title:** 2015-ENCROACHMENT-0000033, Allegro Coffee Roaster Patio Encroachment, 4040 Tennyson Street

**Business name:** The Robert L. Naiman CO., LLC

**Description of Encroachment:** Encroach into the right-of-way with handicap ramp, steps with railing, landing, three benches, exit door swings, gate swings, patio with railing, tables, and chairs at 4040 Tennyson Street.

**Explanation of why the Public Right of Way must be utilized for a private improvement:** The primary purpose for this right-of way improvement is to access the newly created, approved and built entries to the existing building on the large north façade of the corner site. Due to the modest grades there at the sidewalk as it wraps the building, steps and a handicap ramp are needed to openly and freely access the westernmost entry at that north façade. The existing 14'-2" deep, very broad concrete sidewalk on this north side can be used for the public good of outdoor café seating in this high-pedestrian / retail / art district neighborhood and by creating a welcoming, activated cornering building. Such uses and open storefronts are highly encouraged / desired in Blueprint Denver and this U-MS-3 Mainstreet zone district.

**Duration of the Encroachment:** Permanent

**Annual Fees:** \$200.00 per year

**Additional Information:** None.

**Location Map:** (See next page)





**EXHIBIT A**4040 TENNYSON STREET  
TIER III ENCROACHMENT

## DESCRIPTION:

A PARCEL OF LAND LOCATED IN SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 3, RANGE 68 WEST OF THE 6TH P.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF LOT 1, BLOCK 4, WEBER AND OWENS SUBDIVISION OF BLOCKS 1, 4, 6, 9, 12, 14 AND 19, ARGYLE PARK, AS RECORDED IN BOOK 5 AT PAGE 15, ARAPAHOE COUNTY NOW CITY AND COUNTY OF DENVER, STATE OF COLORADO; THENCE EASTERLY ALONG THE NORTHERLY LINE OF SAID LOT 1, ALSO BEING THE SOUTHERLY RIGHT-OF-WAY LINE OF WEST 41ST AVENUE, A DISTANCE OF 3.91 FEET; THENCE NORTHERLY AND PERPENDICULAR TO THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 4.50 FEET; THENCE EASTERLY AND PARALLEL TO THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 11.67 FEET; THENCE NORTHERLY AND PERPENDICULAR TO THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 0.50 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTHERLY AND PERPENDICULAR TO THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 2.58 FEET; THENCE EASTERLY AND PARALLEL TO THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 9.15 FEET; THENCE SOUTHERLY AND PERPENDICULAR TO THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 1.00 FEET; THENCE EASTERLY AND PARALLEL TO THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 7.00 FEET; THENCE NORTHERLY AND PERPENDICULAR TO THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 2.33 FEET; THENCE EASTERLY AND PARALLEL TO THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 29.14 FEET; THENCE SOUTHERLY AND PERPENDICULAR TO THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 3.91 FEET; THENCE WESTERLY AND PARALLEL TO THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 45.29 FEET TO THE TRUE POINT OF BEGINNING.

SAID PARCEL CONTAINS 0.0034 ACRES OR 148.6 SQUARE FEET MORE OR LESS.

AUTHORED BY:  
RICHARD E. HEINZ, P.L.S.#16116  
P.O. BOX 2016, ELIZABETH, CO 80107  
303-519-7017

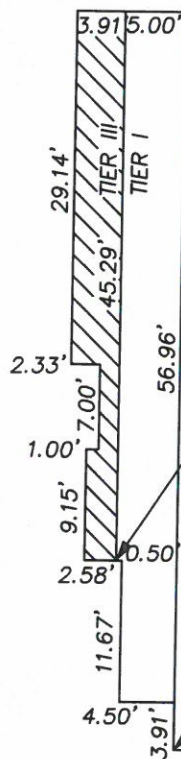




# EXHIBIT A

4040 TENNYSON STREET  
TIER III ENCROACHMENT  
ALLEY (16')

WEST 41ST AVENUE (60')



POINT OF BEGINNING

POINT OF COMMENCEMENT

LOT 1

LOT 2

LOT 3

WEBER & OWEN'S SUB



SCALE 1"=15'

TENNYSON STREET (VARIES)

THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED LAND SURVEY. IT IS ONLY TO DEPICT THE ATTACHED DESCRIPTION.