

1 BY AUTHORITY

2 RESOLUTION NO. 10-0780
3 SERIES OF 2010

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

4 A RESOLUTION

5 **Granting a revocable permit to Billy’s Gourmet Hot Dogs to encroach into the**
6 **right-of-way with various items at 2445 Larimer St.**

7
8 **BE IT RESOLVED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

9 **Section 1.** The City and County of Denver hereby grants to Billy’s Gourmet Hot Dogs, and its
10 successors and assigns (“Permittee”), a revocable permit to encroach into the right-of-way with a
11 fence, bollards and building sign at 2445 Larimer Street (“Encroachments”) in the following described
12 area (“Encroachment Area”):

A PARCEL OF LAND LOCATED IN THE SE¼ OF SECTION 27, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M., CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF LOT 27, CURTIS AND CLARKES ADDITION TO DENVER; THENCE S44°35’16”W ALONG THE SOUTHEASTERLY LINE OF SAID LOT 28 (NORTHWESTERLY RIGHT-OF-WAY LINE OF LARIMER STREET), 6.25 FEET TO THE TRUE POINT OF BEGINNING; THENCE DEPARTING FROM SAID RIGHT-OF-WAY S45°24’44”E, 3.31’ FEET; THENCE S43°45’11”W, 11.86 FEET; THENCE N77°38’29”W, 36.44 FEET; THENCE N00°00’59”W, 47.84 FEET; THENCE N89°43’35”E, 3.05 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY OF BROADWAY; THENCE S00°16’25”E ALONG SAID EASTERLY RIGHT-OF-WAY, 45.74 FEET TO A FOUND 3½” DIAMETER ALUMINUM CAP STAMPED LS #29420; THENCE S82°27’00”E, 33.23 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF SAID LOT 27 (NORTHWESTERLY RIGHT-OF-WAY LINE LARIMER STREET); THENCE N44°35’16”E ALONG SAID SOUTHEASTERLY LINE OF LOT 27, 7.49 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 323 SQUARE FEET OR 0.0074 ACRES MORE OR LESS.

BASIS OF BEARINGS: AN ASSUMED BEARING OF N00°16’25”W BEING THE EASTERLY RIGHT-OF-WAY LINE OF BROADWAY BETWEEN TWO FOUND MONUMENTS 118.16 FEET APART BEING THE WESTERLY PROPERTY LINE OF 2470 N. BROADWAY ST. AND 2441 LARIMER STREET PROPERTY. ONE MONUMENT BEING A 3½” DIAMETER ALUMINUM CAP STAMPED LS #29420 AND THE OTHER MONUMENT BEING A NO. 5 REBAR WITH A RED CAP STAMPED LS #37890.

13
14 **and**

A PARCEL OF LAND LOCATED IN THE SE $\frac{1}{4}$ OF SECTION 27, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M., CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF LOT 28, CURTIS AND CLARKES ADDITION TO DENVER; THENCE S44°35'16"W ALONG THE SOUTHEASTERLY LINE OF SAID LOT 28 (NORTHWESTERLY RIGHT-OF-WAY LINE OF LARIMER STREET), 23.66 FEET TO THE TRUE POINT OF BEGINNING; THENCE DEPARTING FROM SAID RIGHT-OF-WAY S45°18'10"E, 9.00 FEET; THENCE S44°41'50"W, 3.00 FEET; THENCE N45°18'10"W, 9.00 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF LOT 27, CURTIS AND CLARKES ADDITION TO DENVER (NORTHWESTERLY RIGHT-OF-WAY OF LARIMER STREET); THENCE N44°35'16"E ALONG SAID SOUTHEASTERLY LINE OF LOT 27 AND SAID LINE EXTENDED, 3.00 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 27 SQUARE FEET OR 0.0006 ACRES MORE OR LESS.

BASIS OF BEARINGS: AN ASSUMED BEARING OF N00°16'25"W BEING THE EASTERLY RIGHT-OF-WAY LINE OF BROADWAY BETWEEN TWO FOUND MONUMENTS 118.16 FEET APART BEING THE WESTERLY PROPERTY LINE OF 2470 N. BROADWAY ST. AND 2441 LARIMER STREET PROPERTY. ONE MONUMENT BEING A 3 $\frac{1}{2}$ " DIAMETER ALUMINUM CAP STAMPED LS #29420 AND THE OTHER MONUMENT BEING A NO. 5 REBAR WITH A RED CAP STAMPED LS #37890.

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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 303-232-1991. 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 or 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

1 Water Department and/or the City and County of Denver at the sole expense of the Permittee. In the
2 event Permittee's facilities are damaged or destroyed due to the Water Department's or the City and
3 County of Denver's repair, replacement and/or operation of its facilities, repairs will be made by the
4 Permittee at its sole expense. Permittee agrees to defend, indemnify and save the City harmless and
5 to repair or pay for the repair of any and all damages to said sanitary sewer, or those damages
6 resulting from the failure of the sewer to properly function as a result of the permitted structure.

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

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

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

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

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

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

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

6 (l) During the existence of the Encroachments and this permit, Permittee, its successors
7 and assigns, at its expense, and without cost to the City and County of Denver, shall procure and
8 maintain a single limit comprehensive general liability insurance policy with a limit of not less than
9 \$500,000.00. All coverages are to be arranged on an occurrence basis and include coverage for
10 those hazards normally identified as X.C.U. during construction. The insurance coverage required
11 herein constitutes a minimum requirement and such enumeration shall in no way be deemed to limit or
12 lessen the liability of the Permittee, its successors or assigns, under the terms of this permit. All
13 insurance coverage required herein shall be written in a form and by a company or companies
14 approved by the Risk Manager of the City and County of Denver and authorized to do business in the
15 State of Colorado. A certified copy of all such insurance policies shall be filed with the Manager of
16 Public Works, and each such policy shall contain a statement therein or endorsement thereon that it
17 will not be canceled or materially changed without written notice, by registered mail, to the Manager of
18 Public Works at least thirty (30) days prior to the effective date of the cancellation or material change.
19 All such insurance policies shall be specifically endorsed to include all liability assumed by the
20 Permittee hereunder and shall name the City and County of Denver as an additional insured.

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

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

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

30 **Section 3.** That the Permit hereby granted shall be revocable at any time that the Council of
31 the City and County of Denver shall determine that the public convenience and necessity or the public
32 health, safety or general welfare require such revocation, and the right to revoke the same is hereby
33 expressly reserved to the City and County of Denver; provided however, at a reasonable time prior to
34 Council action upon such revocation or proposed revocation, opportunity shall be afforded to

1 Permittee, its successors and assigns, to be present at a hearing to be conducted by the Council upon
2 such matters and thereat to present its views and opinions thereof and to present for consideration
3 action or actions alternative to the revocation of such Permit.

4 COMMITTEE APPROVAL DATE: September 16, 2010 by consent.

5 MAYOR-COUNCIL DATE: September 21, 2010

6 PASSED BY THE COUNCIL: _____, 2010

7 _____ - PRESIDENT

8 ATTEST: _____ - CLERK AND RECORDER,
9 EX-OFFICIO CLERK OF THE
10 CITY AND COUNTY OF DENVER

11 PREPARED BY: KAREN A. AVILES, Assistant City Attorney DATE: September 23, 2010

12 Pursuant to section 13-12, D.R.M.C., this proposed resolution has been reviewed by the office of the
13 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
14 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to §
15 3.2.6 of the Charter.

16 David R. Fine, City Attorney

17 BY: _____, Assistant City Attorney DATE: _____, 2010