

BY AUTHORITY

RESOLUTION NO. CR22-0609
SERIES OF 2022

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

A RESOLUTION

Granting a revocable permit to FP of Bellaire, LLC, to encroach into the right-of-way at 1181 North Bellaire 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 FP of Bellaire, LLC, the owner of the Benefitted Property, and their successors and assigns (“Permittee”), a revocable permit to encroach into the right-of-way with a 57-foot long, 8-inch wide, maximum height of 3 feet, concrete retaining wall (“Encroachment(s)”) at 1181 North Bellaire Street in the following described area (“Encroachment Area”):

PARCEL DESCRIPTION ROW NO. 2021-ENCROACHMENT-0000160-002:

A PORTION OF RIGHT-OF-WAY WITHIN BELLAIRE STREET BETWEEN HALE PARKWAY AND 12TH AVENUE, LOCATED IN THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE 20' RANGE LINE OF ASH STREET TO BEAR NORTH 00°16'56" WEST, A DISTANCE OF 806.43 FEET BETWEEN A FOUND #6 REBAR WITH AN ILLEGIBLE 2" ALUMINUM CAP IN A RANGE BOX AT THE INTERSECTION OF ASH STREET AND HALE PARKWAY, AND A FOUND #6 REBAR WITH A 2" ALUMINUM CAP STAMPED "23899" IN A RANGE BOX AT THE INTERSECTION OF ASH STREET AND 13TH AVENUE, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT SAID RANGE POINT IN THE INTERSECTION OF ASH STREET AND 13TH AVENUE; THENCE SOUTH 22°56'13" EAST, A DISTANCE OF 754.37 FEET TO THE NORTHEASTERLY CORNER OF LOT 48, BLOCK 14, BELLEVUE PARK; THENCE SOUTH 03°52'58" EAST, A DISTANCE OF 95.35 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 89°43'30" EAST, A DISTANCE OF 6.00 FEET; THENCE SOUTH 00°16'30" EAST, A DISTANCE OF 43.88 FEET; THENCE NORTH 89°43'30" EAST, A DISTANCE OF 0.17 FEET; THENCE SOUTH 00°16'30" EAST, A DISTANCE OF 16.46 FEET; THENCE SOUTH 88°57'33" WEST, A DISTANCE OF 7.67 FEET; THENCE NORTH 00°16'30" WEST, A DISTANCE OF 16.53 FEET; THENCE NORTH 89°43'30" EAST, A DISTANCE OF 1.50 FEET; THENCE NORTH 00°16'30" WEST, A DISTANCE OF 43.91 FEET TO THE POINT OF BEGINNING;

SAID PARCEL CONTAINING 390 SQ. FT. OR 0.009 ACRES, MORE OR LESS

and benefitting the following described parcel of property:

PARCEL DESCRIPTION ROW NO. 2021-ENCROACHMENT-0000160-001:

1 ALL OF LOT 1 AND LOTS 45 THROUGH 48 AND PORTIONS OF LOTS 2 THROUGH 4, 43 AND
2 44 LYING NORTHEASTERLY OF HALE PARKWAY, BLOCK 14, BELLEVUE PARK, LOCATED
3 IN THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF
4 THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO,
5 BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
6

7 CONSIDERING THE 20' RANGE LINE OF ASH STREET TO BEAR NORTH 00°16'56" WEST, A
8 DISTANCE OF 806.43 FEET BETWEEN A FOUND #6 REBAR WITH AN ILLEGIBLE 2"
9 ALUMINUM CAP IN A RANGE BOX AT THE INTERSECTION OF ASH STREET AND HALE
10 PARKWAY, AND A FOUND #6 REBAR WITH A 2" ALUMINUM CAP STAMPED "23899" IN A
11 RANGE BOX AT THE INTERSECTION OF ASH STREET AND 13TH AVENUE, WITH ALL
12 BEARINGS CONTAINED HEREIN RELATIVE THERETO.
13

14 COMMENCING AT SAID RANGE POINT AT THE INTERSECTION OF ASH STREET AND 13TH
15 AVENUE; THENCE SOUTH 03°34'03" EAST, A DISTANCE OF 697.96 FEET TO THE
16 NORTHWESTERLY CORNER OF BLOCK 14, BELLVUE PARK, AND THE POINT OF
17 BEGINNING;

18 THENCE ALONG THE NORTHERLY LINE OF SAID BLOCK 14, NORTH 89°34'08" EAST, A
19 DISTANCE OF 250.57 FEET TO THE NORTHEASTERLY CORNER OF SAID BLOCK 14;
20 THENCE ALONG THE EASTERLY LINE OF SAID BLOCK 14, SOUTH 00°16'30" EAST, A
21 DISTANCE OF 150.66 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF
22 HALE PARKWAY, ALSO BEING A POINT OF NON-TANGENT CURVATURE; THENCE ALONG
23 SAID NORTHERLY RIGHT-OF-WAY LINE OF HALE PARKWAY 196.18 FEET ALONG THE ARC
24 OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1834.87 FEET, AN INCLUDED ANGLE OF
25 6°07'34" AND A CHORD BEARING NORTH 68°29'20" WEST, A DISTANCE OF 196.09 FEET;
26 THENCE CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF HALE
27 PARKWAY, NORTH 65°25'23" WEST, A DISTANCE OF 75.47 FEET TO A POINT ON THE
28 WESTERLY LINE OF SAID BLOCK 14; THENCE ALONG SAID WESTERLY LINE OF BLOCK 14,
29 NORTH 00°16'56" WEST, A DISTANCE OF 45.48 FEET TO THE POINT OF BEGINNING.
30

31 SAID PARCEL CONTAINING 25,311 SQ. FT. OR 0.58 ACRES MORE OR LESS.
32

33 **Section 2.** The revocable permit ("Permit") granted by this Resolution is expressly granted
34 upon and subject to each and all of the following terms and conditions (terms not defined herein are
35 defined in the Rules and Regulations Governing Encroachments & Encumbrances in the Public Right
36 of Way):

37 (a) Permittee shall obtain a street occupancy permit, street cut permit, and/or ROW
38 construction permit from the City's Department of Transportation and Infrastructure ("DOTI") Permit
39 Operations through www.denvergov.org/dotipermits prior to commencing construction.

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

42 (c) If the Permittee intends to install any underground facilities in or near a Public road,
43 street, alley, ROW or utility easement, the Permittee shall join the Statewide Notification Association
44 of Owners and Operators of Underground Facilities by contacting the Utility Notification Center of

1 Colorado (Colorado 811) through <https://colorado811.org/> or at 303-232-1991, 16361 Table
2 Mountain Pkwy, Golden, Colorado, 80403. Further, Permittee shall contact the Utility Notification
3 Center (Colorado 811) at <https://colorado811.org/> or 303-232-1991 to request locates for existing
4 underground facilities prior to commencing excavation.

5 (d) Permittee is fully responsible for any and all damages incurred to facilities of Denver
6 Water and any other Utility Company, and/or drainage facilities for water and sewage of the City and
7 County of Denver due to activities authorized by the Permit. Should the relocation or replacement of
8 any drainage facilities for water and sewage of the City and County of Denver become necessary as
9 determined by the City’s Executive Director of DOTI (“Executive Director”), in the Executive
10 Director’s sole and absolute discretion, Permittee shall pay all cost and expense of the portion of the
11 water and/or sewer facilities affected by the Encroachment(s). The extent of the affected portion to
12 be replaced and relocated by Permittee shall be determined by the Executive Director. Any and all
13 replacement or repair of facilities of Denver Water and any other Utility Company, and/or drainage
14 facilities for water and sewage of the City and County of Denver attributed to the Permittee shall be
15 made by Denver Water, Utility Company, and/or the City and County of Denver at the sole expense
16 of the Permittee. In the event the Permittee’s facilities are damaged or destroyed due to Denver
17 Water’s, Utility Company’s, or the City and County of Denver’s repair, replacement and/or operation
18 of its facilities, repairs will be made by Permittee at its sole expense. Permittee agrees to defend,
19 indemnify and hold the City harmless and to repair or pay for the repair of any and all damages to
20 said water, storm, sanitary sewer facilities or other Utility Company facilities, or those damages
21 resulting from the failure of the water, storm, sanitary sewer facilities or other Utility Company
22 facilities to properly function because of the Encroachment(s).

23 (e) Permittee shall comply with all requirements of affected Utility Companies and pay for
24 all costs of removal, relocation, replacement or rearrangement of Utility Company facilities. Existing
25 utility facilities shall not be utilized, obstructed or disturbed.

26 (f) All construction in, under, on or over the Encroachment Area shall be accomplished in
27 accordance with the Building Code and [City and County of Denver Department of Transportation &
28 Infrastructure Transportation Standards and Details for the Engineering Division.](#)

29 (g) Permittee shall observe and comply with all Federal, State and local laws, regulations,
30 ordinances, and public safety requests regarding the use of the Encroachment Area.

31 (h) Plans and Specifications governing the construction of the Encroachment(s) shall be
32 approved by DOTI prior to construction.

33 (i) Permittee shall pay all costs of construction and maintenance of the Encroachment(s).

1 Upon revocation of the Permit or upon abandonment, Permittee shall pay all costs of removing the
2 Encroachment(s) from the Encroachment Area and restore the Encroachment Area to a condition in
3 accordance with [City and County of Denver Department of Transportation & Infrastructure](#)
4 [Transportation Standards and Details for the Engineering Division](#) under the supervision of DOTI.

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

13 (k) The City reserves the right to make an inspection of the Encroachment(s) and the
14 Encroachment Area.

15 (l) During the existence of the Encroachment(s) and the Permit, Permittee, its successors
16 and assigns, at its expense, and without cost to the City, shall procure and maintain Commercial
17 General Liability insurance policy with a limit of not less than \$1,000,000 per occurrence. All
18 coverages are to be arranged on an occurrence basis and include coverage for those hazards
19 normally identified as X.C.U. during construction. The insurance coverage required herein
20 constitutes a minimum requirement and such enumeration shall in no way be deemed to limit or
21 lessen the liability of the Permittee, its successors or assigns, under the terms of this Permit. All
22 insurance coverage required herein shall be written in a form and by a company or companies
23 approved by the Risk Manager of the City and authorized to do business in the State of Colorado. A
24 certified copy of all such insurance policies shall be filed with the Executive Director, and each such
25 policy shall contain a statement therein or endorsement thereon that it will not be canceled or
26 materially changed without written notice, by registered mail, to the Executive Director at least thirty
27 (30) days prior to the effective date of the cancellation or material change. The City and County of
28 Denver, its Elected and Appointed Officials, Employees and Volunteers shall be included as
29 Additional Insured.

30 (m) In addition to the requirement herein to comply with all laws, Permittee shall comply
31 with the provisions of Article IV (Prohibition of Discrimination in Employment, Housing and
32 Commercial Space, Public Accommodations, Educational Institutions and Health and Welfare
33 Services) of Chapter 28 (Human Rights) of the DRMC. The failure to comply with any such provision

1 shall be a proper basis for revocation of the Encroachment(s).

2 (n) The right to revoke the Permit at any time for any reason and require the removal of
3 the Encroachment(s) is expressly reserved to the City.

4 (o) By Permittee's use of this Permit and the Encroachment Area, Permittee agrees to the
5 following:

6 i. Permittee agrees to defend, indemnify, reimburse and hold harmless City, its
7 appointed and elected officials, agents and employees for, from and against all liabilities, claims,
8 judgments, suits or demands for damages to persons or property arising out of, resulting from, or
9 relating to this Permit and the Encroachment(s) ("Claims"). This indemnity shall be interpreted in the
10 broadest possible manner to indemnify City for any acts or omissions of Permittee or its agents either
11 passive or active, irrespective of fault, including City's negligence whether active or passive.

12 ii. Permittee's duty to defend and indemnify City shall arise at the time written notice
13 of the Claim is first provided to City regardless of whether claimant has filed suit on the Claim.
14 Permittee's duty to defend and indemnify City shall arise even if City is the only party sued by
15 claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of
16 claimant's damages.

17 iii. Permittee will defend any and all Claims which may be brought or threatened
18 against City and will pay on behalf of City any expenses incurred by reason of such Claims including,
19 but not limited to, court costs and attorney fees incurred in defending and investigating such Claims
20 or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition
21 to any other legal remedies available to City and shall not be considered City's exclusive remedy.

22 iv. Insurance coverage requirements specified in this Encroachment Permit shall in no
23 way lessen or limit the liability of Permittee under the terms of this indemnification obligation.
24 Permittee shall obtain, at its own expense, any additional insurance that it deems necessary for the
25 City's protection.

26 v. This defense and indemnification obligation shall survive the expiration or
27 termination of this Permit.

28 (p) Pursuant to Chapter 49 of the DRMC, DOTI is authorized to remove or to order the
29 removal of any article, vehicle, object or thing whatsoever encroaching into any street, alley,
30 Sidewalk, or other public way or place.

31 (q) No third party, person or agency, except for an authorized Special District, may place
32 the Encroachment(s) in front of a property without written permission of the adjacent property owner.

33 (r) Permittee's use of the ROW for placement of the Encroachment(s) does not create a

1 property right or ownership interest of any kind in the Encroachment Area to the Permittee.

2 (s) All Encroachment(s) in Amenity Zones containing existing Public Trees and/or with the
3 potential to impact tree roots or tree canopy must be pre-approved by the Office of the City Forester
4 (OCF), by contacting them at forestry@denvergov.org or 720-913-0651. Encroachment(s) cannot
5 be attached to or damage any Public Tree, and any damage shall be reported to the OCF
6 immediately for mitigation. All trenching, excavation and grading activities within the Dripline of any
7 Public Tree must be pre-approved by the OCF. City permits are required for the planting or removal
8 of any Public Trees and can be obtained by emailing forestry@denvergov.org.

9 (t) All disturbances associated with construction of the Encroachment(s) shall be
10 managed as required by City standards for erosion control which may require standard notes or
11 CASDP permitting depending on location and scope of project.

12 (u) Encroachment(s) proposed adjacent to a designated park or within a dedicated
13 parkway shall require the City's Department of Parks and Recreation approval prior to installation.

14 (v) Encroachment(s) attached to a building may require building and/or zoning permits
15 from the City's Department of Community Planning and Development.

16 (w) Encroachment(s) in the regulatory floodplain shall require a SUDP and comply with
17 Chapter 4 Floodplain Regulations of the "Storm Drainage Design and Technical Criteria", Chapter
18 12 Floodplain Management of the "DOTI Rules and Regulations Governing Sewerage Charges and
19 Fees and Management of Wastewater" and the City Floodplain Ordinance in DRMC Section 56-200
20 through 56-206. Above ground Encroachment(s) in a Floodway require a No-Rise Certification
21 sealed and signed by a Professional Engineer licensed in the State of Colorado. If there is any rise
22 in Base Flood Elevations, a Conditional Letter of Map Revision (CLOMR) and LOMR will be required.

23 (x) Only clean soil may be brought onto an Encroachment Area. Verification of soil quality
24 must be provided if requested. Material removed from an Encroachment Area must be properly
25 disposed and is the responsibility of the Permittee.

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

1 COMMITTEE APPROVAL DATE: May 24, 2022 by Consent

2 MAYOR-COUNCIL DATE: May 31, 2022 by Consent

3 PASSED BY THE COUNCIL: June 6, 2022

4 *Steve Gilmore* - PRESIDENT

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

8 PREPARED BY: Martin A. Plate, Assistant City Attorney DATE: June 2, 2022

9 Pursuant to section 13-9, D.R.M.C., this proposed resolution has been reviewed by the Office of the
10 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 Kristin M. Bronson, Denver City Attorney

15 BY: *Jonathan Griffin*, Assistant City Attorney DATE: Jun 2, 2022
16