

1 **BY AUTHORITY**

2 RESOLUTION NO. CR21-0358  
3 SERIES OF 2021

COMMITTEE OF REFERENCE:  
Land Use, Transportation & Infrastructure

4 **A RESOLUTION**

5 **Granting a revocable permit to New Cingular Wireless PCS, LLC d/b/a AT&T**  
6 **Wireless, to encroach into the right-of-way at 4507 North Havana Street.**

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

8 **Section 1.** The City and County of Denver (“City”) hereby grants to New Cingular Wireless  
9 PCS, LLC d/b/a AT&T Wireless and its successors and assigns (“Permittee”), a revocable permit to  
10 encroach into the right-of-way with one (1) type 4 cellular antenna pole (“Encroachment”) at 4507  
11 North Havana Street in the following described area (“Encroachment Area”):

12 **PARCEL DESCRIPTION ROW NO. 2021-ENCROACHMENT-0000022-001:**

13 Location Description for Pole #6965F\_R03 (4507 N Havana St):

14 Latitude: N 39.779222, Longitude: W -104.86598

15 Location Description: The proposed wireless structure lying within the City and County of Denver  
16 Right of Way, consists of a 49 sq. ft. disturbance. The center of said disturbance is positioned 119'  
17 north of the north west intersection of E 45<sup>th</sup> Ave and N Havana St.

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

20 (a) Permittee shall obtain a street occupancy permit from City’s the Department of  
21 Transportation and Infrastructure Permit Operations at 2000 West 3<sup>rd</sup> Avenue, 303-446-3759, prior  
22 to commencing construction.

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

25 (c) If the Permittee intends to install any underground facilities in or near a public road,  
26 street, alley, right-of-way or utility easement, the Permittee shall join the Statewide Notification  
27 Association of Owners and Operators of Underground Facilities by contacting the Utility Notification  
28 Center of Colorado, 16361 Table Mountain Parkway, Golden, Colorado 80403, at 303-232-1991.  
29 Further, Permittee shall contact the Utility Notification Center at 811 to locate underground facilities  
30 prior to commencing any work under this Permit.

31 (d) Permittee is fully responsible for any and all damages incurred to facilities of Denver  
32 Water and/or drainage facilities for water and sewage of the City due to activities authorized by the

1 Permit. Should the relocation or replacement of any drainage facilities for water and sewage of the  
2 City become necessary as determined by the City's Executive Director of the Department of  
3 Transportation and Infrastructure ("Executive Director"), in the Executive Director's sole and absolute  
4 discretion, Permittee shall pay all cost and expense of the portion of the sewer affected by the  
5 permitted structure. The extent of the affected portion to be replaced or relocated by Permittee shall  
6 be determined by the Executive Director. Any and all replacement or repair of facilities of Denver  
7 Water and/or drainage facilities for water and sewage of the City attributed to the Permittee shall be  
8 made by Denver Water and/or the City at the sole expense of the Permittee. In the event Permittee's  
9 facilities are damaged or destroyed due to Denver Water or the City's repair, replacement and/or  
10 operation of its facilities, repairs will be made by the Permittee at its sole expense. Permittee agrees  
11 to defend, indemnify and save the City harmless and to repair or pay for the repair of any and all  
12 damages to said sanitary sewer, or those damages resulting from the failure of the sewer to properly  
13 function as a result of the permitted structure.

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

17 (f) All construction in, under, on or over the Encroachment Area shall be accomplished in  
18 accordance with the Building Code of the City. Plans and specifications governing the construction  
19 of the Encroachments shall be approved by the Executive Director and the Director of Building  
20 Inspection Division prior to construction. Upon completion, a reproducible copy of the exact location  
21 and dimensions of the Encroachments shall be filed with the Executive Director.

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

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

32 (i) Permittee shall remove and replace any and all street/alley paving, sidewalks, and curb  
33 and gutter, both inside the Encroachment Area and in the rights-of-way adjacent thereto, that

1 become broken, damaged or unsightly during the course of construction. In the future, Permittee  
2 shall also remove, replace or repair any street/alley paving, sidewalks, and curb and gutter that  
3 become broken or damaged when, in the opinion of the City Engineer, the damage has been caused  
4 by the activity of the Permittee within the Encroachment Area. All repair work shall be accomplished  
5 without cost to the City and under the supervision of the City Engineer.

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

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

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

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

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

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

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

12 **Section 4.** This Permit is replacing the encroachment permit granted pursuant to  
13 Resolution No. 20180295, Series of 2018 (the "Original Permit"). The Original Permit is being  
14 revoked pursuant to Resolution No. 20210359, Series of 2021, concurrent with the granting of this  
15 Permit. All sub-encroachment permits, such as Tier II encroachment permits, tied to and issued  
16 under the authority of the Original Permit will now be tied to and considered issued under the  
17 authority of this Permit.

18 COMMITTEE APPROVAL DATE: April 6, 2021 by Consent

19 MAYOR-COUNCIL DATE: April 13, 2021 by Consent

20 PASSED BY THE COUNCIL: \_\_\_\_\_

21 \_\_\_\_\_ - PRESIDENT

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

25 PREPARED BY: Martin A. Plate, Assistant City Attorney DATE: April 15, 2021

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

30  
31 Kristin M. Bronson, Denver City Attorney

32 BY: *Jonathan Griffin*  
33 \_\_\_\_\_, Assistant City Attorney

DATE: Apr 15, 2021