

**REQUEST FOR RESOLUTION FOR TIER III ENCROACHMENT PERMIT**

**TO:** Ivone Avila-Ponce, City Attorney's Office

**FROM:** Matt Bryner, P.E. *Matt R. Bryner*  
Director, Right of Way Services Matt R. Bryner (Jun 3, 2022 15:32 MDT)

**ROW NO.:** 2021-ENCROACHMENT-0000106

**DATE:** June 2, 2022

**SUBJECT:** Request for a Resolution granting a revocable permit, subject to certain terms and conditions, to RAR2 – 444 East 19th, LLC, their successors and assigns, to encroach into the right-of-way with an enclosed patio at 494 East 19<sup>th</sup> Avenue.

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

This office has investigated the request from David Goode of David P Goode Architecture dated July 13, 2021, on behalf of RAR2 – 444 East 19th, 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; Comcast Corporation; Division of Disability Rights; Division of Real Estate; Councilperson Hinds; District 10, Community Planning and Development: Building & Construction Services, Planning Services, and Zoning & Development Review; Landmark; Denver Water Board; Environmental Services; Fire Department; Metro Wastewater Reclamation District; Office of Emergency Management; Office of Telecommunications; Parks and Recreation; City Forester; DOTI: City Engineer, Construction Engineering, DES Transportation & Wastewater, Survey, ER Transportation & Wastewater, IPP Infrastructure Engineering, Policy & Planning, TES Sign and Stripe, and Street Maintenance; CenturyLink Corporation; Regional Transportation District; and Xcel Energy, all of whom have indicated no objection for the proposed encroachment.

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 RAR2 – 444 East 19th, LLC, their successors and assigns, to encroach into the right-of-way with an enclosed patio at 494 East 19<sup>th</sup> Avenue.

**INSERT ENCROACHMENT LEGAL DESCRIPTION ROW 2021-ENCROACHMENT-0000106-002 HERE**

And benefitting the following described parcel of property:

**INSERT PARCEL LEGAL DESCRIPTION ROW 2021-ENCROACHMENT-0000106-001 HERE**

City and County of Denver Department of Transportation & Infrastructure  
Right-of-Way Services / Engineering & Regulatory  
201 W Colfax Ave, Dept 507 | Denver, CO 80202  
[www.denvergov.org/doti](http://www.denvergov.org/doti)  
Phone: 720-865-3003

## **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 (terms not defined herein are defined in the Rules and Regulations Governing Encroachments & Encumbrances in the Public Right of Way):

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

(b) Permittee shall be responsible for obtaining all necessary permits and shall pay all costs 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, ROW 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 (Colorado 811) through <https://colorado811.org/> or at 303-232-1991, 16361 Table Mountain Pkwy, Golden, Colorado, 80403. Further, Permittee shall contact the Utility Notification Center (Colorado 811) at <https://colorado811.org/> or 303-232-1991 to request locates for existing underground facilities prior to commencing excavation.

(d) Permittee is fully responsible for any and all damages incurred to facilities of Denver Water and any other Utility Company, and/or drainage facilities for water and sewage of the City and County of Denver due to activities authorized by the Permits. 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 City's Executive Director of DOTI ("Executive Director"), in the Executive Director's sole and absolute discretion, Permittee shall pay all cost and expense of the portion of the water and/or sewer facilities affected by the Encroachment(s). The extent of the affected portion to be replaced and relocated by Permittee shall be determined by the Executive Director. Any and all replacement or repair of facilities of Denver Water and any other Utility Company, and/or drainage facilities for water and sewage of the City and County of Denver attributed to the Permittee shall be made by Denver Water, Utility Company, and/or the City and County of Denver at the sole expense of the Permittee. In the event the Permittee's facilities are damaged or destroyed due to Denver Water's, Utility Company'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 hold the City harmless and to repair or pay for the repair of any and all damages to said water, storm, sanitary sewer facilities or other Utility Company facilities, or those damages resulting from the failure of the water, storm, sanitary sewer facilities or other Utility Company facilities to properly function because of the Encroachment(s).

(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 utility facilities shall not be utilized, obstructed or disturbed.

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

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

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

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

(j) Permittee shall remove and replace any and all street/alley paving, Sidewalks, Streetscapes, Amenity Zones, and curb and gutter, both inside the Encroachment Area and in the rights-of-way adjacent thereto, that become broken, damaged or unsightly during, in the opinion of DOTI, the course of construction or maintenance of the Encroachment(s). 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 DOTI, the damage has been caused by the Encroachment(s) or 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 DOTI.

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

(l) During the existence of the Encroachment(s) and the Permit, Permittee, its successors and assigns, at its expense, and without cost to the City, shall procure and maintain Commercial General Liability insurance policy with a limit of not less than \$1,000,000 per occurrence. All coverages 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 authorized to do business in the State of Colorado. A certified copy of all such insurance policies shall be filed with the Executive Director, 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 Executive Director at least thirty (30) days prior to the effective date of the

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cancellation or material change. The City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers shall be included as Additional Insured.

(m) In addition to the requirement herein to comply with all laws, 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 DRMC. The failure to comply with any such provision shall be a proper basis for revocation of the Encroachment(s).

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

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

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

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

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

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

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

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

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

(r) Permittee's use of the ROW for placement of the Encroachment(s) does not create a property right or ownership interest of any kind in the Encroachment Area to the Permittee.

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

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

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

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

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

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

## **SPECIAL CONDITIONS FOR THIS PERMIT**

(a) None

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A map of the area is attached hereto.

MB: dp

cc: Asset Management, Steve Wirth  
City Council Office, Zach Rothmier  
Councilperson and Aides  
Department of Law, Bradley Beck  
Department of Law, Deanne Durfee  
Department of Law, Maureen McGuire  
Department of Law, Martin Plate  
Department of Law, Ivone Avila-Ponce  
DOTI, Alba Castro  
DOTI, Jason Gallardo  
Project File

Property Owner:  
RAR2 – 444 East 19th,  
LLC  
c/o Erin Welch  
444 E 19<sup>th</sup> Ave  
Denver, CO 80203

## ORDINANCE/RESOLUTION REQUEST

Please email requests to Jason Gallardo

at [Jason.Gallardo@denvergov.org](mailto:Jason.Gallardo@denvergov.org) by **12:00pm on Monday**. Contact her with questions.

Date of Request: June 2, 2022

Please mark one: ☐ Bill Request or ☒ Resolution Request

### 1. Type of Request:

- ☐ Contract/Grant Agreement ☐ Intergovernmental Agreement (IGA) ☐ Rezoning/Text Amendment
- ☐ Dedication/Vacation ☐ Appropriation/Supplemental ☐ DRMC Change
- ☒ Other: Tier III Encroachment

### 2. Title: (Start with *approves*, *amends*, *dedicates*, etc., include name of company or contractor and indicate 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 RAR2 – 444 East 19th, LLC, their successors and assigns, to encroach into the right-of-way with an enclosed patio at 494 East 19th Avenue.

### 3. Requesting Agency: Department of Transportation and Infrastructure; Right-of-Way Services, Engineering and Regulatory

### 4. Contact Person:

Contact person with knowledge of proposed ordinance/resolution	Contact person to present item at Mayor-Council and Council
Name: Devin Price	Name: Jason Gallardo
Email: <a href="mailto:devin.price@denvergov.org">devin.price@denvergov.org</a>	Email: <a href="mailto:Jason.Gallardo@denvergov.org">Jason.Gallardo@denvergov.org</a>

### 5. General description or background of proposed request. Attach executive summary if more space needed:

Request for a Resolution granting a revocable permit, subject to certain terms and conditions, to RAR2 – 444 East 19th, LLC, their successors and assigns, to encroach into the right-of-way with an enclosed patio at 494 East 19th Avenue.

### 6. City Attorney assigned to this request (if applicable): Martin Plate

### 7. City Council District: Councilperson Hinds; District 10

### 8. **\*\*For all contracts, fill out and submit accompanying Key Contract Terms worksheet\*\***

*To be completed by Mayor's Legislative Team:*

Resolution/Bill Number: \_\_\_\_\_

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

## Key Contract Terms

**Type of Contract:** (e.g. Professional Services > \$500K; IGA/Grant Agreement, Sale or Lease of Real Property):

**Vendor/Contractor Name:**

**Contract control number:**

**Location:**

**Is this a new contract?** ☐ Yes ☐ No **Is this an Amendment?** ☐ Yes ☐ No **If yes, how many?** \_\_\_\_\_

**Contract Term/Duration** (for amended contracts, include existing term dates and amended dates):

**Contract Amount** (indicate existing amount, amended amount and new contract total):

<i>Current Contract Amount</i> <i>(A)</i>	<i>Additional Funds</i> <i>(B)</i>	<i>Total Contract Amount</i> <i>(A+B)</i>
<i>Current Contract Term</i>	<i>Added Time</i>	<i>New Ending Date</i>

**Scope of work:**

**Was this contractor selected by competitive process?**

**If not, why not?**

**Has this contractor provided these services to the City before?** ☐ Yes ☐ No

**Source of funds:**

**Is this contract subject to:** ☐ W/MBE ☐ DBE ☐ SBE ☐ XO101 ☐ ACDBE ☐ N/A

**WBE/MBE/DBE commitments** (construction, design, Airport concession contracts):

**Who are the subcontractors to this contract?**

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*To be completed by Mayor's Legislative Team:*

Resolution/Bill Number: \_\_\_\_\_

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





## **TIER III ENCROACHMENT EXECUTIVE SUMMARY**

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

**Project Title:** 2021-ENCROACHMENT-0000106 - Tier III 494 E 19th Ave DBar Patio Awning with Walls

**Property Owner:** RAR2 – 444 East 19th, LLC

**Description of Encroachment:** Proposing to enclose an existing patio by adding an awning and walls over the patio area at 494 E 19th Ave., along E. 19th Ave. and N. Pennsylvania St.

**Applicant's explanation of why the Public Right of Way must be utilized for a private improvement:** Applicant is seeking this encroachment to increase the number of months during the year when outdoor seating can be utilized.

**Annual Fees:** \$200

**Additional Information:** Existing patio approved under 2021-PW-0001802

**Location Map:** Continued on next page

# TIER III ENCROACHMENT EXECUTIVE SUMMARY

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



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# EXHIBIT "A"

## LAND DESCRIPTION

SHEET 1 OF 2

A PARCEL OF LAND BEING A PORTION OF THE 80 FOOT RIGHTS OF WAY OF NORTH PENNSYLVANIA STREET AND EAST 19TH AVENUE, AND SITUATED IN THE SOUTHEAST 1/4 OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A RANGE POINT IN THE INTERSECTION OF NORTH PENNSYLVANIA STREET AND EAST 19TH AVENUE, BEING A FOUND 3" BRASS CAP, FLUSH IN CONCRETE, FROM WHENCE A RANGE POINT IN THE INTERSECTION OF NORTH PENNSYLVANIA STREET AND EAST 19TH AVENUE, BEING A FOUND 2" ALUMINUM CAP IN RANGE BOX, BEARS SOUTH 00°13'29" EAST, A DISTANCE OF 479.91 FEET, WITH ALL BEARINGS HEREIN RELATIVE THERETO:

THENCE SOUTH 47°46'41" WEST, A DISTANCE OF 85.36 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 89°18'38" EAST, A DISTANCE OF 39.77 FEET;  
THENCE 11.41 FEET ALONG A CURVE TO THE RIGHT, WITH A RADIUS OF 7.20 FEET, A DELTA OF 90°46'48", AND A CHORD WHICH BEARS SOUTH 45°17'58" EAST, A DISTANCE OF 10.25 FEET;

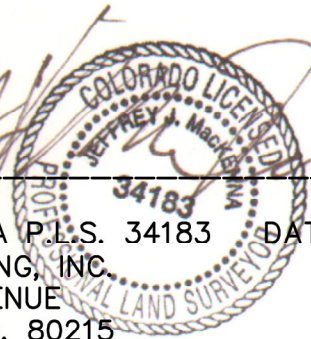
THENCE SOUTH 00°05'26" WEST, A DISTANCE OF 23.24 FEET;  
THENCE SOUTH 89°47'33" WEST, A DISTANCE OF 3.46 FEET TO THE EAST LINE OF BLOCK 263, CLEMENTS ADDITION TO THE CITY OF DENVER;

THENCE NORTH 00°13'29" WEST ALONG THE EAST LINE OF SAID BLOCK 263, A DISTANCE OF 27.29 FEET TO THE NORTHEAST CORNER OF SAID BLOCK 263;  
THENCE SOUTH 89°49'21" WEST ALONG THE NORTH LINE OF SAID BLOCK 263, A DISTANCE OF 43.44 FEET;

THENCE NORTH 00°15'03" WEST, A DISTANCE OF 2.83 FEET TO THE POINT OF BEGINNING;

CONTAINING: 228 SQUARE FEET, 0.005 ACRES OF LAND, MORE OR LESS.

PREPARED BY:  
JEFFREY J. MACKENNA P.L.S. 34183 DATE: 09/07/2021  
FOR FALCON SURVEYING, INC.  
9940 WEST 25TH AVENUE  
LAKEWOOD COLORADO, 80215  
(303)202-1560



**EXHIBIT "A"**

SITUATED IN THE SE 1/4, SECTION 34, T3S, R68W, OF THE 6TH P.M.  
CITY AND COUNTY OF DENVER, STATE OF COLORADO

**SHEET 2 OF 2**

POINT OF COMMENCEMENT

LINE TABLE		
LINE #	BEARING	DISTANCE
L1	S89°47'33"W	3.46'
L2	N00°15'03"W	2.83'

RANGE POINT  
3" BRASS CAP  
FLUSH IN CONCRETE  
"LS 12083"

TIE LINE  
S47°46'41"W  
85.36'

**EAST 19TH AVENUE**

80' PUBLIC RIGHT OF WAY

POINT OF BEGINNING

L2

N89°18'38"E 39.77'

S89°49'21"W 43.44'

CONTAINING:  
228 SQ. FT.  
OR 0.005 AC. ±

LOT 32

LOT 31

N00°13'29"W 27.29'

S00°05'26"W 23.24'

L1

$\Delta = 90^{\circ}46'48''$   
R=7.20'  
L=11.41'  
ChB=S45°17'58"E  
ChL=10.25'

**NORTH PENNSYLVANIA STREET**

80' PUBLIC RIGHT OF WAY

20' RANGE LINE

BASIS OF BEARINGS: S00°13'29"E 479.91'

RANGE POINT  
2" ALUMINUM CAP  
0.5' BELOW GRADE IN RANGE BOX  
"LS 28283"

JEFFREY J. MACKENNA DATE: 09/07/2021  
PLS 34183

**GRAPHIC SCALE**

10 0 5 10 20

( IN US SURVEY FEET )

1 inch = 10 ft.

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