

BY AUTHORITY

RESOLUTION NO. 116
SERIES OF 2009

COMMITTEE OF REFERENCE:
Public Works

A RESOLUTION

Granting a revocable permit to Columbine-Clayton, LLC, to encroach into the right-of-way with various items at 2nd Avenue and the alley west of 2nd Avenue.

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

Section 1. The City and County of Denver hereby grants to Columbine-Clayton, LLC, and their successors and assigns ("Permittee"), a revocable permit to encroach into the right-of-way with shoring and tiebacks in the following described area ("Encroachment Area"):

Two parcels of land situated in the Northwest Quarter of Section 12, Township 4 South, Range 68 West of the Sixth Principal Meridian, City and County of Denver, State of Colorado, more particularly described as follows:

PARCEL 1: The west half of Clayton Street adjacent to Plot 8, Block 62, Harmans Subdivision, City and County of Denver, State of Colorado;

PARCEL 2: The east half of the alley in Block 62, Harmans Subdivision, City and County of Denver, State of Colorado, adjacent to Plot 8 of said Block 62.

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

1 drainage facilities for water and sewage of the City and County of Denver become necessary as
2 determined by the Manager of Public Works, in the Manager's sole and absolute discretion,
3 Permittee shall pay all cost and expense of the portion of the sewer affected by the permitted
4 structure. The extent of the affected portion to be replaced or relocated by Permittee shall be
5 determined by the Manager of Public Works. Any and all replacement or repair of facilities of the
6 Water Department and/or drainage facilities for water and sewage of the City and County of
7 Denver attributed to the Permittee shall be made by the Water Department and/or the City and
8 County of Denver at the sole expense of the Permittee. In the event Permittee's facilities are
9 damaged or destroyed due to the Water Department's or the City and County of Denver's repair,
10 replacement and/or operation of its facilities, repairs will be made by the Permittee at its sole
11 expense. Permittee agrees to defend, indemnify and save the City harmless and to repair or pay
12 for the repair of any and all damages to said sanitary sewer, or those damages resulting from the
13 failure of the sewer to properly 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.
16 Existing telephone facilities shall not be utilized, obstructed or disturbed.

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

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

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

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

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

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

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

31 (m) Permittee shall comply with the provisions of Article IV (Prohibition of Discrimination
32 in Employment, Housing and Commercial Space, Public Accommodations, Educational
33 Institutions and Health and Welfare Services) of Chapter 28 (Human Rights) of the Revised

1 Municipal Code of the City and County of Denver. The failure to comply with any such provision
2 shall be a proper basis for revocation of this permit.

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

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

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

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15 opinions thereof and to present for consideration action or actions alternative to the revocation of
16 such Permit.

17 COMMITTEE APPROVAL DATE: N/A MAYOR-COUNCIL DATE: October 13, 2009

18 PASSED BY THE COUNCIL October 19 2009

19 Jeannette Robb - PRESIDENT

20 ATTEST: Stephanie Macey - CLERK AND RECORDER,
21 EX-OFFICIO CLERK OF THE
22 CITY AND COUNTY OF DENVER
23

24 PREPARED BY: KAREN A. AVILES, ASSISTANT CITY ATTORNEY, October 13, 2009
25

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 David R. Fine, City Attorney

32 BY: David R. Fine, Assistant City Attorney DATE: 14 Oct, 2009
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