

**RESOLUTION NO. 77-25**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND DENYING THE APPEAL FILED BY NATHAN TRIVERS, OWNER OF UP & UNDER PUB & GRILL, AND UPHOLDING THE CITY ENGINEER'S DENIAL OF ENCROACHMENT PERMIT APPLICATION #EN23-00746 TO MAINTAIN A PATIO-PARKLET IN THE STREET ADJACENT TO 2 WEST RICHMOND AVENUE**

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**WHEREAS**, the City of Richmond ("City") issued Encroachment Permit No. EN20-00883 on November 5, 2020, allowing a temporary patio-parklet structure in the public right-of-way in front of 2 W. Richmond Avenue; and

**WHEREAS**, Encroachment Permit No. EN20-00883 expired on December 31, 2021; and

**WHEREAS**, the patio-parklet remained in place without renewal or authorization for nearly two years after the expiration of Permit No. EN20-00883, despite the City's repeated efforts to raise concerns and resolve the matter with the applicant; and

**WHEREAS**, on September 19, 2023, Nathan Trivers submitted Encroachment Permit Application EN23-00746 with the City of Richmond to maintain the existing patio-parklet located in the public right of way in front of 2 W. Richmond Avenue; and

**WHEREAS**, while Application EN23-00746 was pending, the City also reviewed and ultimately denied Encroachment Permit Application EN24-000843 for a BBQ grill/smoker adjacent to the same establishment, and the City Council, at its September 24, 2024 hearing, expressed interest in resolving all issues relate to unauthorized uses in the right-of-way, including the patio-parklet; and

**WHEREAS**, City staff followed up with Mr. Trivers in correspondence dated October 7, 2024, and October 29, 2024, to suggest corrective actions and to request compliance, but the patio-parklet remained unchanged; and

**WHEREAS**, on April 24, 2025, the City Engineer issued a formal letter denying Encroachment Permit Application EN23-00746 based on seven independent findings, consistent with the applicable provisions of Chapter 12.28, 12.30, 14.46, 14.64 of the Richmond Municipal Code, as well as California Building Code 11B and 107; and

**WHEREAS**, on May 8, 2025, Mr. Trivers submitted a written appeal to the City Clerk under RMC 12.30.290 challenging the denial but did not provide an explanation or basis for the appeal; and

**WHEREAS**, on May 12, 2025, the City Clerk mailed, via overnight mail, a letter to the Applicant advising that the hearing of his appeal had been scheduled for the June 17, 2025, City Council meeting and included a copy of the Notice of Hearing; and

**WHEREAS**, the City Council held a hearing on June 17, 2025, in accordance with the City Council Rules of Procedure and Order and received, reviewed, and considered testimony and evidence from City staff, the Applicant, and the public; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Richmond, as follows:

**Section 1.** The foregoing recitals are true and correct, and this City Council hereby so finds and determines.

**Section 2.** After careful consideration of the testimony and evidence at the hearing on June 17, 2025, the City Council makes the following findings of facts:

1. The Applicant is a tenant at 2 West Richmond Avenue and the owner of Up & Under Pub & Grill.
2. Applicant received a prior encroachment permit (EN20-00883) issued by the City on November 5, 2020, which authorized the patio-parklet temporarily.
3. Encroachment permit (EN20-00883) expired on December 31, 2021.
4. On September 19, 2023, Applicant submitted encroachment permit application No. EN23-00746 to the City seeking approval to maintain the patio-parklet within the public right-of-way in front of 2 W. Richmond Avenue.
5. The City previously provided suggested corrective action to Applicant to bring the patio-parklet into compliance, but Applicant did not complete any of the suggested corrective actions.
6. On April 23, 2025, City staff visited the patio-parklet and took photographs and measurements.
7. The City has received complaints concerning the placement of the patio-parklet in the public right-of-way.
8. The City is responsible for managing public rights-of-way and public areas and maintaining them in a clean, safe, and accessible condition as set forth in the RMC, including but not limited to Chapters 11.96, 12.28, and 12.30.

**Section 3.** Based on the foregoing findings of facts and the evidence and testimony presented at the hearing on June 17, 2025, the City Council hereby denies the appeal and upholds the City Engineer's denial of encroachment permit application #EN23-00746, which sought approval to maintain a patio-parklet in the public right-of-way in front of 2 West Richmond Avenue. The City Council finds that the City Engineer's denial of the application was justified for all the reasons stated in the denial letter and is supported by substantial evidence in the record.

**Section 4.** Applicant is hereby directed to:

1. Remove the patio-parklet from the public right-of-way in front of 2 West Richmond Avenue within 30 days of the passage of this resolution at his own expense; and
2. Restore the public right-of-way in front of 2 West Richmond Avenue to the same or better condition than before the installation of the patio-parklet within 30 days of passage of this resolution at his own expense.

**Section 5.** Should Applicant fail to remove the patio-parklet and/or restore the public right-of-way within the time set forth in this resolution, this shall be deemed a public nuisance subject to City abatement pursuant to any application provision of law, including but not limited to provisions of the RMC. City staff, in coordination with the City Attorney's Office, shall take all necessary and lawful steps to ensure the removal of the unauthorized patio-parklet and restoration of the public right-of-way, consistent with any applicable laws and regulations, including but not limited to the provisions of the Richmond Municipal Code and this resolution. The City shall also recover any costs of enforcement, including any and all abatement costs, as allowed under any application laws and regulations, including but not limited to the provisions of the Richmond Municipal Code and this resolution.

**Section 6.** This resolution shall take effect immediately upon its passage.

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I certify that the foregoing resolution was passed and adopted by the City Council of the City of Richmond at a regular meeting thereof held on June 17, 2025, by the following vote:

AYES:	Councilmembers Bana, Brown, Jimenez, Robinson, Wilson, Vice Mayor Zepeda, and Mayor Martinez.
NOES:	None.
ABSTENTIONS:	None.
ABSENT:	None.

PAMELA CHRISTIAN  


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CLERK OF THE CITY OF RICHMOND

Approved: (SEAL)

EDUARDO MARTINEZ  
Mayor

Approved as to form:

DAVE ALESHIRE  
City Attorney

State of California	}	
County of Contra Costa		: ss.
City of Richmond	}	

I certify that the foregoing is a true copy of **Resolution No. 77-25**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on June 17, 2025.

  


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Pamela Christian, Clerk of the City of Richmond