



AGENDA REPORT

Public Works

DATE:	June 17, 2025
TO:	Mayor Martinez and Members of the City Council
FROM:	Robert Armijo, PE, Deputy Public Works Director / City Engineer Andy Cho, PE, Senior Engineer
Subject:	Denial of the Appeal of the Encroachment Permit for Up and Under Patio Parklet
FINANCIAL IMPACT:	The applicant paid a \$150 appeal fee in accordance with the City's adopted Master Fee Schedule. While staff time has been required to process the application, prepare the denial letter, and respond to the appeal, these administrative costs are partially offset by the fee paid by the applicant. No additional appropriation of funds is required at this time.
PREVIOUS COUNCIL ACTION:	None.
STATEMENT OF THE ISSUE:	The Applicant, Nathan Trivers, owner of Up & Under Pub & Grill, is appealing the City Engineer's denial of encroachment permit application EN23-00746, which sought approval to maintain a patio-parklet structure within the public right-of-way adjacent to 2 West Richmond Avenue. The denial was based on, among many reasons, the failure to provide a complete application and concerns relating to safety, municipal code compliance, impact on the right-of-way, community complaints, and prior compliance failure. Pursuant to Richmond Municipal Code Section 12.30.290, the City Council must consider the appeal and determine whether to uphold or overturn the denial, considering both the

	Applicant's appeal and the City's regulatory and safety concerns.
RECOMMENDED ACTION:	ADOPT a resolution denying the appeal and upholding the City Engineer's denial of encroachment permit application EN23-00746 submitted by Nathan Trivers, owner of Up & Under Pub & Grill, to maintain a patio-parklet at 2 West Richmond Avenue, based on the findings and analysis contained in this staff report and the supporting exhibits – Public Works (Andy Cho 510-620-6547/Robert Armijo 510-620-5477).

Applicant Nathan Trivers ("Applicant"), the owner of Up & Under Pub & Grill and tenant at 2 West Richmond Avenue, appeals the City Engineer's denial of encroachment permit application No. EN23-00746 which sought approval to maintain a patio-parklet structure within the public right-of-way in front of 2 West(W.) Richmond Avenue.

Under Richmond Municipal Code ("RMC") section 12.30.290, "any person aggrieved by City Engineer's decision may appeal by submitting a written appeal to City Clerk within 15 days of the date of the decision." RMC 12.30.290(b) provides, "City Council shall hold a hearing on the appeal at a regularly scheduled meeting not fewer than 14 days and not greater than 45 days after City receives the appeal. City shall provide appellant at least ten days' written notice of the hearing's date and time. City Council's decision on the appeal shall be final and binding."

This issue is now on the City Council agenda because Applicant has exercised his right and formally appealed the denial of the encroachment permit. Applicant's appeal was received on May 8, 2025. The hearing is being held on June 17, 2025, which is less than 45 days after the City received Applicant's appeal. On May 12, 2025, the City Clerk sent Applicant written notice of this hearing by overnight mail. Notice of the hearing was also published in the West County Times on May 24, 2025, and June 7, 2025.

BACKGROUND:

On September 19, 2023, the applicant, Mr. Nathan Trivers, submitted encroachment permit application No. EN23-00746 to the City of Richmond ("City") seeking approval to maintain a patio-parklet located within the public right-of-way in front of 2 W. Richmond Avenue (Exhibit A – Encroachment Permit Application No. EN23-00746). This request follows a prior permit (EN20-00883) that was issued by the City on November 5, 2020, which authorized the patio-parklet temporarily (Exhibit B – Encroachment Permit EN20-00883). That original encroachment permit expired on December 31, 2021, and the applicant did not seek renewal until nearly two years later, despite numerous notifications from the City regarding concerns about the continued presence of the structure in the right-of-way after permit expiration.

Following submission of the current application, City staff refrained from issuing immediate determination while awaiting supporting documentation and coordinating internal review with the Planning Division, Building Division, Fire Department, and ultimately, the City Attorney's Office. As such, the extended processing timeline reflects the City's efforts to conduct a thorough and interdepartmental evaluation of the application.

While this application was pending, the City also reviewed and denied a separate encroachment permit application (EN24-000843) submitted by the same business owner to place a BBQ grill/smoker on the street or sidewalk adjacent to the same restaurant. During a public hearing before the City Council on September 24, 2024, concerning the BBQ grill/smoker application, Councilmembers expressed interest in addressing the broader set of issues relating to operations at Up and Under, including the patio-parklet. In follow-up letters sent on October 7 and October 29, 2024, the City outlined its concerns with the unpermitted patio-parklet and encouraged corrective action. The October 29 letter, in particular, included suggested steps to bring the installation into compliance and offered the applicant an opportunity to engage with City staff. Applicant did not complete any of the suggested corrective action.

On April 23, 2025, City staff visited the subject patio-parklet and took photographs and measurements (Exhibit C – Photographs of Site with Measurements).

Ultimately, the City Engineer issued a formal denial of the encroachment permit application on April 24, 2025. (Exhibit D – Letter of Denial dated April 24, 2025.) The denial letter was delivered via certified mail and signed for by the applicant on April 30, 2025 (Exhibit E – USPS Certified Mail Receipt).

On May 8, 2025, the City Clerk received the Applicant's appeal. (Exhibit F – Appeal received May 8, 2025.) The appeal form did not include any rationale, supporting materials, or arguments contesting the findings outlined in the denial letter. At the time of this report, the applicant has not submitted additional materials but may offer oral remarks during the public hearing scheduled for June 17, 2025.

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. The Notice of Hearing was also published in the West County Times on May 24, 2025, and June 7, 2025. (Exhibit G – Notice of Hearing)

DISCUSSION:

RMC 12.30.010 recognizes "[t]he public rights-of-way are unique, physically limited public resources held in trust for the public's benefit, and they require proper management to maximize their efficiency and minimize the taxpayers' costs; to protect against foreclosure of future economic expansion due to premature exhaustion of these resources; and to minimize the inconvenience to, and negative effects on, the public

from use of these rights-of-way by individuals, contractors, utility companies, video service providers, utilities, special districts, et al.”

As such, RMC 12.28.040 prohibits placing “any material, machinery or apparatus for building, paving or other purposes” “on any street, sidewalk or public place in the city of Richmond” “for over twenty-four hours without a permit.” Moreover, RMC 12.30.030 requires “any person” to “obtain a permit . . . before placing any encroachment in, on, over, or under any right of way within the City.”

RMC 12.30.280(a) relates to “Decisions on permits and encroachment agreements.” According to RMC 12.30.280(a)(1), “City Engineer shall put their decision to grant or to deny a permit in writing and deliver it to applicant within five calendar days following the decision. Notice of a decision to deny the permit shall enumerate the reason(s) for denial.”

The denial of Encroachment Permit Application EN23-00746 is based on seven (7) specific findings, each of which was detailed in the denial letter issued on April 24, 2025. The City Engineer determined that the application does not comply with the Richmond Municipal Code, applicable design standards, and established safety practices. The findings are restated and elaborated upon below.

1. Incomplete Application (RMC § 12.30.050(a)):

The applicant did not submit the required supporting documentation necessary to process the encroachment permit, including a construction plan prepared by a licensed design professional, a traffic control and safety plan, and evidence of public notification to adjacent and affected properties. These omissions constitute an incomplete application and prevent the City Engineer from making the required findings for permit approval.

2. Safety Concerns (RMC § 12.30.100(f)(1)(A)):

The parklet's configuration presents multiple safety hazards, including obstructed lines of sight near an intersection and potential conflicts with moving traffic. Specifically, the corner post of the parklet is approximately five feet tall—two feet taller than the 36-inch height limit established by RMC § 14.64.050 for structures within the sight triangle formed by property lines extending 25 feet from the intersection.

3. Impact on the Right of Way (RMC § 12.30.100(f)(1)(D)):

The parklet adversely affects public use of the right of way in several ways:

- It exceeds the two-parking-space (38-foot) limit by approximately four feet;
- It extends into the travel lane, eliminating the required 18-inch buffer zone;
- The structure's deck width exceeds 8 feet, surpassing the 6-foot guideline;
- It is not ADA-accessible, with a 12-inch step-up and stairs as the only means of entry; and

- A railing corner reaches over 5 feet in height, which is inconsistent with the 3-foot height maximum.
- These impacts interfere with pedestrian and vehicular safety, accessibility, and maintenance operations.

4. Community Concerns (RMC § 12.30.170 and General Findings):

The City has received multiple complaints from community members, including formal concerns raised by members of the Point Richmond Neighborhood Council. These concerns relate to the parklet's size, design, aesthetics, and lack of compliance with applicable regulations. Continued allowance of the structure in its current form is not in the public's interest.

5. Prior Compliance Failure (RMC § 12.30.100(f)(1)(E)):

The applicant allowed the structure to remain in the public right of way without authorization for nearly two years following the expiration of the original 2020 encroachment permit (EN20-00883). The City made multiple attempts to contact the applicant and offer corrective actions, including letters sent in October 2024. Despite this, the applicant did not pursue corrective action until October 2023, and the structure remained unmodified throughout.

6. Planning Requirements (RMC § 12.28.340):

According to the Planning Division, no alcohol sales or restaurant service may be conducted in the parklet without a modification to the restaurant's existing conditional use permit. The application did not demonstrate compliance with this requirement or initiate any modification request.

7. Building Code Compliance (CBC § 107 and § 11B):

The parklet appears to lack compliance with accessibility requirements set forth in the California Building Code. The structure includes stairs rather than a ramp, is elevated from the sidewalk by approximately 12 inches, and lacks flush decking. In addition, construction plans prepared by a licensed design professional were not submitted. The Building Division has advised that plans must demonstrate structural and accessibility compliance before any review or approval could occur.

The application does not satisfy the requirements for approval under the Richmond Municipal Code. Recent field observations demonstrate the patio-parklet violates several RMC provisions and the Applicant has a documented history of non-compliance with the City's efforts to bring the patio-parklet into compliance. Allowing the patio-parklet to remain in the public right-of-way violates multiple City regulations and presents ongoing safety, accessibility, and community concern issues. Therefore, City staff recommends that the City Council adopt a resolution upholding the City Engineer's denial of Encroachment Permit Application EN23-00746 (Exhibit H – Resolution No. ____25).

DOCUMENTS ATTACHED:

Exhibit A – Encroachment Permit Application EN23-00746 dated September 19, 2023

Exhibit B – Encroachment Permit EN20-00883

Exhibit C – Photographs of Site with Measurements

Exhibit D – Letter of Denial dated April 24, 2025

Exhibit E – USPS Certified Mail Receipt

Exhibit F – Appeal received May 8, 2025.

Exhibit G – Notice of Hearing

Exhibit H – Resolution No. __25