



AGENDA ITEM EXECUTIVE SUMMARY

Title: Recommend Approval of a License Agreement for 117 W. Main Street

Presenter: Richard Gallas

Please check appropriate box:

<input type="checkbox"/>	Government Operations	<input checked="" type="checkbox"/>	Government Services 11.28.11
<input type="checkbox"/>	Planning & Development	<input type="checkbox"/>	City Council
<input type="checkbox"/>	Public Hearing	<input type="checkbox"/>	

Estimated Cost:	NA	Budgeted:	YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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If NO, please explain how item will be funded:

Executive Summary:

City staff is working with the property owner at 117 W Main Street to grant a license to install a grease interceptor in accordance with the attached documents. The agreement contains terms and conditions acceptable to the City for the placement of the grease interceptor inside the boundaries of a City owned parking lot on the south east side of Main Street and Route 31. City staff has detailed those conditions in the attached agreement. Some of the key conditions are as follows:

1. A one-time license preparation Fee of \$1,500 to recover legal costs.
2. Contingency in the event that property changes ownership.
3. Installation and maintenance requirements for the equipment.
4. Restrictions for maintenance service times to avoid Public use of the lot.
5. The City retains the responsibility to cancel the agreement with proper notice.

Staff has worked through the details with legal counsel and recommends approval.

Attachments: *(please list)*

License Agreement for 117 West Main Street, LLC

Recommendation / Suggested Action *(briefly explain):*

Staff recommends approval of a resolution to authorize the Mayor and City Clerk to execute License Agreement and all applicable documents

For office use only:

Agenda Item Number: 3.b

City of St. Charles, Illinois
Resolution No. _____

**A Resolution Approving the Execution of a License Agreement to install a
Grease Interceptor at 117 W. Main Street**

**Presented & Passed by the
City Council on**

BE IT RESOLVED by the Mayor and City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, that the Mayor and City Clerk be and the same are hereby authorized to execute a License Agreement authorizing the installation of a grease interceptor at 117 W. Main Street.

PRESENTED to the City Council of the City of St. Charles, Illinois, this day of .

PASSED by the City Council of the City of St. Charles, Illinois, this day of .

APPROVED by the Mayor of the City of St. Charles, Illinois, this day of .

Donald P. DeWitte, Mayor

ATTEST:

City Clerk

COUNCIL VOTE:

Ayes:

Nays:

Absent:

Abstain:

NON-EXCLUSIVE LICENSE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2011, by and between the City of St. Charles, Kane and DuPage Counties, Illinois, an Illinois municipal corporation (the "City"), and 117 West Main Street, L.L.C., an Illinois limited liability company (the "Licensee");

WITNESSETH

WHEREAS, the Licensee owns certain real estate located at 117 West Main Street, St. Charles, Illinois (PIN #09-27-377-002), upon which a building is located and currently being repaired and reconstructed for use as a restaurant (the "Licensee's Parcel"); and

WHEREAS, the City's building code requires that a grease interceptor be installed in connection with such repair and reconstruction; and

WHEREAS, the City owns certain real estate (PIN #09-27-377-020) immediately adjacent to west property line of the Licensee's Parcel (the "City Parcel"); and

WHEREAS, the Licensee desires to utilize a portion of City Parcel, which portion is described and depicted on Exhibit "A", attached hereto and incorporated herein (the "License Area") for purpose of installing the grease interceptor; and

WHEREAS, the corporate authorities of the City find that the contemplated use of the License Area will be beneficial to the residents of the City and the public at large.

NOW, THEREFORE, in consideration of the foregoing recitals and of the terms and conditions hereinafter contained, the adequacy and sufficiency of which the parties hereto hereby acknowledge, the parties hereto hereby agree as follows:

Section 1. Incorporation of Recitals. The preambles set forth hereinabove are incorporated herein as substantive provisions of this Agreement as if fully set out in this Section 1.

Section 2. Grant. The City agrees to grant, and does hereby grant, to Licensee, a license over, under and upon the License Area for the purpose of installing a grease interceptor, as more fully described in Section 5 hereof.

Section 3. Non-Exclusive Grant. The privilege granted herein is not exclusive and the City reserves the right at any time to grant other or similar privileges to use or occupy the City Parcel and/or the License Area.

Section 4. Liens. Neither the Licensee, nor its tenants, agents, independent contractors nor employees shall suffer or permit any mechanic's lien, judgment lien or other lien of any nature whatsoever to attach or be against the City Parcel or the License Area, or any portion thereof. The Licensee shall promptly pay all contractors, sub-contractors or material men

providing work or materials for the Improvement (as hereinafter defined) and shall not suffer or permit the filing of any mechanics lien on behalf of said parties against the City with respect to the City Parcel or the License Area. Should any such lien be filed, the City shall have the right to contest same.

Section 5. Installation and Removal of Improvement. The Improvement shall consist of a grease interceptor described in the Specification Sheet attached hereto and incorporated herein as Exhibit "B" and shall be installed underground in the License Area. The Licensee shall be solely responsible for the installation of the Improvement, and shall install the Improvement in strict compliance with any applicable federal, state and local laws, ordinances, orders, regulations and administrative rulings ("Applicable Laws"). Installation of the Improvement shall be completed within ten (10) business days from when installation begins and no temporary gravel surfaces shall be permitted in the License Area for more than five (5) days. The Licensee shall notify the City when the installation is complete, and provide verification to the City's building inspector that the installation meets or exceeds the manufacturer's requirements. If the building inspector finds that the installation does not meet Applicable Laws and the manufacturer's requirements, the Licensee shall take such actions as are necessary to bring the Improvement into conformity with same.

Upon completion of the installation of the Improvement, Licensee shall restore the surface area of the License Area to the condition that it was in prior to the time of installation. Notwithstanding the foregoing, the City shall restripe the parking spaces and the Licensee shall reimburse the City for the cost of same, including materials and labor, within thirty (30) days of receipt of an invoice from the City. Should any settlement in the pavement occur in the License Area subsequent to the installation of the Improvement, the Licensee shall repair the area within ten (10) business days of written notice thereof from the City.

Upon termination of this Agreement, Licensee shall, if requested by the City, remove the Improvement from the License Area and restore the License Area to the condition that it was in immediately prior to the time of installation. If Licensee fails to do so, the City may remove the Improvement and the Licensee shall be liable to the City for the costs of such removal. This provision shall survive the termination of this Agreement.

Section 6. Access and Maintenance. Licensee, its tenants, officers, agents and employees, shall at all times have the right of access to the License Area; provided, however, that such access does not interfere with the use of the surface of the License Area for public parking or with the City's snow removal or maintenance and repair of City Parcel.

Any spills or leaks in the License Area shall be cleaned up within twenty four (24) hours of occurrence. Absent an emergency situation, maintenance and repair of the Improvement shall occur between the hours of 8:00 p.m. and 6:00 a.m. The Licensee shall be solely responsible for the maintenance and repair of the Improvement and shall maintain and repair the Improvement in good condition and in strict compliance with Applicable Laws.

The City shall have the right to inspect the Improvement and License Area at any time to determine whether or not the Improvement is being maintained in conformance with the

requirements of this Agreement. If the City determines that the Improvement is not being maintained in conformance with the requirements of this Agreement, it shall notify the Licensee in writing and Licensee shall, within ten (10) days of receipt of said notice, take such actions as are necessary to bring the Improvement into conformance.

Section 7. Assignment. Licensee shall not assign or otherwise transfer its right in whole or in part under this Agreement without the express written consent of the City.

Section 8. Insurance. The Licensee shall procure and maintain general liability insurance coverage with a limit of not less than \$1,000,000 per occurrence provided on an occurrence basis, and commercial umbrella coverage with a limit of not less than \$5,000,000 in excess and umbrella coverage. Licensee shall cause the insurance carrier to issue a certificate to the City evidencing that the City is named as an additional named insured under each policy in question with respect to any coverage afforded thereunder and that such coverage shall not be canceled or modified without prior thirty (30) day written notice to the City.

Upon request, Licensee shall promptly furnish to the City a copy of each of the policies required to be maintained pursuant to this section.

Section 9. Hold Harmless and Indemnification. Licensee hereby indemnifies, releases and holds the City harmless, and agrees to defend the City from any and all liability, causes of action, suits, damages or demands of whatever nature arising out of the conduct of the Licensee, its tenants, officers, contractors, agents and/or employees under the exercise of the privileges herein granted. This indemnity is intended as a full and complete general indemnity and shall include Licensee's responsibility for any attorney's fees incurred by the City in defense of any claims or actions brought by third parties against the City as a result of the privileges granted to Licensee herein.

Section 10. Financial Responsibility/No Third-Party Beneficiaries. The City shall have no financial responsibility or obligation to Licensee or any third party as a result of the City's granting the privileges described herein to Licensee. This Agreement creates no rights, title or interest in any person or entity whatsoever (whether under a third party beneficiary theory or otherwise) other than the Licensee and the City.

Section 11. No Lease or Easement. Licensee expressly acknowledges that nothing herein is intended to create a corporal or possessory interest of Licensee and, accordingly, this Agreement shall not be construed as a lease, easement or any other interest running with the land. Neither this Agreement nor any summary or memorandum thereof shall be recorded with any public authority.

Section 12. Relationship of the Parties. Under no circumstances shall this Agreement be construed to create a relationship of agency, partnership, joint venture, or employment between the City and the Licensee.

Section 13. Waste. In the exercise of the privileges herein granted, Licensee will conduct all of its operations in a careful and proper manner, and will not commit or allow any

waste or damage to the City Parcel or License Area or permit any nuisance upon or at the City Parcel or the License Area.

Section 14. Damage and Destruction. The City and its officers, contractors, agents and/or employees shall not be liable or responsible to Licensee for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, or court order, or for any damage or inconvenience which may arise from this Agreement, other than that caused by its own officers, agents and/or employees.

Licensee and its tenants, officers, contractors, agents and/or employees shall not be liable or responsible to the City for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, or for any damage or inconvenience which may arise from this Agreement, other than that caused by its own tenants, officers, contractors, agents and/or employees.

Section 15. Governing Law; Jurisdiction. This Agreement shall be interpreted and construed in accordance with the laws of the State of Illinois. The Parties hereby agree that any state court located in Kane County, Illinois shall have jurisdiction to adjudicate any dispute between the parties hereto which arises out of or in connection with this License Agreement. The Parties further agree that only the aforementioned courts shall be eligible for use by the parties for purposes of trial level proceedings, with such election constituting an exclusive forum selection.

Section 16. Notices. All notices hereunder shall be in writing and must be served either personally or by registered or certified mail to:

A. City at:

City of St. Charles
2 E. Main Street
St. Charles, Illinois 60174
Attn: Director of Public Works

B. Licensee at:

117 West Main Street, L.L.C.

C. To such other person or place with either party hereto by its written notice shall designate for notice to it from the other party hereto.

Section 17. Miscellaneous. This Agreement sets forth the entire understanding of the parties, and may only be amended, modified or terminated by a written instrument signed by the parties unless herein otherwise provided. Either party's waiver of any breach or failure to enforce any of the terms or conditions of this Agreement, at any time, shall not in any way affect,

limit or waive that party's right thereafter to enforce or compel strict compliance with every term and condition hereof.

Section 18. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be and shall constitute one and the same instrument.

Section 19. Termination. Either party may terminate this License Agreement without cause upon thirty (30) days written notice.

The City may terminate this License Agreement for cause without liability by giving no less than ten (10) days written notice of termination, which termination shall be effective on the effective date for termination set forth in that termination notice. For the purposes of this provision, "for cause" shall mean the Licensee's failure to comply with one or more of the terms or conditions set forth herein.

Section 20. Reimbursement of Costs. The Licensee shall, within thirty (30) days of receipt of written request from the City, reimburse the City for all administrative and out of pocket costs, including, but not limited to, attorney fees, which the City incurs in connection with the administration of this Agreement. In addition, simultaneously with the execution of this Agreement, the Licensee shall remit the sum of \$1,500 to the City for administrative costs and attorney fees in connection with the preparation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first above written.

CITY OF ST. CHARLES

By: _____
Title: Donald P. DeWitte, Mayor

ATTEST:

Nancy Garrison, City Clerk

117 WEST MAIN STREET, L.L.C.

By: _____
Title: Its _____

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Donald P. DeWitte, Mayor of the City of St. Charles, and Nancy Garrison, City Clerk of said City, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively appeared before me this date in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth; and the said City Clerk then and there acknowledged that she, as custodian of the corporate seal of said City, did affix the corporate seal of said City to said instrument, as her own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2011.

Notary Public

EXHIBIT "A"

DESCRIPTION OF LICENSE AREA



EXHIBIT "B"

DESCRIPTION OF IMPROVEMENT