



ST. CHARLES
SINCE 1834

AGENDA ITEM EXECUTIVE SUMMARY

Title: Recommendation to Approve License Agreement and Resolution for Jalapeno Grill Refuse Enclosure

Presenter: John Lamb

Please check appropriate box:

<input checked="" type="checkbox"/>	Government Operations	X	Government Services 10.27.14
<input type="checkbox"/>	Planning & Development		City Council
<input type="checkbox"/>	Public Hearing		

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:

The Jalapeno Grill Restaurant located at 602 Geneva Road requires a license agreement for a refuse enclosure to be placed on the City right-of-way. The restaurant has insufficient interior storage space for the containers and does not have another location for enclosure. There are currently other license agreements for refuse enclosures in the city right-of-way.

The Jalapeno Grill enclosure will be located in the city right-of-way along 1st Street on the east side of their building. There is no sidewalk along this area. The enclosure will be sixteen feet long and eight feet wide. The license agreement stipulates what space can be used in the right of-way. The enclosure plans will be reviewed by city staff and built to applicable codes. Jalapeno Grill is responsible for paying for all enclosure costs and future maintenance.

Attachments: *(please list)*

License Agreement
Ordinance Resolution

Recommendation / Suggested Action *(briefly explain):*

Recommendation to approve License Agreement with Jalapeno Grill for refuse enclosure on City right-of-way and a Resolution Authorizing the Mayor and Clerk to execute the same.

For office use only:

Agenda Item Number: 4.f

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK OF THE CITY OF ST. CHARLES TO EXECUTE A CERTAIN LICENSE AGREEMENT – 602 GENEVA ROAD

BE IT RESOLVED by the City Council of the City of St. Charles, Kane and Du Page Counties, Illinois, that the Mayor and City Clerk be and the same are hereby authorized to execute that certain Non- Exclusive License Agreement, in substantially the form attached hereto and incorporated herein as Exhibit “A”, by and on behalf of the City of St. Charles.

Presented to the City Council of the City of St. Charles, Illinois this ____ day of _____, 2014.

Passed by the City Council of the City of St. Charles, Illinois this ____ day of _____, 2014.

Approved by the Mayor of the City of St. Charles, Illinois this ____ day of _____, 2014.

Mayor Raymond P. Rogina

Attest:

City Clerk

Council Vote:

Ayes: _____

Nays: _____

Abstain: _____

Absent: _____

NON-EXCLUSIVE LICENSE AGREEMENT

THIS AGREEMENT, made and entered into this ___ day of _____, 2014, by and between the CITY OF ST. CHARLES, Kane and DuPage Counties, Illinois, an Illinois municipal corporation (hereinafter "CITY"), and Fredrick W. Kohlert (hereinafter "OWNER"; the CITY and the OWNER sometimes hereinafter referred to individually as "Party" and collectively as the "Parties");

WITNESSETH:

WHEREAS, OWNER is the owner of a restaurant known as Jalapeno Grill, located at 602 Geneva Road, St. Charles, such property being legally described in Exhibit A, attached hereto and incorporated herein (hereinafter "Owner's Real Estate"); and

WHEREAS, CITY is the owner of the public right of way known as S. 1st Street, located adjacent to the Owner's Real Estate and legally described in Exhibit B attached hereto and incorporated herein (hereinafter "S. 1st Street Right-of-Way"); and

WHEREAS, OWNER is obligated pursuant to Section 8.24.026 of the St. Charles Municipal Code to construct an approved trash receptacle enclosure and has requested that it be located within the S. 1st Street Right-of-Way, and

WHEREAS, the proposed trash receptacle enclosure (the "Encroachment") shall encroach no more than 16 feet in length and 8 feet in width, as depicted on Exhibit B (the "License Area"); and

WHEREAS, the City is willing to permit the existence of the Encroachment within the License Area under certain conditions and restrictions stated below, and OWNER agrees to abide by those conditions and restrictions in exchange for CITY's grant of a license.

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:

1. The CITY hereby grants to the OWNER a non-exclusive license (the "License") over, under and upon the License Area for the sole purpose of constructing and maintaining the Encroachment. The Encroachment shall not be expanded, added to or enlarged without the written consent of the CITY. The OWNER shall obtain all necessary permits from the CITY prior to construction of the Encroachment.

2. The repair and maintenance of the Encroachment and License Area shall be the sole responsibility of the OWNER. Should the OWNER fail to repair or maintain the Encroachment and/or License Area in accordance with applicable laws, regulations and ordinances ("Applicable Laws"), written notice of such failure shall be served upon OWNER by the CITY. If after 30 days or as may be reasonably be extended by the CITY, OWNER does not cure said failures then the CITY shall have the right to repair or maintain the Encroachment. Costs for all CITY expenses including, but not limited to, staff time and attorneys fees shall be the responsibility of the OWNER and shall be paid within in 30 days of receipt of a written invoice from the CITY. If costs are not paid, said amounts shall constitute a lien against the Owner's Real Estate.

3. Neither the OWNER, nor his 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 License Area, or any portion thereof. The OWNER shall promptly pay all contractors, sub-contractors or material men providing work or materials for the Encroachment.

4. This License shall automatically terminate in the event that Jalapeno Grill closes or if the Owner's Real Estate is ever damaged or destroyed to the extent that requires replacement or relocation.

Either party may terminate this License without cause upon sixty (60) days written notice.

The CITY may terminate this License 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 OWNER’S failure to comply with of the terms or conditions set forth herein.

Termination of this License shall not be the CITY’S exclusive remedy. Nothing contained herein shall preclude the CITY from enforcing any provision of the St. Charles Municipal Code against the OWNER in any administrative or judicial proceeding.

Upon termination of this License, the OWNER shall restore the License Area to pre-license conditions, including, but not limited to, removal of all improvements installed by the OWNER. Such restoration shall be completed within ninety (90) days of the notice of termination.

5. OWNER and his successors and assigns, hereby agrees to, and does, hold the CITY, its officials, officers, employees, and agents, harmless from any claim or damages caused to the Encroachment, or any part thereof, caused by work performed by the CITY, its officials, officers, employees, and agents within the License Area.

6. OWNER agrees to pay all costs incurred by the CITY in connection with this Agreement, including but not limited to attorney fees prior to the execution of this Agreement. In addition, should any real estate taxes be assessed against the License Area, the OWNER shall be responsible for the cost thereof.

7. The term of this License shall be for a period of five (5) years from the date set forth above unless earlier terminated pursuant to Section 4. This License shall be subject to automatic renewal for additional five (5) year periods unless either party shall give written notice of non-renewal to the other party not less than sixty (60) days prior to the expiration of the then current five (5) year term.

8. As additional consideration for the CITY’S consent to this License Agreement, OWNER agrees to indemnify, defend and hold the CITY harmless from any cause of action and all costs and expenses including but not limited to attorney’s fees and court costs that may arise from the use of the Encroachment whether by the OWNER, its agents or employees or by the general public and shall add CITY as an additional insured on any general comprehensive liability policy carried by the OWNER covering said perils. OWNER shall provide CITY with proof of such insurance 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 throughout the term of this License Agreement at the time of the execution of this License Agreement.

9. AUTHORITY – The OWNER has read this License Agreement and understands its content and represents that he has authority to sign same on behalf of all co-owners of the property.

10. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed in accordance with, the laws of the State of Illinois.

11.0. 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 Agreement. The Parties further agree that only the aforementioned court shall be eligible for use by the parties for purposes of trial level proceedings, with such election constituting an exclusive forum selection.

12. Nothing contained in this Agreement or in the exhibits attached hereto, shall be deemed to create the relationship of principal or agent, or of limited or general partnership, or of joint venture, or of any association or other relationship between the Parties. This Agreement is entered into solely for the benefit of the Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement.

13. All notices and other communications required under this Agreement shall be in writing and may be given by any of the following methods: (i) personal delivery; (ii) registered or certified mail, postage prepaid, return receipt requested; or (iii) overnight delivery service. Notices shall be sent to the appropriate party at its address given below (or at such other address for such party as shall be specified by notice given hereunder):

If to the City:

City of St. Charles
Attn: City Administrator
2 East Main Street
St. Charles, Illinois 60174

If to the Licensee:

Fredrick W. Kohlert
Jalapeno Grill
602 Geneva Road
St. Charles, IL 60174

With a copy to:

John M. McGuirk
Hoscheit, McGuirk, McCracken & Cuscaden, P.C.
1001 East Main Street, Suite G
St. Charles, IL 60174

14. The failure (with or without intent) of any party to insist upon the strict performance by any other party of any provision of this Agreement shall not be deemed to constitute a modification of any of the provisions hereof, or a waiver of the right to insist at any time thereafter upon performance strictly in accordance with the provisions of this Agreement. No waiver of any term, condition or provision shall operate as a waiver of any other term, condition or provision under this Agreement and no waiver of any term, condition or provision shall operate as a continuing waiver.

15. This Agreement may be amended only by the written agreement of the Parties, as approved and as provide for by law.

Fredrick W. Kohlert

By: _____

CITY OF ST. CHARLES, Kane and DuPage Counties, Illinois

By: _____
Mayor Raymond P. Rogina

ATTEST:

City Clerk