

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Environmental Services

AGENDA DATE: September 15, 2020

PUBLIC HEARING DATE: September 29, 2020

CONTACT PERSON NAME AND PHONE NUMBER: Ellen Smyth, P.E. – Director
Environmental Services Dept. 212-6000

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 3 – Promote the Visual Image of El Paso

SUBJECT:

An Ordinance granting to Paul Berube a non-exclusive franchise for waste containers on City property.

BACKGROUND / DISCUSSION:

A franchise agreement is required for the placement of solid waste containers on City property. The Ordinance, acknowledged by the franchisee, identifies standards to be maintained for the placement, maintenance, and use for advertising of the solid waste containers at locations identified in the ordinance.

PRIOR COUNCIL ACTION:

Council approved Mr. Berube's current Ordinance on October 17, 2017. It will expire on October 7, 2020.

AMOUNT AND SOURCE OF FUNDING:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO PAUL BERUBE A NON-EXCLUSIVE FRANCHISE FOR WASTE CONTAINERS ON CITY PROPERTY

WHEREAS, Paul Berube desires to place waste containers on City property; and

WHEREAS, the City of El Paso (the "City") desires to allow Paul Berube to place waste containers on City property;

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. There is hereby granted to Paul Berube, hereinafter called "Grantee," and his assigns, a non-exclusive franchise to place and maintain up to 150 "waste containers" meeting the criteria discussed herein, on City property. The size of the waste containers shall not exceed thirty-six (36) inches in height and thirty-six (36) inches in width, or as otherwise specified in the El Paso City Code, and the design and construction of the waste containers shall be subject to prior approval by the Director for the Department of Environmental Services (the "Director") of the City. The waste containers must be durable and attractively constructed and shall at all times be maintained by Grantee in such condition as not to constitute a hazard to persons or property, or impede in any way the flow of vehicular or pedestrian traffic, with five (5) feet of free and unobstructed passage around the waste container. The specific, fixed locations of existing waste containers are on Exhibit "A", provided, however, that should the Traffic Engineer determine that any of the waste containers on Exhibit "A" do not meet the requirements set forth herein, the Traffic Engineer shall direct Grantee to relocate or remove such waste containers in conformity with this franchise and City Code. Grantee shall comply with City Code Section 20.18.020C,

and shall register any new locations with the City's Planning Department if any changes to Exhibit "A" locations are sought subsequent to the approval of this franchise by City Council. This franchise does not grant the right to locate waste containers on property owned or controlled by the Texas Department of Transportation (TxDOT). The location of any waste containers on TxDOT property must be by separate agreement with said state department or agency.

2. The term of this franchise shall be a five (5) year period beginning October 7, 2020, unless the agreement is otherwise terminated as provided herein. In the event the Grantee issues a written request to the City to extend the franchise at least ninety (90) days prior to the end of the initial term, the parties may agree to a one-year extension option, unless or until otherwise cancelled or terminated as provided for herein. The option may be exercised on behalf of the City administratively via signature of the City Manager.

3. Grantee may use the space on the waste containers for advertising such reputable and reliable business concerns as may contract for the space. Grantee shall not be prohibited from placing on his/her waste containers any advertisement based on content. No advertising will be permitted, however, which is for any illegal business or activity, which advertises a political party or the candidacy of any person for political office, or which is of a character deemed by the City Council to be improper for exhibition in the public streets or parks when judged by contemporary community standards.

4. If any improvements are to be constructed or repairs made, whether by the City or a utility company, on City property where Grantee has placed any waste containers, Grantee shall, upon written notice from the Director, remove any waste containers located on the affected City property. The Director shall give Grantee fourteen (14) days written notice of the date when the

construction of improvements on such City property is to begin, and Grantee shall remove such waste containers prior to the commencement of construction.

5. During the life of this franchise, Grantee shall maintain, repair or replace the waste containers as necessary, and shall keep them reasonably clean, in neat and attractive appearance, and free of odors. Grantee may change the design of the waste containers if it deems advisable, but such changes shall be subject to prior approval of the Director.

5.1 The City will provide written notice to the Grantee in the case of any problem waste container(s) and if the problem is not cured within seven (7) days of that notice, the City can order the removal of said waste container(s).

5.2 If Grantee does not remove the problem waste container(s) within seven (7) days of the City's removal order, the City will remove and dispose of the waste container(s) at the Grantee's cost.

5.3 The timeframes referenced in this section 5 may be accelerated by the City in the case of an imminent public health or safety hazard.

6. As part of the consideration for the grant of this franchise, Grantee agrees during the term hereof:

6.1 To collect all refuse from the waste containers on a schedule to be approved by the Director within five (5) days of the City's approval of this ordinance and within the timeframe subsequently approved by the Director after any change to the initially approved schedule.

6.2 To dispose of such refuse in a legal and proper manner including, but not limited to applicable City ordinance.

7. If Grantee collects and disposes of the refuse or uses his own employees to collect and dispose of the refuse, Grantee shall obtain, pay for and keep in effect a City commercial hauler's license, and shall comply with all laws, codes and ordinances applicable to the collection, hauling and disposal of refuse. Grantee may contract with a permitted hauler to collect and dispose of the refuse.

8. Grantee shall be deemed at all times to be an independent contractor and shall be responsible for his own acts. Grantee agrees to indemnify, defend and hold harmless the City, its officers, agents and employees from and against any and all loss, liability, damage, expense or claim of any nature whatsoever arising out of or incident to this franchise, which are the result of any act or omission of Grantee. Grantee shall give the City reasonable notice of any such claims or actions. Grantee shall use legal counsel reasonably acceptable to the City in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this franchise.

9. During the term of this franchise, the Grantee will carry public liability insurance by a solvent insurance company authorized to do business in Texas, for the protection of itself and the City, which shall be named as an additional insured. The limits of liability shall be at least \$250,000 for bodily injury or wrongful death of one person, \$500,000 for more than one person in the same accident, and \$100,000 property damage. The form of the policy shall be subject to approval by the City and a copy, or a certificate of insurance, shall be filed with the City Clerk. The policy shall provide that it cannot be canceled without ten (10) days prior notice in writing to the City Clerk.

10. Grantee shall comply with all applicable laws, regulations and ordinances.

11. The City may terminate this franchise without cause, for any reason whatsoever, upon thirty (30) days written notice to Grantee.

12. Upon termination of this franchise, the grant hereof, as well as the property of Grantee situated in and upon the City property shall, at the option of and upon the payment by the City to Grantee of a fair valuation therefore, be and become the property of the City. The fair valuation

shall be ascertained by the arbitration and appraisal of a majority of three appraisers, one of whom shall be appointed by the City of El Paso, one of whom shall be appointed by the Grantee, and one of whom shall be appointed by the first two appraisers so appointed by the City and Grantee. If said two appraisers shall be unable to agree upon the designation of a third appraiser, or if the City or Grantee shall refuse within a period of thirty (30) days after notice to appoint or designate an appraiser, the County Judge of El Paso County, Texas, shall designate such appraiser. The valuation as fixed by a majority of three appraisers shall not include any payment or valuation because of any value derived from the franchise or the fact that it is or may be a going concern, duly installed and operated. If the City Council shall not desire to acquire the property by the payment of a fair valuation therefore, the property shall be removed by the Grantee without cost or expense to the City, and the public place where the property was located shall be restored to its former condition.

13. This franchise shall not be assigned without the prior written consent of the City, which consent shall not be unreasonably withheld.

14. As consideration for this franchise, Grantee will pay to the City the annual franchise fee in the amount authorized by City Council on or before the 15th day following the granting of this franchise. In addition, on December 31, March 31, June 30, and September 30 of each year during the term of this franchise, the Grantee will submit a quarterly payment in the amount authorized by City Council per waste container in service per month. By way of example, the December 31, 2020 payment shall cover the period from the date of execution to December 31, 2020, and the March 31, 2021 payment shall cover the period from January 1, 2021 to March 31, 2021. This fee will include a report listing the number of waste containers in service, their location and reason for

removing a waste container. If the City does not receive one or more of the referenced franchise fees by their due date, the City shall send a written notice of default to the Grantee for lack of payment. The City will give Grantee ten (10) calendar days from the date of such notice to pay in full or the franchise will be terminated at the end of the ten (10) day period. If the Grantee is found to be violating the provisions of this franchise or submitting false records listing locations or number of waste containers, the penalties listed in Section 1.08.030 of the City Code shall be pursued by the City against Grantor. All payments shall be submitted to the Department of Environmental Services, located at 7968 San Paulo, El Paso, Texas 79907.

15. The City may conduct periodic audits of the waste container locations to ensure quarterly reporting is accurate. The Department of Environmental Services may also investigate any and all complaints addressing waste container condition, locations, and nuisances caused by these waste containers.

16. In addition, Grantee shall allow the City to use ten percent (10%) of its advertising space on its waste containers to publicize upcoming City-sponsored events and City-related community services messages. The Grantee will meet with the Director within 10 days following the execution of this ordinance and again annually as of the date of the granting of this franchise to discuss the number and location of spaces available for City use. The locations shall be fixed until such time as the City agrees to a different location. The City shall be entitled to use ten percent (10%) of the total advertising spaces which the Grantee had available during the immediately preceding three (3) months. There shall be no more than one space for City use per waste container. The Grantee reserves the right to try to solicit sponsorship for the spaces allotted for City use. The City reserves the right to approve the wording and design of such advertisements and to accept sponsors. If the

Grantee does not have a sponsor for the spaces allotted for City use, the City has the option to furnish its own signs for placement by the Grantee on the waste containers. The City reserves the right to give the Grantee thirty (30) days written notices to update or change the advertisement wording or design of a space reserved for City use.

17. Grantee herein shall indicate the acceptance of the provisions of this Ordinance in writing within five (5) days after the passage thereof.

PASSED AND APPROVED this _____ day of _____, 2020.

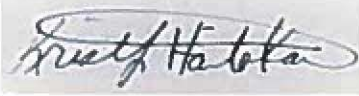
CITY OF EL PASO

Dee Margo
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Kristen Lynn Hamilton-Karam
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Department of Environmental Services

(Acceptance and Acknowledgment follow on next page)

EXHIBIT "A"

Main Street	Cross Street	No. Authorized
AIRWAY	EDGEMERE	2
DIANA	KENWORTHY	1
DONIPHAN	BORDERLAND	1
DYER	HONDO PASS	2
DYER	SANDERS	1
DYER	WREN	1
DYER	McCOMBS	1
EDGEMERE	GERONIMO	1
EDGEMERE	JOE BATTLE	2
EDGEMERE	RICH BEEM	1
EDGEMERE	TIERRA ESTE	2
GATEWAY BLVD NORTH	KENWORTHY	2
GATEWAY BLVD NORTH	SEAN HAGGERTY	1
GATEWAY BLVD WEST	CAPER	1
GEORGE DIETER	ADAIR MARGO	2
GEORGE DIETER	EAST GLEN	1
GEORGE DIETER	ESTHER LAMA	1
GEORGE DIETER	PEBBLE HILLS	3
GEORGE DIETER	PELLICANO	1
GEORGE DIETER	ROJAS	4
GEORGE DIETER	TRAWOOD	1
LEE TREVINO	ARMOUR	1
LEE TREVINO	BEN CRENSHAW	1
LEE TREVINO	JAMES WATT	1
LEE TREVINO	MONTWOOD	3
LEE TREVINO	PELLICANO	1
LEE TREVINO	ROJAS	3
LEE TREVINO	TRAWOOD	3
LEE TREVINO	VISTA DEL SOL	4
MCCOMBS	SEAN HAGGERTY	1
MESA HILLS	CROMO	1
MLK	JON CUNNINGHAM	1
MONTANA	AIRWAY	1
MONTWOOD	ARBY'S	1
MONTWOOD	GEORGE DIETER	3
MONTWOOD	HOME DEPOT	1
MONTWOOD	JOE BATTLE	1
MONTWOOD	LEE	1

MONTWOOD	SAUL KLEINFELD	2
MONTWOOD	TRAWOOD	2
MONTWOOD	YARBROUGH	1
NORTH MESA	ALTO MESA	1
NORTH MESA	BARTLETT	2
NORTH MESA	BELVIDERE	1
NORTH MESA	CRESTMONT	1
NORTH MESA	CROSSROADS	2
NORTH MESA	EXECUTIVE CENTER	2
NORTH MESA	FESTIVAL	2
NORTH MESA	KERBEY	1
NORTH MESA	OSBORNE	1
NORTH MESA	PITT	1
NORTH MESA	REMCON (CHIK FIL A)	1
NORTH MESA	REMCON (USPO)	1
NORTH MESA	RESLER	4
NORTH MESA	SHADOW MOUNTAIN	2
NORTH MESA	SUN BOWL	1
NORTH MESA	SUNLAND PARK	2
NORTH MESA	THUNDERBIRD	1
NORTH MESA	WHOLE FOODS DRIVEWAY	1
PELLICANO	SAM'S CLUB	1
REDD	HELEN OF TROY	1
REDD	HIGH RIDGE	1
REDD	RESLER	3
REDD	SOUTHWESTERN	1
REDD	WESTWIND	1
RESLER	BELVIDERE	3
RESLER	CLOUDVIEW	1
RESLER	ESCONDIDO	1
RESLER	HELEN OF TROY	3
RESLER	HIGH RIDGE	1
SAUL KLEINFELD	PEBBLE HILLS	2
SUNLAND PARK	CRESTMONT	1
SUNLAND PARK	CROMO	2
SUNLAND PARK	MESA HILLS	3
SUNLAND PARK	STANTON OPTICAL	1
TRAWOOD	BEN CRENSHAW	1
TRAWOOD	LOMALAND	1
VISCOUNT	ACER	1
VISCOUNT	AIRWAY	1

VISCOUNT	HAWKINS	2
VISCOUNT	SUNMOUNT	1
WESTWIND	BELVIDERE	1
WESTWIND	ESCONDIDO	1
WESTWIND	THUNDERBIRD	1
YARBROUGH	VISTA DEL SOL	1
ZARAGOZA	CHIK FIL A	1
ZARAGOZA	CRESTED QUAIL	1
ZARAGOZA	DON HASKINS	1
ZARAGOZA	EL MERCADO	1
ZARAGOZA	GANDER MTN	1
ZARAGOZA	GEORGE DIETER	3
ZARAGOZA	MONTWOOD	2
ZARAGOZA	PELLICANO	4
ZARAGOZA	ROJAS	2
ZARAGOZA	SAUL KLEINFELD	1
ZARAGOZA	VISTA DEL SOL	4
		150

ORDINANCE NO. _____

PL MATTER #17-1005-1490.001/ PL#1006150/PAUL BERUBE TRASH CAN FRANCHISE ORD /KHK