

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

DEPARTMENT: Environmental Services

AGENDA DATE: November 22, 2022

PUBLIC HEARING DATE: December 6, 2022

CONTACT PERSON NAME AND PHONE NUMBER: Ellen Smyth, Director 915-212-6000

DISTRICT(S) AFFECTED: All Districts

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

SUBJECT:

An Ordinance granting to Tyler Lyon El Paso Street Ads, LLC a non-exclusive franchise for waste containers on sidewalks and other 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:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

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

DEPARTMENT HEAD:

Nicholas H. Ybarra

Nicholas Ybarra for Ellen Smyth

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

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO TYLER LYON EL PASO STREET ADS, LLC A NON-EXCLUSIVE FRANCHISE FOR WASTE CONTAINERS ON SIDEWALKS AND OTHER CITY PROPERTY

WHEREAS, El Paso Street Ads, LLC desires to place waste containers on sidewalks and other City property in accordance with El Paso City Code Section 13.20.120; and

WHEREAS, the City of El Paso (the “City”) desires to allow El Paso Street Ads, LLC to place waste containers on sidewalks and other City property.

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

1. There is hereby granted to Tyler Lyon, El Paso Street Ads, LLC, hereinafter called “Grantee,” and his assigns, a non-exclusive franchise under El Paso City Code 13.20.120 to place and maintain up to 150 “waste containers” meeting the criteria discussed herein, on sidewalks and other 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 feet of free and unobstructed passage around the waste container. The specific, fixed locations for Grantee’s waste containers are on Exhibit “A”, however, if the Traffic Engineer determines that any of the locations or container placements do not meet these requirements or hinders pedestrian or vehicular traffic, 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 the sign regulations contained in City Code Section 20.18.020C, and shall register any new locations with the City’s Planning Department if any changes to Exhibit “A” are sought after City Council approvals this franchise. 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 property or right of way not owned or controlled by the City of El Paso must be by separate agreement with the appropriate entity.

2. The term of this franchise shall be a five-year period beginning December 6, 2022, unless the agreement is otherwise terminated as provided herein. If Grantee is not in default of this agreement, the Grantee may request a one-year extension in writing no later than ninety days before the end of the term, unless or until cancelled or terminated as provided for herein. The City Manager or designee is authorized to approve this option to extend.

3. Grantee may use the space on the waste containers for advertising reputable and reliable business concerns that contract for the space. Grantee will not be prohibited from placing any advertisement on the waste containers based on content. This agreement does not allow advertising for any illegal business or activity, a political party, the candidacy of any person for political office, or that 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 any sidewalk or other 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 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 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 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 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 is deemed, at all times, an independent contractor and is 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 must be named as an additional insured. The limits of liability must 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 is subject to approval by the City and a copy, or a certificate of insurance, must be filed with the City Clerk. The policy must provide that it cannot be canceled without ten days prior notice in writing to the City Clerk.

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

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

12. Upon termination of this franchise, the City Council may either require Grantee to remove the containers or the City may acquire the containers as described. If the City opts to acquire the property of Grantee located in accordance with this Agreement, the grant hereof, and such property will be transferred to the City upon the payment by the City to Grantee of a fair valuation. 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 are unable to agree on the designation of a third appraiser, or if the City or Grantee refuses for a period of thirty 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 sidewalk or other public place where the property was located shall be restored to its former condition.

13. This franchise may not be assigned without the prior written consent of the City, which consent will 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 the El Paso City Council in Schedule C of the City's Budget Resolution, as amended on or before the 15th day following the granting of this franchise. In addition, on March 31, June 30, September 30 and December 31 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, 2022 payment shall cover the period from the date of execution to December 31, 2022, and the March 31, 2023 payment shall cover the period from January 1, 2023 to March 31, 2023. 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 calendar days from the date of such notice to pay in full or the franchise will be terminated at the end of the ten-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 Grantee. All payments shall be submitted to the Comptroller of the City of El Paso, at the following address: P.O. Box 1890, El Paso, Texas 79950-1890.

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 must allow the City to use ten percent 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 ten 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 is entitled to use ten percent of the total advertising spaces that the Grantee had available during the immediately preceding three months. There will be no more than one space per waste container for City use. 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 days written notice 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 days after the passage thereof.

18. Written notice to the other party may be provided at the following addresses, or at a new address as provided in writing to the nonmoving party by a party that has moved its physical location within thirty days of said relocation without the necessity of amending this contract:

City: City of El Paso
Attn: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

Grantee: El Paso Street Ads, LLC
Attn: Owner
1423 E. Missouri Ste. A
El Paso, Texas 79902

ADOPTED this _____ day of _____, 2022.

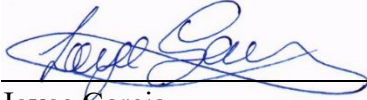
CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

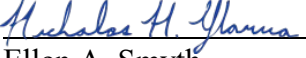
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Joyce Garcia
Assistant City Attorney

APPROVED AS TO CONTENT:

 Nicholas Ybarra for
Ellen A. Smyth,
Chief Transit and Field Operations Officer

(Acceptance and Acknowledgment follow on next page)

ORDINANCE NO. _____

22-1005-11762|1209702|Tyler Lyon, EL Paso Street Ads, LLC – Waste Container Franchise ORD|JG

ACCEPTANCE AND ACKNOWLEDGMENT

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this ____ day of _____, 2022.

Tyler Lyon EL PASO STREET ADS, LLC

By: Tyler Lyon
Its: Owner

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2022, by Tyler Lyon, acting as the Owner of EL Paso Street Ads, LLC.

Notary Public, State of Texas

Notary's Printed or Typed Name:

My Commission Expires:

EXHIBIT “A”

Site locations for El Paso Street Ads, LLC waste containers:

Main Street	Cross Street	No Authorized
ALABAMA	NASHVILLE	1
ALABAMA	RICHMOND	1
ALABAMA	WHEELING	1
ALABAMA	HARRISON	1
ALABAMA	FORT BLVD.	1
ALAMEDA	YSLETA	1
ALAMEDA	HARRIS	1
ALTURA	PERSHING	1
BROWN	CLIFF	1
CAMPBELL	ARIZONA	2
COPIA	PERSHING	1
COPIA	AURORA	1
COPIA	ALTURA	1
COPIA	FRANKFORD	1
COPIA	FORT BLVD.	2
COPIA	DOUGLAS	1
COTTON	ARIZONA	2
COTTON	TEXAS	2
COTTON	WYOMING	1
COTTON GRANT	RIO GRANDE	1
DYER	ALPS	1
DYER	HERCULES	1
DYER	YVETTE	1
DYER	MANILA	1
DYER	RUSHING	1
DYER	DIANA	1
DYER	RUTHERFORD	2
DYER	MARWELL	1
DYER	BROADUS	1
DYER	FRED WILSON	1
DYER	MOBILE	1
DYER	VAN BUREN	1
GATEWAY BLVD WEST	SUMAC	2
GERONIMO	HUGHEY	1
HERCULES	DIANA	1

HONDO PASS	DIANA	1
MESA	CAMILLE	1
MESA	CROSBY	1
MESA	CLIFF	1
MESA HILLS	ONIX	1
MESA HILLS	SUNCREST	1
MONTANA	DALLAS	1
MONTANA	MESCALERO	1
MONTANA	STANTON	1
MONTANA	KANSAS	1
MONTANA	PIEDRAS	2
NORTH LOOP	HAWKINS	4
OREGON	ARIZONA	1
OREGON	RIVER	1
PEBBLE HILLS	OAK CREST	1
PEBBLE HILLS	LEE	3
PEBBLE HILLS	ARRAMIDE	1
PEBBLE HILLS	RUNNING DEER	1
PERSHING	TROWBRIDGE	1
PERSHING	RAYNOR	1
PIEDRAS	ALTURA	1
PIEDRAS	PERSHING	1
PIEDRAS	FORT BLVD.	1
PIEDRAS	TULAROSA	2
TRANSMOUNTAIN	RUSHING	1
TROWBRIDGE	FREDERICK	1
TROWBRIDGE	CHELSEA	1
TROWBRIDGE	HOWZE	1
VISTA DEL SOL	VISTA DE ORO	1
YANDELL	OREGON	1
YANDELL	EL PASO	2
YARBROUGH	SPRINGWOOD	2
YARBROUGH	WOODWARD	1
YARBROUGH	ALBUM	1
YARBROUGH	EDGEMERE	1
ZARAGOZA	ROSEWAY	1
	TOTAL	86