CITY OF EL PASO, TEXAS
REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: **Environmental Services**

AGENDA DATE: **CCA08/08/06 INTRO; CCA08/22/06 PUBLIC HEARING FOR TRASH RECEPTACLE ADVERTISING FRANCHISE**

CONTACT PERSON/PHONE: **Ellen A. Smyth, P.E., (915) 621-6719**

DISTRICT(S) AFFECTED: Districts 3, 5, 6,7

SUBJECT:

CCA08/08/0 Introduction, CCA08/22/06-An ordinance granting to Sign Store, a non-exclusive franchise for litter receptacles on sidewalks and other City property.

BACKGROUND / DISCUSSION:

Granting a non-exclusive franchise ordinance for the Sign Store, who will provide customized waste baskets on City R.O.W. Grantee will sell advertisements that will be placed on all sides of the designer waste receptacles. Grantee to maintain, repair and replace receptacles if needed.

Grantee will pay to the City $500.00 on or before each July 15 of each year plus 2% of the monthly gross receipts.

The City will be allowed to use 10% of the advertising space on the receptacles to publicize upcoming City sponsored events and City related community events.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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

LEGAL: (if required) Josette Flores **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

An ordinance granting to Sign Store a non-exclusive franchise for litter receptacles on sidewalks and other City Property. **(Districts 3,5,6,7)** [Ellen A. Smyth, Environmental Services, (915) 621-6719].

ORDINANCE NO._____

AN ORDINANCE GRANTING TO SIGN STORE A NON-EXCLUSIVE FRANCHISE FOR LITTER RECEPTACLES ON SIDEWALKS AND OTHER CITY PROPERTY

WHEREAS, Sign Store desires to place litter receptacles on sidewalks and other City property; and

WHEREAS, the City of El Paso (the "City") desires to allow Sign Store to place litter receptacles 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 Sign Store, hereinafter called "Grantee," and his assigns, a non-exclusive franchise to place and maintain up to 200 "litter receptacles" of the latest design on sidewalks and other City property. The size, design and construction of the receptacles shall be subject to prior approval by the Director for Environmental Services Department (the "Director") of the City. The specific locations of existing receptacles is at Exhibit "A". The modifications or change to Exhibit "A" and the specific location of each future receptacle on City property will be determined by the Director, or his/her designee, and a representative of Grantee. This franchise does not grant the right to locate receptacles on property owned or controlled by the Texas Department of Transportation (TxDOT). The location of any receptacles on TxDOT property must be by separate agreement with said department or agency. The receptacles shall be substantially, durably 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.

2. The term of this franchise shall be five (5) years from the passage and approval of this ordinance.

3. Grantee may use the space on the receptacles for advertising such reputable and reliable business concerns as may contract for the space. Grantee shall not be prohibited from placing on his litter receptacles 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 any sidewalk or other City property where Grantee has placed any receptacles, Grantee shall, upon written notice from the Director, remove any receptacles 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 receptacles prior to the commencement of construction.

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

(a) The City will provide written notice to the Grantee in the case of any problem receptacle(s) and if the problem is not cured within ten (10) days of that notice, the City can order the removal of said receptacles.
(b) If Grantee does not remove the problem receptacle(s) within five (5) days of the City's removal order, the City will remove and dispose of the receptacle at the Grantee's cost.

(c) 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:

(a) To collect all refuse from the receptacles on a schedule to be approved by the Director.
(b) To dispose of such refuse in a legal and proper manner.

If Grantee uses its 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.

7. Grantee shall be deemed at all times to be an independent contractor and shall be responsible for its 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 Agreement, which are the result of any act or omission of Grantee. Grantee shall give to 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 Agreement.

8. 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.

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

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

11. Upon termination of this franchise and of any extension thereof, the grant hereof, as well as the property of Grantee situated in and upon the sidewalks and other public places 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 appraisement 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 sidewalk or other public place where the property was located shall be restored to its former condition.

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

13. As consideration for this franchise, Grantee will pay to the City the sum of $500.00 and thereafter the sum of $500.00 on or before July 15 of each year during the life of this franchise; and in addition thereto, Grantee will pay to the City 2% of the gross sums received by Grantee as payment for advertising space. The percentage of the gross receipts of each month shall be paid on or before the fifth day of the succeeding month. The Grantee shall keep accurate and complete records, subject to inspection by the City at any reasonable times, sufficient to show the correctness of the payments; and the annual totals of such payments shall be certified by a Certified Public Accountant and shall be delivered to the Director on or before September 30th of each year. Should the City detect a discrepancy in Grantee's records or certified payment totals and the actual payments, the City shall send written notice of such discrepancy to Grantee, which the City must rectify by paying such discrepancy or by disputing same in writing within ten days of such notice.

In addition, Grantee shall allow the City to use ten percent (10%) of its advertising space on its receptacles to publicize upcoming City-sponsored events and City-related community service messages. The Grantee will meet with the Director every six (6) months to discuss the number of spaces available for City use. The City shall be entitled to use ten percent (10%) of the total advertising spaces which the Grantee had available during the immediately preceeding six (6) months. 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 receptacles. The City reserves the right to give the Grantee ninety (90) days

written notice to update or change the advertisement wording or design of a space reserved for City use.

14. Grantee herein shall indicate the acceptance of the provisions of this Ordinance in writing within thirty (30) days after the passage thereof.

PASSED AND APPROVED this _____ day of_____, 2006.

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

SIGN STORE

_____
Name Printed: TERRANCE A. FLORES
Title: OWNER

APPROVED AS TO FORM:

_____
Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Ellen A. Smyth, P.E., Director
Environmental Services

ORDINANCE NO._____
Document Name:SWM/1/SIGN STORE FRANCHISE
Document #: 21700
Author_Id: JFLO

EXHIBIT "A"

Our location is → ●
Others are X

Street and Cross street	Location	Marker
Vista Del Sol / Yarbrought	S/E Corner	
Vista Del sol / Vista De Oro		
Trawood / Lee Trevino	S/E Corner	
Lee Elder / Montwood	N/E Corner	
Montwood / Trawood	S/E Corner	
Montwood / Zaragoza	N/E Corner	
Montwood / Zaragoza	Chick Fi La	
Zaragoza / Saul Klienfield (2)	N/E & N/W	
Zaragoza / Vista Del Sol		
Bob Hope / Pellicano	S/W Corner	
Pellicano / Zerigoza	N/W Corner	
Rojas / Zaragoza	N/E Corner	
G. Dietier / Zaragoza	N/W	
ROJAS / G. DIETIER	N/E CORNER	
PENDALE / G. DIETIER	N/W (3way)	
G. DIETIER / PELLICANO	N/E	
G. DIETIER / VISTA DEL SOL	N/E & S/E	
G. DIETIER / TRAWOOD	N/E, N/W, S/W	
MONTWOOD / G. DIETIER	S/W (chevron)	
PEBBLE HILLS / G. DIETIER	S/E Corner	walgreens
LEE TREVINO / PEBBLE HILLS	4 CORNERS	
MONTANA / LEE TREVINO	S/E CORNER	
PEBBLEHILLS / YARBROUGHT		
SAM SNEAD		
LEE TREVINO / PELLICANO	N/E & S/W	
JAMES WATT / LEE TREVINO	N/E, S/E, S/W	