CITY OF EL PASO, TEXAS
DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: **Legal**

AGENDA DATE: **INTRODUCTION: 12/4/07 – PUBLIC HEARING: 12/11/07**

CONTACT PERSON/PHONE: **Raymond L. Telles-541-4550**

DISTRICT(S) AFFECTED: **All**

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SUBJECT:
APPROVE an ordinance rescinding Ordinance No. 13753 and granting a new non-exclusive franchise to Oliva Manufactured Home Sales, Inc. dba Southwest Bench Ads to place benches at bus stops on city rights of way pursuant to the El Paso City Code; the penalties being as provided in Section 13.20.110 of the El Paso City Code.

BACKGROUND / DISCUSSION:
The City has determined that a need exists for the installation and maintenance of bus benches and shelters on public rights of way adjacent to established Sun Metro bus stops wherever possible for the convenience and benefit of members of the public utilizing the public transportation system provided by the City. After consulting with each of the existing bus bench franchisees, the City desires to rescind the previously granted bus bench franchise in order to implement a new system of granting and administration of bus bench and shelter franchises to insure that all franchisees are treated equitably and that the public has access to safe and attractive bus benches and shelters. This new franchise will insure that all franchisees have identical terms lengths as well as uniform rules and regulations applicable to all.

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one? If so, when?
No

AMOUNT AND SOURCE OF FUNDING:
How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?
N/A

BOARD / COMMISSION ACTION:
Enter appropriate comments or N/A
N/A

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____
OTHER: _____
(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 RESCINDING ORDINANCE NO. 13753 AND GRANTING A NEW NON-EXCLUSIVE FRANCHISE TO OLIVA MANUFACTURED HOME SALES, INC. DBA SOUTHWEST BENCH ADS TO PLACE BENCHES AT BUS STOPS ON CITY RIGHTS OF WAY PURSUANT TO THE EL PASO CITY CODE; THE PENALTIES BEING AS PROVIDED IN SECTION 13.20.110 OF THE EL PASO CITY CODE.

WHEREAS, the City of El Paso has determined that a need exists for the installation and maintenance of bus benches and shelters on public rights of way adjacent to established Sun Metro bus stops wherever possible for the convenience and benefit of members of the public utilizing the public transportation system provided by the City of El Paso;

WHEREAS, the City had previously granted four (4) bus bench franchises in order to provide said bus benches to the public;

WHEREAS, the City, in consultation with each of the franchisees, now desires to rescind the previous franchises in order to implement a new system of bus bench and shelter franchise rules, El Paso City Code provisions and new franchises to insure that all franchisees are treated equitably and that the public has access to safe and attractive bus benches and shelters; and

WHEREAS, the franchisees have agreed with the intent of the City, it being the goal of all parties to insure that all franchisees shall have identical term lengths as well as uniform rules and regulations that are applicable to all;

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

I. The City of El Paso (hereinafter referred to as the "City") hereby rescinds Ordinance No. 13753, which had previously granted a non-exclusive bus bench franchise to Joe Oliva in order to grant a new non-exclusive bench franchise to Oliva Manufactured Home Sales, Inc., dba Southwest Bench Ads (hereinafter referred to as "Grantee").

II. The City hereby grants a non-exclusive franchise to Grantee in order to maintain Grantee's existing bus benches and to construct, place and maintain new bus benches on the public rights of way of the City of El Paso. Said benches shall be placed at locations adjacent to the bus stops of the City's Mass Transit Department (hereinafter referred to as "Sun Metro"), the necessity for which shall be determined by Sun Metro in accordance with Section 13.20.110 (Bus Bench Franchises) of the El Paso City Code and those Bus Bench Franchise Rules adopted by the Mass Transit Department Board, as may be amended from time to time (hereinafter referred to as the "Rules"). Sun Metro intends to incorporate a bus shelter program whereby bus bench franchisees shall have the opportunity to place advertising on existing Sun Metro shelters. Once developed, the guidelines for such a shelter program shall be more fully described within the Rules. Accordingly, and subject to the rules, the terms "bench" and "bus benches", as used herein, shall be inclusive of bus shelters subject to the Rules as amended.

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III. The term of this franchise shall begin on the date of the passage and approval of this ordinance by the City and shall continue for a period of ten (10) years. If Grantee is not in default of the terms hereof, and in the sole discretion and option of the City, Grantee may renew the franchise for a period to be determined by the City upon such additional terms and conditions as required by the City. In no event, however, may the renewal period exceed ten (10) years. Grantee shall make a request for renewal by delivering to the Mayor and filing with the City Clerk a written request not later than ninety (90) days before the expiration of the initial term. A copy of the request shall also be provided to the Director of the Mass Transit Department (hereinafter referred to as the "Director").

IV. All benches placed and/or maintained pursuant to this franchise shall be substantially, durably and attractively constructed and secured in a safe manner. Bus benches, including five (5) feet in each direction of such bench, shall be maintained by Grantee at all times in such a manner as to present a clean, neat and pleasing appearance and in such condition as not to constitute a safety hazard to persons or property. Such maintenance requirements shall include, but not be limited to, the removal of grass, weeds and trash. All costs associated with construction, placement, numbering, identification and the referenced maintenance shall be borne by the Grantee. All benches shall be constructed and maintained pursuant to and in accordance with the Rules, as may be amended. Failure to comply with this franchise, applicable provisions of the El Paso City Code or the Rules shall constitute adequate grounds for termination of this franchise.

V. Grantee is an independent contractor and is neither an agent nor an employee of the City, the Mass Transit Department or the Mass Transit Department Board of the City of El Paso, and Grantee shall be solely responsible for Grantee's acts or omissions and the acts or omissions of its employees, agents and independent contractors. GRANTEE SHALL HOLD THE CITY, THE MASS TRANSIT DEPARTMENT AND THE MASS TRANSIT DEPARTMENT BOARD OF THE CITY HARMLESS AGAINST ANY AND ALL LIABILITY FOR DAMAGES TO PERSONS OR PROPERTY ARISING OUT OF THE USE OF BENCHES OR SHELTERS PLACED OR MAINTAINED PURSUANT TO THIS FRANCHISE OR ARISING OUT OF THE EXERCISE OF THE PRIVILEGES HEREIN GRANTED. The Grantee shall carry at all times during which the franchise is in effect, a public liability insurance policy issued by a solvent insurance company authorized to do business in the State of Texas. The insurance policy shall provide the following minimum limits of liability: $250,000.00 for personal injury or death of any one person per occurrence; $500,000.00 for personal injury or death of more than one person per occurrence; $100,000.00 for property damage per occurrence. The form of the policy shall be subject to the approval of the City and the City shall be named as an additional insured on said policy. A copy of the policy, or a certificate of insurance including any and all renewals, clearly showing compliance with the foregoing requirements, shall be filed with the City Clerk and a copy provided to the Director. The policy shall provide that it cannot be cancelled or the amount of coverage reduced without thirty (30) days prior notice in writing to the City, with a copy of such notice to the Director. In the event Grantee shall fail to keep any required insurance in full force and effect through the term of the franchise granted herein, such franchise rights shall be automatically revoked.

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VI. The benches shall be placed pursuant to and in accordance with the Rules in a manner that is convenient for the use of persons waiting for Sun Metro buses. Placement of said benches shall also be compliant with all applicable laws, regulations and ordinances, including but not limited to, the Americans with Disabilities Act (ADA) and Texas Accessibility Standards (TAS). The benches shall not constitute a hazard to safety or impede in any way the flow of vehicular or pedestrian traffic. Where a bus bench location involves a proposed use of a public right of way designated as a state or federal highway or road, written approval from the appropriate state or federal agency shall be required prior to approval of the location by the City. Any new bus bench locations shall be determined pursuant to the bench site award process established under the Rules. No benches shall be constructed or maintained at any location where the adjacent property owner objects to the presence of the bench. Subject to the Rules and upon written notice to the Grantee and a forty-eight (48) hour period for the Grantee to remedy, the Director may remove any benches found to be illegally placed, unsafe or otherwise in violation of this franchise. All expenses related to such removal, including but not limited to disposal, shall be reimbursed by the Grantee in accordance with the Rules. Further, civil penalties for failure to comply shall apply as enumerated within the El Paso City Code.

VII. The benches may have advertising matter printed thereon, subject to and in accordance with the Rules. No advertising shall be permitted which is for any illegal business, illegal activity or which is deemed by City Council to be improper for exhibition in public rights of way when judged by contemporary community standards. One (1) bench shall be made available to the City, for advertising, for each twenty (20) benches constructed or maintained pursuant to this franchise. For those benches allotted to the City, the Grantee shall be responsible for the production and maintenance of the advertising to be placed on the benches including all related costs.

VIII. As consideration for this franchise the Grantee shall pay to the City a franchise fee of ONE HUNDRED AND 00/100 DOLLARS ($100.00) and shall pay an annual franchise fee of ONE HUNDRED AND 00/100 DOLLARS ($100.00) on January 1 of each year during the life of this franchise; and in addition thereto Grantee shall pay to the City a fee of TWO AND 00/100 DOLLARS ($2.00) per approved bench, which shall be paid not later than the fifth (5th) day of the succeeding month. The Grantee shall keep accurate and complete accounts, subject to inspection by the City at reasonable times, sufficient to show the correctness of the amounts due the City and shall at quarterly intervals give the Director a list of the locations of all benches on City rights of way. The Grantee shall also give the City a statement annually by a certified public accountant certifying to the correctness of the amounts paid to the City during the preceding year.

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IX. Failure of the Grantee to comply with the terms and conditions of this franchise, the Rules, applicable provisions of the El Paso City Code or any other applicable local, State or Federal law as amended shall constitute adequate grounds for the termination of this franchise for cause after reasonable notice and hearing. Any notices provided pursuant to this franchise shall be provided by certified mail, return receipt requested, directed to the following addresses, as may be amended from time to time in writing:

CITY:	Mayor 2 Civic Center Plaza El Paso, Texas 79901	City Clerk 2 Civic Center Plaza El Paso, Texas 79901
COPY TO:	Mass Transit Department Director Sun Metro 700-A San Francisco El Paso, Texas 79901	
GRANTEE:	Oliva Manufactured Home Sales, Inc. dba Southwest Bench Ads 10100 Dyer El Paso, Texas 79924 Attn: Joe Oliva	

X. This franchise shall not be assigned without the prior written consent of the City. Further, no rights granted pursuant to this franchise may be assigned without the prior written consent of the City. Any attempt to assign this franchise or any rights within this franchise without such prior approval shall be void and shall be grounds for immediate termination.

XI. To better serve the public, the Grantee shall maintain an office in the City of El Paso.

XII. This franchise and the rights and privileges granted hereunder shall not be exclusive. The City expressly reserves the right to grant similar rights and privileges to other franchisees.

XIII. Pursuant to the El Paso City Charter, this franchise may also be revoked by the City if such revocation is found to be necessary for the securing of efficiency of public service at a reasonable rate or to assure that the property is maintained in good order throughout the term of this franchise.

XIV. Upon termination of this franchise, the property involved, including all Grantee improvements, shall become the property of the City without further compensation to Grantee. If the City desires not to acquire the improvements, such improvements shall be removed by the Grantee without cost or expense to the City and the right of way where the improvements were located shall be restored to its former condition. In the event that the Grantee fails or refuses to remove said improvements as required herein, the City may remove the same and charge the Grantee for the expense associated with such removal. The City may store these improvements at the sole expense and for the account of the Grantee without any liability to Grantee for such removal or storage. Further, the City shall have the right to dispose of any improvements removed by the City in accordance with this section and which have not been removed from storage by Grantee after reasonable notice from the City to the Grantee to cause such removal. The City shall not be liable for disposing of any improvements, which have not been removed from storage, in accordance with the provisions of this franchise. All costs incurred by the City in the removal, storage and disposal of any such improvements shall be reimbursed by Grantee.

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By accepting this franchise, Grantee releases the City from any liability related to such removal, storage and disposal.

XV. Grantee herein shall indicate acceptance and acknowledgment of the provisions of this franchise ordinance in writing within thirty (30) calendar days after the passage and approval thereof. In the event Grantee fails to accept and acknowledge as required, this franchise shall immediately terminate.

PASSED AND APPROVED this _____ day of _____ 2007.

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richard Duffy Momsen
City Clerk

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APPROVED AS TO FORM:

Raymond Telles
Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Tim Omick, Director
Mass Transit Department

(GRANTEE'S ACCEPTANCE AND ACKNOWLEDGMENT ON THE FOLLOWING PAGE)

GRANTEE'S ACCEPTANCE AND ACKNOWLEDGMENT

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this _____ day of _____, 2007.

GRANTEE:
OLIVA MANUFACTURED HOME SALES, INC.
dba SOUTHWEST BENCH ADS

_____
By: _____
Printed Name: _____
Title: _____

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2007, by _____, as _____ of **Oliva Manufactured Home Sales, Inc. dba Southwest Bench Ads** (Grantee).

_____
Notary Public, State of Texas

My Commission Expires:
_____

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RECEIVED FOR FILING THIS _____ DAY OF _____, 2007.

_____
Richarda Duffy Momsen, City Clerk