

## RESOLUTION 17-088

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, COMMANDING COMPLIANCE WITH THE CARSON ZONING ORDINANCE REGARDING SHIPPERS TRANSPORT EXPRESS, LOCATED AT 1150 EAST SEPULVEDA BOULEVARD, CITY OF CARSON

**WHEREAS**, on August 10, 1999, pursuant to an application by ARCO Products Company ("ARCO"), the City of Carson Planning Commission approved Tentative Parcel Map No. 25505 (the "TPM") for approximately 85 acres located south of Sepulveda Boulevard and east of Wilmington Avenue (the "Property," also referenced as 1150 E. Sepulveda Boulevard) and within the boundary of the former ARCO refinery. The TPM sub-divided the Property into four parcels for leasing purposes, designated as Assessor Parcel Numbers 7315-001-026 ("Parcel 1"), 7315-001-025 ("Parcel 2"), 7315-001-027 ("Parcel 3") and 7315-001-028 ("Parcel 4"). Parcel 1 was proposed to be leased for cargo container storage, which is allowed in the Manufacturing, Heavy ("MH") zone without a discretionary permit.

**WHEREAS**, the Planning Commission Staff Report provided that the proposed subdivision was in conformance with the General Plan, and would not cause serious health problems or environmental damage. Staff further concluded the TPM was exempt from the California Environmental Quality Act ("CEQA") as a minor land division pursuant to CEQA Guidelines § 15315. The Planning Commission approved the TPM in Resolution No. 99-1775, subject to various "Conditions of Approval" concluding that adoption of the resolution was exempt from CEQA.

**WHEREAS**, on October 12, 1999, the Carson Planning Commission approved Resolution No. 99-1787, granting Relocation Review No. 3035.43 (the "Relocation Review") requesting the use of a commercial coach (trailer) for a cargo container facility on Parcel 1. The Staff Report noted that the commercial coach would be used as office space for the container facility, and that Section 9148.6 of the Zoning Ordinance of the Carson Municipal Code (the "CMC") requires a container facility to be located 1000 feet from residential use and requires development standards including setbacks and landscaping.

**WHEREAS**, the Planning Commission Staff Report opined that the container facility would meet the 1000 feet requirement upon recording of the TPM. The Relocation Review procedure(s) of CMC § 9172.26 was applicable to a structure constructed at one location and moved within the City. The Planning Commission approved the Relocation Review request, subject to various "Conditions of Approval," concluding that adoption of the same was exempt from CEQA pursuant to CEQA Guidelines § 15303.

**WHEREAS**, in or about November 1999, Shippers Transport Express, Inc. ("Shippers") took possession of the approximately 27-acre Parcel 1 pursuant to a ground lease, and thereafter commenced operation of a truck parking and cargo container facility.

**WHEREAS**, on May 13, 2003, Shippers submitted a plot plan review application for a truck yard use to the City's Planning Division.

**WHEREAS**, on July 21, 2003, the City's Planning Division provided a comment letter on the proposed plot plan, and stated "the truck yard use proposed for Parcel 2 requires a Conditional Use Permit (CUP) per Ordinance No. 02-1263 and Ordinance No. 1273."

**WHEREAS**, BP West Coast Products LLC ("BP") and Shippers entered into a Ground Lease dated January 1, 2005. Pursuant to the Ground Lease, Shippers rents 59.11 acres, comprising Parcels 1, 2 and 3 of the Property. The City contends, and Shippers and Tesoro dispute, that this Ground Lease was entered into without the required City approvals.

**WHEREAS**, on January 31, 2011, BP submitted a Development Application for a Conditional Use Permit ("CUP") for a container storage yard at the Property, referenced as CUP No. 861-11 and Relocation Review No. 3044-11. The City's Planning Division provided review comments on the requested CUP, including on February 28, 2011, March 1, 2011, December 20, 2012, and April 8, 2014.

**WHEREAS**, on August 8, 2012, BP and certain of its affiliates entered into a Purchase and Sale Agreement ("PSA") whereby BP agreed to sell certain assets to Tesoro Refining & Marketing Company LLC ("Tesoro") or Tesoro's affiliates, including the former ARCO refinery and the Property. The Shippers Ground Lease was assigned to Tesoro as part of that asset sale. The City contends, and Shippers and Tesoro dispute, that the PSA and Ground Lease were entered into without the required City approvals.

**WHEREAS**, there presently exists a dispute among the City, Tesoro, and Shippers relating to the permitting issues for the Shippers operations. The parties desire to resolve their differences over the CUP application, to avoid litigation between them arising out of such disputes, and without acknowledging fault or responsibility in connection with the positions of any party to this dispute (hereinafter referred to as the "Truck Yard CUP Dispute").

NOW THEREFORE, the CITY COUNCIL of the CITY OF CARSON, CALIFORNIA, does hereby FIND, DETERMINE and ORDER AS FOLLOWS:

**Section 1.** The foregoing recitals are true and correct and incorporated herein by this reference.

**Section 2. Applicable Zoning Regulations & City Staff Findings.**

A. The Property is located in the MH (Manufacturing, Heavy) zone district. Pursuant to CMC § 9141.1, Cargo Container Storage is a permitted use in the MH zone, subject to the special limitations and requirements of CMC §§ 9138 and 9148 the Carson Zoning Code. CMC § 9141.1 also specifies that container storage is "prohibited within 1,000 feet, as measured from lot line to lot line, of residentially zoned property or institutional uses."

B. CMC § 9148 lists Special Requirements for Certain Uses in Industrial Zones. Section 9148.6 addresses Cargo Container Storage Facilities, and specifies development policies and site development standards. The site development standards include setbacks, landscaping and irrigation, configuration of cargo containers, and several other general requirements relating to parking, dust control/drainage, site access, screening and prohibition of hazardous material storage.

C. A truck terminal or truck yard is allowed in the MH zone with a conditional use permit, and subject to the requirements of CMC § 9148.9. (*See* CMC § 9141.1 [Industrial Zones -- Table of Transportation, Communications, Utilities and Public Service uses].) Section 9148.9 establishes development policies and site development standards for truck terminal and truck yard facilities. The site development standards include setbacks, landscaping and irrigation, fencing, configuration of truck parking and storage, and several other general requirements relating to parking, dust control/drainage, site access, prohibition of hazardous material storage and requirements for habitable structures. (*See* CMC § 9148.6(B).)

D. A conditional use permit is required for any truck-related uses located less than 100 feet from the lot line of any residentially-zoned property. (*See* CMC § 9148.8.) A use permit for such a facility must include development standards to mitigate environmental impacts affecting the residential areas, such as walls, fences, buffer zones, and landscaping.

E. CMC §§ 9181.1 *et seq.* authorizes the City to enforce the Carson Zoning Code, and to order action necessary to correct violations and/or assess a penalty when the City determines that a zoning requirement, regulation or standard has been violated.

F. City staff have found and determined that Shippers' operations at the Property on Parcel 2 and Parcel 3 violated CMC §§ 9141.1 and/or 9148, to the extent that cargo container storage was conducted within 1,000 feet of residentially zoned property or industrial uses.

G. City staff have further found and determined that Shippers' operations of the Property on Parcel 2 and Parcel 3 violated CMC §§ 9141.1 and/or 9148.9, to the extent that a truck terminal or truck yard was operated without prior issuance of a conditional use permit.

### **Section 3. Order of Compliance Directed to Tesoro & Shippers, Jointly and Severally.**

In resolution of the Truck Yard CUP Dispute, the City Council issues the following compliance order:

A. Shippers and Tesoro are hereby ordered to terminate, and cease and desist in, the operation of any cargo container storage and/or any truck parking and/or any truck terminal facilities on or at the Property; such compliance shall occur on or before the close of normal business hours on December 31, 2018 (the "Compliance Deadline"). Failure to meet the Compliance Deadline shall subject Shippers and/or Tesoro to enforcement actions as well as such other legal remedies as may be afforded the City by law.

B. In consideration of resolution of the Truck Yard CUP Dispute, Shippers and/or Tesoro shall, within twenty (20) days following adoption of this Resolution, pay to the City a one-time "Retroactive Development Impact Fee" of Nine Hundred Thousand Dollars (\$900,000.00) reflecting compensation for past operations by Shippers up to June 30, 2016. In the event Shippers or Tesoro fails to make timely payment of the "Retroactive Development Impact Fee," then Shippers and/or Tesoro shall pay a daily penalty of One Thousand Five Hundred Dollars (\$1,500.00) for each calendar day such payment is delinquent.

C. In further consideration of resolution of the Truck Yard CUP Dispute, Shippers and/or Tesoro shall pay to the City a one-time "2017 Development Impact Fee" of Two Hundred Fifty Thousand Dollars (\$250,000.00) on or before December 31, 2017, reflecting compensation for operations by Shippers between July 1, 2016 and June 30, 2017. In the event Shippers or Tesoro fails to make timely payment of the "2017 Development Impact Fee," then Shippers and/or Tesoro shall pay a daily penalty of One Thousand Five Hundred Dollars (\$1,500.00) for each calendar day such payment is delinquent.

D. In further consideration of resolution of the Truck Yard CUP Dispute, Shippers and/or Tesoro shall pay to the City a one-time "2018 Development Impact Fee" of Two Hundred Fifty Thousand Dollars (\$250,000.00) on or before December 31, 2018, reflecting compensation for operations by Shippers between July 1, 2017 and December 31, 2018. In the event Shippers or Tesoro fails to make timely payment of the "2018 Development Impact Fee," then Shippers and/or Tesoro shall pay a daily penalty of One Thousand Five Hundred Dollars (\$1,500.00) for each calendar day such payment is delinquent.

E. Subject to the City's election, in its sole and unfettered discretion, to extend the Compliance Deadline, as set forth in Section 4, below, should Shippers and Tesoro fail to meet any Compliance Deadline, Shippers and/or Tesoro shall pay a delinquent departure penalty in the amount of Five Thousand Dollars (\$5,000.00) per day for each day of delayed departure beyond a Compliance Deadline.

F. In the event that any provision of this Resolution is rescinded or revoked by the City, or declared invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the entire Resolution shall be null and void and shall subject Shippers and/or Tesoro to such enforcement action(s) as well as such other legal remedies as may be afforded the City by law.

G. In the event the City is required to take action to enforce this Resolution, or in the event this Resolution is declared invalid, illegal or otherwise unenforceable by the court of competent jurisdiction and the City is required to commence an enforcement proceeding(s) against Shippers and/or Tesoro, the City shall be reimbursed by Shippers and/or Tesoro for all costs and reasonable attorneys' fees incurred in such action or enforcement proceeding(s).

H. In the event that any claim or litigation is filed to challenge any provision of this Resolution ("Litigation Challenge"), the payment obligations of Shippers and Tesoro under this Resolution shall be tolled and delayed for a period of time equal to the time any such "Litigation Challenge" is pending. If a "Litigation Challenge" is pending on the date that any payment is due and payable under this Resolution, Tesoro shall deposit the entire amount due and payable into a separate interest bearing account ("Escrow Account") with the City. Within thirty (30) days following the final resolution of any "Litigation Challenge," Tesoro shall authorize, in writing, the City to withdraw all funds in the "Escrow Account."

#### **Section 4. City's Discretion to Extend Compliance Deadline.**

A. In the event that Shippers and/or Tesoro are unable to meet the Compliance Deadline, the City may, in its sole and unfettered discretion, extend the Compliance Deadline by the period(s) of time up to two (2) additional calendar years (an "Extended Compliance Deadline").

B. Such discretion shall be exercised by the Carson City Council at a duly noticed public meeting and provided that Shippers and/or Tesoro make(s) a written request to extend such deadline(s) not later than ninety (90) calendar days prior to the Compliance Deadline or any Extended Compliance Deadline.

C. In the event the City grants an Extended Compliance Deadline, then Shippers and/or Tesoro shall pay, prior to the first date of the period covered by any Extended Compliance Deadline, to the City a minimum "Extended Compliance Impact Fee" of Two Hundred Fifty Thousand Dollars (\$250,000.00) for each three (3) months extension beyond the Compliance Deadline or any Extended Compliance Deadline for on-going operations by Shippers at the Property, together with such other additional reasonable conditions and reasonable requirements as the City shall impose in return for any Extended Compliance Deadline.

D. During the term of this Resolution, or any Extended Compliance Deadline, Shippers and/or Tesoro shall pay to the City all normal and customary fees and charges applicable to all permits necessary for the use, and any taxes, fees, and charges hereafter imposed by City in connection with the use which are standard and uniformly-applied to similar entities in the City.

#### **Section 5. Shippers/Tesoro Required Deposit.**

A. Within thirty (30) days from the City's grant of an Extended Compliance Deadline, Shippers and/or Tesoro are hereby ordered to deposit with the City, to be held in a separate City interest bearing account, the sum of Five Hundred Thousand Dollars (\$500,000.00) (the "Reimbursement Fund") which the City may draw upon to reimburse the City for any delinquencies by Shippers or Tesoro in complying with this Resolution, for any "Extended Compliance Impact Fee" approved by the City, for any litigation costs and attorneys' fees incurred by the City arising out of or related to this Resolution, or for any litigation costs and attorneys' fees incurred by the City in any enforcement proceeding(s) the City may be required to undertake against Shippers and/or Tesoro to compel the cessation of the operation of any cargo container storage and/or any truck parking and/or any truck terminal facilities on or at the Property by Shippers and/or Tesoro.

B. Upon the expiration of any Extended Compliance Deadline period, or upon termination of any litigation arising out of or related to this Resolution, or upon termination of any enforcement proceeding(s) by the City to compel the cessation of the operation of any cargo container storage and/or any truck parking and/or any truck terminal facilities on or at the Property by Shippers and/or Tesoro, the City shall refund to Shippers and/or Tesoro the balance of the Reimbursement Fund, if any, not drawn upon by the City.

**Section 6. Finding of Compliance With Interim Urgency Ordinance.**

A. Interim Urgency Ordinance Nos. 17-1615U and 17-1618U (collectively, the “Logistics Moratorium”) enacted a moratorium on the establishment, expansion or modification of truck yards, logistics facilities, hazardous materials or waste facilities, container storage, and container parking.

B. The City Council finds and determines that this Resolution is consistent with the Logistics Moratorium because it does not allow for establishment, expansion or modification of any facilities subject thereto.

C. The City further finds and determines that this Resolution furthers the purpose of the Logistics Moratorium by providing for termination of existing facilities otherwise subject to the moratorium.

**Section 7. Resolution Exempt From CEQA.**

A. The City Council finds and determines that this Resolution is exempt from the requirements of the California Environmental Quality Act as a Class 1 Categorical Exemption, Existing Facilities, pursuant to Section 15301 of the CEQA Guidelines.

B. The City Council further finds and determines that this Resolution is exempt from the requirements of the California Environmental Quality Act as a Class 21 Categorical Exemption, Enforcement Actions by Regulatory Agencies, pursuant to Section 15321 of the CEQA Guidelines.

**Section 8. Tesoro Indemnification.**

Tesoro shall indemnify, protect, defend, and hold harmless City, and its respective officials, officers, employees, agents, elected boards, commissions, departments, agencies, and instrumentalities thereof, from any and all actions, suits, claims, demands, writs of mandamus, liabilities, losses, damages, penalties, obligations, expenses, and any other actions or proceedings (whether legal, equitable, declaratory, administrative, or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to, arbitrations, mediations, and other such procedures) asserted by third parties against City that may arise from or relate to adoption of this Resolution (herein the “**Claims and Liabilities**”), whether such Claims and Liabilities arise out of or under planning and zoning laws, the Subdivision Map Act, Code of Civil Procedure section 1085 or 1094.5, or any other federal, state, or local statute, law, ordinance, rule, regulation, or any decision of a competent jurisdiction.

PASSED, APPROVED AND ADOPTED this 5<sup>th</sup> day of July, 2017,

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Mayor

ATTESTED:

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City Clerk

APPROVED AS TO FORM:

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City Attorney