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Title: CONSIDER DIRECTING STAFF TO ORDER COMPLIANCE BY MARATHON OIL (FORMERLY TESORO REFINING & MARKETING COMPANY LLC) AND SHIPPERS TRANSPORT EXPRESS ("SHIPPERS") UNDER RESOLUTION NO. 17-088 REGARDING NON-COMPLIANT TRUCKING OPERATION ON THE SITE LOCATED AT 1150 EAST SEPULVEDA BOULEVARD, CITY OF CARSON AND/OR REQUIRE MARATHON OIL TO PAY COMPLIANCE PAYMENTS AND/OR PAY THE DELINQUENT DEPARTURE PENALTY PAYMENTS DUE (CITY COUNCIL)

Sponsors:

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Attachments: 1. Ex. 1 - Compliance Resolution, 2. Ex. 2 - Shippers Transport Express Letter Dated January 4, 2019

Date	Ver.	Action By	Action	Result
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Report to Mayor and City Council

Tuesday, February 05, 2019

Discussion

SUBJECT:

CONSIDER DIRECTING STAFF TO ORDER COMPLIANCE BY MARATHON OIL (FORMERLY TESORO REFINING & MARKETING COMPANY LLC) AND SHIPPERS TRANSPORT EXPRESS ("SHIPPERS") UNDER RESOLUTION NO. 17-088 REGARDING NON-COMPLIANT TRUCKING OPERATION ON THE SITE LOCATED AT 1150 EAST SEPULVEDA BOULEVARD, CITY OF CARSON AND/OR REQUIRE MARATHON OIL TO PAY COMPLIANCE PAYMENTS AND/OR PAY THE DELINQUENT DEPARTURE PENALTY PAYMENTS DUE (CITY COUNCIL)

I. SUMMARY

Shippers operates the largest truck parking and cargo container storage facility in the City of Carson at 1150 East Sepulveda Boulevard (59+/- acre site with approximately 2,600 spaces for trucks and containers) ("Site") in violation of the City's zoning code and City approvals and without any mitigation measures for the environmental impacts of its operations, including impacts caused by the several hundred heavy truck trips traveling to the Site daily (24/7), disturbing adjacent residential communities, causing substantial damage to the City's streets, and creating health impacts due to diesel emissions.

Marathon Oil (herein known as “Marathon,” but formerly known and referred to in the agreements as Tesoro Refining & Marketing Company, LLC), the current property owner, has always known about the unpermitted violations and is responsible for correcting them. In 2017, to avoid litigation over such violations, Marathon and Shippers negotiated a Compliance Resolution with the City wherein, the parties agreed: (1) Marathon would pay an initial retroactive impact fee of \$900,000; (2) Shippers would vacate the Site by December 31, 2018 (“Compliance Deadline”); (3) City would allow for an extension of the Compliance Deadline of up to two years if necessary, subject to Marathon/Shippers paying the City extension payments of \$250,000 for each 3 month period of any extension; and (4) if Marathon or Shippers failed to deposit the required extension payments and Shippers continued in occupancy past the Compliance Deadline, the City would levy a \$5,000 per day delinquent departure penalty payment against Marathon and Shippers (see Exhibit No. 1). The City stands to lose \$1,000,000 in 2019 if Marathon and Shippers do not pay the extension fees owed to the City.

Therefore, City staff seeks direction from the City Council to enforce compliance by Marathon of the obligations under the Compliance Resolution.

II. RECOMMENDATION

DIRECT staff to: 1) Order compliance by Marathon Oil (formerly Tesoro Refining & Marketing Company LLC) and Shippers Transport Express (“Shippers”) under Resolution No. 17-088 by terminating all operations by Shippers on the site located at 1150 East Sepulveda Boulevard, City of Carson; 2) require Marathon Oil to cause Shippers to vacate the site for failure to comply with the provisions of Resolution No. 17-088; 3) require Marathon Oil to pay the delinquent departure penalty payments due under Resolution No. 17-088; and, 4) take any necessary legal actions required to cause full compliance with Resolution No. 17-088.

III. ALTERNATIVES

TAKE another action that the City Council deems appropriate and consistent with the requirements of the Compliance Resolution.

IV. BACKGROUND

Shippers originally took occupancy of a portion of the Site in November 1999 pursuant to a ground lease for truck parking and the operation of a cargo container facility. Thereafter, Shippers expanded its operations to ultimately include approximately 59 acres in total, which it leases from Marathon Oil (formerly Tesoro Refining & Marketing Company LLC). However, Shippers use and operations on the Site were in direct violation of the provisions of the City’s Municipal Code (“CMC”) and Shippers and Marathon and its predecessor have failed to obtain required City approvals. Marathon Oil, as the owner of the Site, is also required to correct these violations under the CMC. Such violations include the fact that Shippers operations are illegally operating within 100 feet of residentially zoned property and its truck and container storage yard is operated without a conditional use

permit. As a result, was unable to impose conditions of approval to mitigate the environmental impacts of Shippers' operations, including requiring setbacks, buffers, screening, hours of operation, configuration of parking and storage, dust control/drainage requirements, and other measures that would limit the extent of the damage caused to the City's street system as a result of having several hundred heavy truck trips traveling to the Site daily (24/7), together with its associated diesel emissions which are harmful to human health and cause cancer.

Compliance Resolution Terms and Conditions

Tesoro, Marathon Oil's predecessor and the City negotiated a resolution to these matters in 2017, and the terms of the parties' agreement were set forth in Resolution No. 17-088 (the "Compliance Resolution") adopted by the City Council on July 5, 2017, as shown attached hereto as Exhibit No. 1. In addition to requiring certain Development Impact Fee payments for Shippers previous and continued operations on the Site, under the Compliance Resolution, Shippers and Marathon Oil were ordered to terminate the operation of any cargo container storage and/or any truck parking facilities on the Site by December 31, 2018 (the "Compliance Deadline").

However, if Shippers and/or Marathon Oil are unable to meet the Compliance Deadline, they could request an extension of up to two additional years under Compliance Resolution (i.e., until December 31, 2020) and if the City approves such extension, either Shippers or Marathon Oil must pay a fee of \$250,000 ("Extension Fee") for each 3 month period of extension beyond the Compliance Deadline in order to enable Shippers to continue its storage/parking operations on the Site. Thus, the City is entitled to up to \$1,000,000 from Shippers and/or Marathon Oil if operations continue on-site for a full year.

In addition, if an extension is granted, the Compliance Resolution requires Shippers and/or Marathon Oil to pay the City \$500,000 as an advance deposit of Shippers' and/or Marathon Oil's required payments of Extension Fees (or any associated compliance costs incurred by the City) within 30 days following the City's grant of such extension.

Failure to meet the Compliance Deadline or pay the required fees entitles the City to pursue enforcement proceedings and legal actions against Shippers and/or Marathon Oil in order to ensure compliance with the CMC, including, a delinquent departure penalty fee in the amount of \$5,000 for each day of delayed departure / termination starting on January 1, 2019 and continuing until the Site is completely vacated. All legal fees and costs for such enforcement must be repaid by Marathon Oil and/or Shippers under the Compliance Resolution.

Extension Request

On October 1, 2018 Shippers/Marathon Oil requested an extension to the Compliance Deadline for a one-year period (i.e., December 31, 2019) in order to terminate its storage and parking operations and vacate the Site. The extension request was considered and approved by the City Council during its closed session meeting held on December 4, 2018. However, the approval was made subject to the required payments due to the City under the Compliance Resolution for such extension by Shippers, or by Marathon Oil, as the landowner of the Site.

To date, the City has not received any of the extension payments due under the Compliance Resolution and therefore, Marathon Oil and Shippers are in violation of the terms of the Compliance Resolution and the City's Municipal Code. The Compliance Resolution requires Marathon Oil and/or Shipper's to pay the delinquent departure penalty of \$5,000 per day commencing on January 1, 2019 and continuing each day thereafter until fully vacated.

City's Efforts to Work with Shippers to Assist Them to Move Their Facility in a Legal Fashion.

On August 21, 2018, City Council approved Resolution No. 18-117 to grant an exception to the City's Logistics Moratorium to allow Shippers to file a Conditional Use Permit (CUP) for a site located at 2149 E. Sepulveda Boulevard with a 5-0 vote, in order to enable them to relocate their operations. Shippers had proposed to move a portion of their operations to this site. However to date, Shippers has not filed a CUP application with the City.

Despite this, City staff has continued to work to resolve this matter and has set up meet and confer meetings with Shippers. On January 3, 2018, City staff held a meeting with Shippers and discussed the fact that their continued operations on the Site constituted a violation of the Compliance Resolution due to their failure to submit the required extension payments. On January 4, 2019, Shippers responded to City staff's request for the extension payments by asking for a 75% discount in the amount of the required extension payments (see Exhibit No. 2).

V. FISCAL IMPACT

If the City Council rejects the recommendation herein, the City will lose up to \$1,000,000 in calendar year 2019. Note that the City will not incur legal fees and cost to carry out any legal action or enforcement proceeding because the Compliance Resolution allows the City to recover these costs from Marathon Oil.

VI. EXHIBITS

1. Compliance Resolution (pgs. 5-11)
2. Shippers Transport Express Letter Dated January 4, 2019 (pg. 12)

1.

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