



CITY OF CARSON

Legislation Text

File #: 2017-529, Version: 1

Report to Mayor and City Council

Wednesday, July 05, 2017

Discussion

SUBJECT:

CONSIDER ADOPTING SIX MATTERS RELATED TO THE CARSON TESORO REFINERY:

(1) A COMMUNITY BENEFITS AGREEMENT;

(2) ORDINANCE NO. 17-1626, AN ORDINANCE OF THE CITY OF CARSON, CALIFORNIA, CONSENTING TO THE TRANSFER OF THE ARCO PIPELINE COMPANY PIPELINE FRANCHISE GRANTING A NONPUBLIC UTILITY PIPELINE FRANCHISE TO TESORO REFINING & MARKETING SOCIAL PIPELINE COMPANY LLC & AMENDING ORDINANCE NO. 00-1204;

(3) ORDINANCE NO. 17-1627, AN ORDINANCE OF THE CITY OF CARSON, CALIFORNIA, CONSENTING TO THE TRANSFER OF THE ARCO TERMINAL SERVICES CORPORATION PIPELINE FRANCHISE GRANTING A NONPUBLIC UTILITY PIPELINE FRANCHISE TO TESORO SOCIAL PIPELINE COMPANY LLC & AMENDING ORDINANCE NO. 92-962;

(4) ORDINANCE NO. 17-1628, AN ORDINANCE OF THE CITY OF CARSON, CALIFORNIA, CONSENTING TO THE TRANSFER OF THE ATLANTIC RICHFIELD COMPANY PIPELINE FRANCHISE GRANTING A NONPUBLIC UTILITY PIPELINE FRANCHISE TO TESORO SOCIAL PIPELINE COMPANY LLC & AMENDING ORDINANCE NO. 99-1177;

(5) ORDINANCE NO. 17-1629, AN ORDINANCE OF THE CITY OF CARSON, CALIFORNIA, AMENDING ORDINANCE NO. 09-1416 GRANTING A NONPUBLIC UTILITY PIPELINE FRANCHISE TO TESORO REFINING & MARKETING COMPANY, LLC; AND

(6) RESOLUTION NO. 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 (CITY COUNCIL)

I. SUMMARY

The City Council will consider approving a Community Benefits Agreement (CBA) with Tesoro and other related resolutions and ordinances dealing with the Carson refinery, resolving concerns regarding the Los Angeles Refinery Integration and Compliance Project (LARIC), road conditions, certain tax matters, issues involving pipeline franchise amendments and the Shippers Truck Yard permit.

Tesoro has secured regulatory approval for the Los Angeles Refinery Integration and Compliance Project (LARIC). At the same time, the City has worked closely with Tesoro to better understand and mitigate the LARIC project's impacts. Tesoro has agreed to mitigate additional concerns that the City had with the project beyond the mitigations addressed in the EIR. The CBA will provide the City with \$9 million in funding for community mitigation projects. The City and Tesoro have also entered into separate agreements resolving all other outstanding disputes between Tesoro and the City. The value of these other agreements to the City is \$36 million and the combined value to the City with the LARIC's community mitigation projects is \$45 million. Tesoro has also agreed not build or operate a hydrofluoric (HF) acid alkylation unit at the refinery.

Upon the execution of the CBA and the approval of other agreements, almost immediately \$4,650,000 of the total payments will become due to the City. Thereafter, the CBA includes milestone payments of \$1.5 million each over the life of the construction of the LARIC's project, totaling \$9 million. The CBA further provides annual \$1 million payments to the City over the term of the CBA.

The City will also consent to the transfer and amend four (4) oil pipeline franchise ordinances to Tesoro. In doing so, Tesoro has agreed to increasing the pipeline franchise fees by 50% and subjecting themselves to an annual CPI for the fifteen-year term. A separate compliance resolution will resolve a zoning dispute over the Shippers Transit Express, located at 1150 E. Sepulveda, with a retroactive payment of \$900,000 to the City for Development Impact Fees and a payment of \$250,000 annually for the next two years for impacts related to truck traffic. The \$900,000 is due within 20 days of the approval of a separate Compliance Resolution on the Shippers Transport Express.

The CBA will lift the "cap" on the City's Utility User's Tax on Tesoro, without the need to declare a "fiscal emergency," during the term of the agreement. This will result in an estimated additional \$15,000,000 in revenues to the City over the life of the CBA. The CBA is designed to provide a stable source of funding over a 15-year period to permit the City to provide benefits to the community and implement mitigation and safety measures related to the LARIC's project and to permit the continued operation of the Tesoro Refinery.

II. RECOMMENDATION

1. APPROVE the Community Benefits Agreement and authorize the City Manager to execute the same following approval as to form by the City Attorney; and
2. WAIVE further reading and ADOPT Resolution No. 17-088, entitled "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”; and

3. WAIVE further reading and INTRODUCE for first reading Ordinance No. 07-1629 entitled “AN ORDINANCE OF THE CITY OF CARSON, CALIFORNIA, AMENDING ORDINANCE NO. 09-1416 GRANTING A NONPUBLIC UTILITY PIPELINE FRANCHISE TO TESORO REFINING & MARKETING COMPANY LLC”; and

4. WAIVE further reading and INTRODUCE for first reading Ordinance No. 07-1626 entitled “AN ORDINANCE OF THE CITY OF CARSON, CALIFORNIA, CONSENTING TO THE TRANSFER OF THE ARCO PIPELINE COMPANY PIPELINE FRANCHISE GRANTING A NONPUBLIC UTILITY PIPELINE FRANCHISE TO TESORO SOCIAL PIPELINE COMPANY LLC & AMENDING ORDINANCE NO. 00-1204”; and

5. WAIVE further reading and INTRODUCE for first reading Ordinance No. 07-1627 entitled “AN ORDINANCE OF THE CITY OF CARSON, CALIFORNIA, CONSENTING TO THE TRANSFER OF THE ARCO TERMINAL SERVICES CORPORATION PIPELINE FRANCHISE GRANTING A NONPUBLIC UTILITY PIPELINE FRANCHISE TO TESORO SOCIAL PIPELINE COMPANY LLC & AMENDING ORDINANCE NO. 92-962”; and

6. WAIVE further reading and INTRODUCE for first reading Ordinance No. 07-1628 entitled “AN ORDINANCE OF THE CITY OF CARSON, CALIFORNIA, CONSENTING TO THE TRANSFER OF THE ATLANTIC RICHFIELD COMPANY PIPELINE FRANCHISE GRANTING A NONPUBLIC UTILITY PIPELINE FRANCHISE TO TESORO SOCIAL PIPELINE COMPANY LLC & AMENDING ORDINANCE NO. 99-1177”.

III. ALTERNATIVES

TAKE any action deemed appropriate consistent with the requirements of law.

IV. BACKGROUND

Tesoro purchased the former British Petroleum (BP/ARCO) refinery in 2013. The refinery is located at 2350 E. 223rd Street in Carson. The Carson refinery manufactures gasoline, jet fuel, diesel and other petroleum products. The City and Tesoro have been involved since 2013 in discussions over a series of issues and disputes. The major disputes involve the environmental impacts of the integration of the Carson and Wilmington Refineries, the use of a 60 acre parcel for a trucking and container storage yard and the transfer of oil pipeline franchise agreements between ARCO and Tesoro. The City maintained that Tesoro should make substantial funding available for significant investments in the Carson community. Through the discussions, Tesoro has indicated their intent to make substantial funding available to support the wellbeing and safety of our residents and to improve the City’s environment.

Tesoro also owns and operates the refinery located at 2101 E. Pacific Coast Highway in the Wilmington District of the City of Los Angeles. Tesoro proposes to integrate its Wilmington operations with the Carson Refinery, in what is known as the Los Angeles Refinery Integration and Compliance Project (LARIC). LARIC would greatly enhance and modernize both facilities and would provide compliance with State and local air quality regulations mandating emission reductions.

LARICs Project

Tesoro plans to invest \$460 million in facility improvements that would upgrade both refineries. The project would improve air quality by reducing the refinery's greenhouse gas emissions, in what the South Coast Air Quality Management District (SCAQMD) estimates is equivalent to removing 13,500 passenger vehicles from local roads daily. There would be other reductions in NO_x, SO_x, PM and CO. The project would physically connect the two refineries with a major pipeline "bundle" that would travel below the Alameda Corridor and Sepulveda Boulevard. The interconnect will allow the closure of the older gasoline production facility in Wilmington, switching production to the newer and more efficient gasoline production facility in Carson. All new and updated equipment will use "Best Available Control Technology," approved by the SCAQMD. The project also includes the closure of the Shipper's Express truck storage yard, where six large petroleum storage tanks will be constructed.

Economic Benefits

Tesoro contracted with the Los Angeles Economic Development Commission to complete an economic study of LARIC's project. The report found that the project will generate 1,810 direct jobs, including 700 local construction jobs. No current jobs would be eliminated at the refinery. The project was estimated to contribute \$702.7 million in regional business revenues and \$86.4 million in tax revenues, including \$32.3 million in state and local taxes. Tesoro has stated on numerous occasions that they are committed to being good neighbors in Carson. One of the stated purposes of the improvements will allow the refinery to operate more cleanly and efficiently. Construction of the project is expected to begin later this year, with an anticipated completion date of March of 2021.

Environmental Impact Report

The SCAQMD is the lead agency responsible for the project review and for preparing the environmental document. As such, an environmental impact report was prepared for the LARIC Project by the SCAQMD as the lead agency and the City was identified as a responsible agency under the California Environmental Quality Act. The EIR states that the City will be required to consider a conditional use permit for new above ground storage tanks, right-of-way approvals for new pipelines joining the two refineries and ministerial grading and building permits. The SCAQMD held workshops and took public comments on the proposed environmental impact report. The City provided written comments on the environmental document and suggested mitigation measures. The EIR was certified as complete by the SCAQMD Executive Director on May 12, 2017. The City filed notice of intent to sue the SCAQMD soon after, concerned over the lack of community benefits.

The City raised a series of issues related to public health and safety, including the need for a stable funding source for the City's Stroke Center and assistance in upgrading the City's Emergency Response Center. The City also raised the need to implement an environmental capital improvement program adjacent to the refinery, including renovating the landscape medians on Wilmington and Sepulveda, as well as the construction of six new landscape medians on Sepulveda from Marbella to Wilmington and medians on 223rd Street. The City commented on the need to implement a green streets program for compliance with the Dominguez Watershed Plan which requires the improvement of surface water quality in the vicinity of the refinery. The City expressed concern about the need to implement the City's master bike lane and walkability planning efforts. Other concerns raised included the damage to City streets and the need to resurface many of streets adjacent to the refinery.

On June 9, 2017, the City and the SCAQMD entered in to tolling agreement with respect to the City's claims against the District and the project. Tesoro then disputed the claimed deficiencies. In order to avoid litigation the parties met to discuss and resolve the City's concerns with the project.

Ban on Hydrofluoric (HF) Acid

The February 18, 2015 explosion at the Torrance Refinery resulted in debris thrown into the refinery, narrowly missing a tank containing thousands of pounds of hydrofluoric acid or HF. After a complete investigation of the explosion, the U.S. Chemical Safety Board determined that if debris had struck the tank, a rupture could have been possible, resulting in "potentially catastrophic release of extremely toxic modified HF into the neighboring community." Studies conducted by the safety board determined that the toxic cloud would have covered the southern and western portions of Carson, reaching the Carson Civic Center. Within a 3 mile radius of the Torrance refinery are 333,000 residents, 71 schools and eight hospitals. Tesoro has agreed to address the concerns that the City had with the project including assurances that Tesoro will not build or operate a hydrofluoric (HF) acid alkylation unit at the refinery.

Franchise Dispute and Franchise Agreements

The City Ordinance requires franchise agreements on non-public oil and gas pipe-lines within the City's rights-of-way and streets. The City granted a franchise to Tesoro on February 3, 2009. Tesoro purchased the refinery from BP/ARCO in June of 2013. BP/ARCO submitted a written request to the City to consent to the transfer of the ownership of three existing franchises to Tesoro. A dispute also arose between Tesoro and the City as to the exact pipelines subject to the original Tesoro Franchise (2009). During the process additional pipelines were discovered that had not been properly documented. The City and Tesoro have now agreed to the total amount of pipelines subject to the franchise agreements. City Council will be asked to adopt ordinances for these franchises. The City has also negotiated a 50% increase in the pipeline fees and the fees will be subject to an annual cost of living adjustment (CPI).

Shipper's Express Transport Truck Yard Dispute and Agreement

Shipper's Express Transport (Shippers) leases 59.11 acres of Tesoro's property for a truck yard and container storage yard. The three leased parcels are located south of Sepulveda Boulevard and east of Wilmington Avenue. The City's Planning Commission approved a parcel map in 1999 which subdivided the property for the truck yard storage. The City and Shippers had on going disputes over the need for a conditional use permit to operate the truck yard. ARCO filed a conditional use permit application in 2010, however the application is currently pending.

The LARICs project includes the construction six storage tanks on a portion of the Shipper's property. The City has required the closure of the truck yard in 2018, when the tank construction is scheduled to begin. It is expected that the project will take two years to complete. Since the truck yard is scheduled to be closed, the City and Tesoro now desire to resolve the dispute without entering into litigation. The Council will be asked to adopt a Compliance Resolution, which would resolve the zoning issue. The Compliance Resolution is structured to provide the City with a back payment of development impacts fees of \$900,000 and two annual payments of \$250,000.

Community Benefits Agreement

The CBA not only outlines the resolution of these disputes, but contains provisions to mitigate the impacts of the LARICs project. It is intended that \$9 million in environmental projects be adopted by the City Council to address impacts in the immediate vicinity of the refinery and City-wide. The CBA is divided into five "milestone" payments of \$1.5 million each. The first payment would be made no less than 30 days after the execution of the CBA.

Milestone 1 requires payment of \$1.5 million upon completion of the LARIC pipelines and the same are placed into use. Milestone 2 requires payment of \$1.5 million when Tesoro commences construction of the new tanks **or** when the City issues the CUP for the same, whichever first occurs. Milestone 3 requires payment of \$1.5 million upon completion of construction on defined elements of the LARIC project. Milestone 4 requires payment of \$1.5 million once the storage tanks are completed and at least one storage tank is placed into service. Finally, Milestone 5 requires payment of \$1.5 million when construction SAR plant is done and is placed into service.

Community Funding

The City completed a series of studies and surveys of communities that host refineries. It is not uncommon for refineries to make additional agreed to payments to their host communities. For example, the City of El Segundo entered into an agreement that provided their City with \$6.6 million. Other communities with refineries have higher Utility Users Taxes, which generate substantial funding for their communities. The City of Torrance receives \$10 million annually from their refinery based on their higher rate UUT. It should be noted that the Carson UUT is the lowest in the South Bay at 2%. Carson is

also incorporated as a low-property tax community in 1968, so it is not unusual for refineries in other communities to pay higher property taxes. Tesoro is currently our single largest property tax payer at \$1,016,634 in annual tax payments to the City. Although property taxes in other host cities are difficult to compare due to the size of the refineries, Tesoro in the City of Benicia pays \$2.5 million in property tax revenues to that community. The CBA provides for annual payments to the City of \$1 Million for the 15 year term of the agreement. These funds would be deposited in the General Fund and could be used by the City for a variety of public services.

Credit for New Tax

The City has faced tremendous budget headwinds. In 2011 the City suffered a major financial setback when the State dissolved its redevelopment agency. All redevelopment agencies were dissolved statewide, when the State transferred redevelopment funds to the public schools in order to close the State's budget deficit. This one action resulted in the annual loss of \$30 million to the City of Carson and its redevelopment agency. Since 2011 the City has reduced its workforce by over 20%, with the loss of over 60 employees. In many cases the City has deferred maintenance as a cost cutting measures. Recent pavement management studies have indicated that the City will need to invest over \$8 million annually in street repairs and resurfacing just to keep the streets from further deterioration. Tesoro as a good corporate partner has indicated that it would participate in new taxes on industry. For example, the City could raise the UUT for refineries. However, they requested a credit in the CBA for any payments made under this agreement. Staff believes that this is reasonable request.

V. FISCAL IMPACT

Staff estimates that the total new revenues to the City over the 15 year term of these agreements will be \$45 million. The CBA will provide the City with \$9 million in funding for community mitigation projects. There are five "milestone" payments of \$1.5 million each over the life of the construction of the LARIC's project, with \$1 million to be paid within 30 days approval of the CBA. The CBA further provides \$15 million in funding to the City in annual \$1 million payments over the term of the CBA. The first payment of \$1 million is due within 30 days of the execution of the CBA.

The CBA would amend the oil pipeline franchise ordinances with Tesoro, increasing the pipeline franchise fees from \$143,470 annually to \$300,790, subject to an annual CPI adjustment for the fifteen-year term. A separate resolution would resolve the zoning dispute over the Shippers Transit Express, located at 1150 E. Sepulveda, with a retroactive payment of \$900,000 to the City for development impact fees and a payment of \$250,000 annually the City for the next two years for development impact fees related to the impacts from truck traffic. The \$900,000 is due within 20 days of the approval of a separate Compliance Resolution on the Shippers Transport Express.

The CBA will remove the \$1 million annual "cap" on the City's Utility User's Tax on Tesoro, without requiring the City to declare a "fiscal emergency." This will result in resulting in an additional \$1 million payment annually, a total of \$15 million over the life of the Agreement. The total value of these agreements, including additional property tax and use tax

revenues is \$36 million. The CBA is designed to provide a stable source of funding over a 15-year period to permit the City to provide benefits to the community and implement more localized mitigation and safety measures related to the LARIC's project.

VI. EXHIBITS

1. Ordinance 17-1626 (Pages 9-15)
2. Ordinance 17-1627 (Pages 16-22)
3. Ordinance 17-1628 (Pages 23-29)
4. Ordinance 17-1629 (Pages 30-36)
5. Resolution No. 17-088 (Pages 37-43)
6. Community Benefits Agreement (Pages 44-58)

Prepared by: Kenneth C. Farfsing, City Manager & Sunny Soltani, City Attorney