

**City of Culver City, California  
Agenda Item Report**

Meeting Date: 07/27/2015	Item Number: <u>PH-2</u>
<b>CITY COUNCIL AGENDA ITEM: PUBLIC HEARING – Introduction of an Ordinance Granting a Franchise to Crimson California Pipeline, L.P. for the Operation of Existing Pipelines Located in the Public Rights-of-Way for the Transportation of Oil or Products Thereof Pursuant to Certain Terms and Conditions Contained in the Proposed Ordinance.</b>	
Contact Person/Dept.: Martin R. Cole, Assistant City Manager/City Clerk	Phone Number: 310-253-6000
Fiscal Impact: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	General Fund: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Public Hearing: <input checked="" type="checkbox"/>	Action Item: <input type="checkbox"/> Attachments: <input checked="" type="checkbox"/>
Commission Action Required: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Date: _____
Public Notification: (E-Mail) Meetings and Agendas – City Council (07/22/15); (Publication) Culver City News (06/25/15, 07/15/15, and 07/23/15)	
Department Approval: Martin R. Cole (07/21/15)	City Attorney Approval: Carol Schwab (by H. Baker (07/21/15)
Chief Financial Officer Approval: Jeff Muir (07/22/15)	City Manager Approval: John M. Nachbar (07/22/15)

**RECOMMENDATION:**

Staff recommends the City Council introduce an ordinance granting a Franchise to Crimson California Pipeline, L.P. (Proposed Crimson Franchise) for the operation of existing pipelines located in the public rights-of-way for the transportation of oil or products thereof pursuant to certain terms and conditions contained in the proposed ordinance.

**BACKGROUND:**

Section 1700 of the City Charter provides, in pertinent part, the following:

“The City Council may, by ordinance, grant a franchise to furnish the City and its inhabitants with any public utility or service and to use the public streets for that purpose. The exercise by any person, firm or corporation of any privilege for which a franchise is required without procuring such franchise from the City is prohibited.”

Additionally, Section 6205.1 of the California Public Utilities Code (PUC) provides, in pertinent part, the following:

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“...facilities which are part of a pipeline system transmitting oil or products thereof, shall be granted upon the terms and conditions provided in, and in accordance with...this chapter”

Since its incorporation in 1917, in accordance with the City Charter and the PUC, the City has issued a number of franchises to various utilities. Some of the City’s franchises often trace their origins back a number of decades. In the case of the Proposed Crimson Franchise, the pipelines that are subject to the Proposed Crimson Franchise have been in their underground location since at least 1968 (under a Franchise granted by the City Council via Ordinance CS-593 on April 11, 1968).

Since 1968, the City Charter was significantly updated in 2006. Also, the PUC has been substantively amended. In addition to these changes in applicable law, provisions in the 1968 Franchise have become dated (especially provisions related to insurance and indemnity). Further, Shell Oil Company, the franchise holder of the original 1968 Franchise, conveyed its interests to Crimson California Pipeline, L. P. (Crimson). For all of these reasons, an updated Franchise is needed.

On June 8, 2015, the City Council adopted Resolution 2015-R045: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CULVER CITY, CALIFORNIA (1) DECLARING THE CITY COUNCIL'S INTENTION TO GRANT A FRANCHISE TO CRIMSON CALIFORNIA PIPELINE, L.P. FOR THE OPERATION OF EXISTING PIPELINES LOCATED IN THE PUBLIC RIGHTS-OF-WAY FOR THE TRANSPORTATION OF OIL OR PRODUCTS THEREOF PURSUANT TO CERTAIN TERMS AND CONDITIONS UPON WHICH SUCH FRANCHISE IS PROPOSED TO BE GRANTED; AND, (2) SETTING THE DATE, TIME, AND PLACE FOR THE PUBLIC HEARING AT WHICH ANY PERSON MAY APPEAR BEFORE THE CITY COUNCIL AND BE HEARD TO BE JULY 27, 2015 AT 7:00PM IN THE MIKE BALKMAN COUNCIL CHAMBERS.

The City Council approved minutes for the City Council Meeting of June 8, 2015, contain the following:

“...Council Member Sahli-Wells thanked Assistant City Manager/City Clerk Martin Cole for his hard work on the issue; discussed a similar franchise in Santa Monica; the Santa Monica agreement; notification requirements; **changing the word "reasonably" to "immediately"**; the recent oil spill in Santa Barbara; and emergencies (**emphasis added**).

David Blakesly, Crimson Pipeline, discussed Federal and State notification for spill events; the National Response Center; best accommodating the emergency response; and the emergency response plan.

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Further discussion ensued between staff and Council Members regarding other pipelines beneath Culver City; All American Pipeline; different levels of regulation; the Public Utilities Code of California; issues that are negotiable; provisions of the franchise set by state law; a request that regulators increase inspections of pipelines; the main regulator of safety; contact with the Culver City Fire Department; and the Santa Monica franchise.

Council Member Clarke received clarification from Mr. Blakesly regarding the life expectancy for pipelines...”

The proposed ordinance presented to the City Council for consideration this evening includes the amendments proposed as emphasized above.

**DISCUSSION:**

Given the significant changes noted above and the 47 years of time since the installation of the subject pipelines, staff has been in discussions with Crimson to update the Proposed Crimson Franchise. The result of over three years of discussions is a completely re-written and updated document.

***Significant Change in Applicable Law***

When the PUC was last substantively amended by the State Legislature in 1989, the amendments included a “pre-emption” provision. That provision (contained in Section 6205.1) pre-empted the City’s authority to negotiate many substantive provisions in the franchise and required that franchises be granted “upon the terms and conditions provided in [the PUC].” One important provision, the amount of the fee the City can charge oil pipeline systems for the use of the public right-of-way is set by Section 6231.5 of the PUC (prior to 1989, the franchise fee was a negotiable item).

***Substantive Updates Contained in the Proposed Crimson Franchise***

Throughout this entire process, in accordance with negotiating instructions provided by the City Council, staff has proceeded with negotiations to update the insurance/bond/indemnity language to provide improved protection to the residents of the City in case of pipeline damage or oil spills. Also, secondarily to providing for the public health and safety, the City Council’s negotiating instructions also provided for an opportunity to standardize and update the remaining language of the franchise agreements and provide maximum revenues for use of the public lands.

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Improved and Updated Insurance Coverage

Because of the pre-emption of the franchise fee by the PUC, negotiations focused mainly on the City's main goal to modernize and improve the insurance provided by Crimson to protect the City, its residents, and property owners. As with the City of Santa Monica franchise, the Proposed Crimson Franchise includes updated and, in staff's opinion more appropriate, insurance coverage (please see Exhibit B of the Proposed Crimson Franchise for additional details). The updated insurance requirements now provide for \$35,000,000 in Pollution Legal Liability coverage and \$10,000,000 in Excess or Umbrella Liability.

Other Major Terms and Conditions

The Proposed Crimson Franchise includes the following major terms and conditions:

1. Term of 10 Years: Staff had originally proposed an initial term of ten years and two five-year extensions subject to payment of Extension Fees. To maintain parity with the Santa Monica (and other) franchises, Crimson rejected that proposal. The term reverted to a single, 10-year term, which both parties have agreed upon.
2. Updated Language: The language of the document has been updated and restructured to improve the ease of administration of the franchise.
3. Renewal and Annual Franchise Fee: The document reflects the payment of a \$10,000 Franchise Renewal and Extension Fee and an annual Franchise Fee equal to the maximum allowed under the PUC. Under the PUC tariff schedule, the City is expected to receive \$1,654 for the first year of the franchise, subject to a modest inflation factor each year thereafter.

Should the City Council introduce the proposed ordinance this evening, it will be brought back for adoption at the August 10, 2015 City Council Meeting.

**FISCAL IMPACT:**

Should the City Council ultimately adopt the proposed ordinance, the City's General Fund will receive a one-time payment of \$10,000 as a Franchise Renewal and Extension Fee and will receive approximately \$1,654 each year as the maximum allowable franchise fee set under the PUC (the franchise fee is subject to increase each year as allowed by the PUC).

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**ATTACHMENTS:**

Proposed Ordinance

**MOTION:**

That the City Council:

Introduce an ordinance granting a franchise to Crimson California Pipeline, L.P. (Proposed Crimson Franchise) for the operation of existing pipelines located in the public rights-of-way for the transportation of oil or products thereof pursuant to certain terms and conditions contained in the proposed ordinance.