

COUNCIL COMMITTEE MINUTES

Concurrent Special Committee Meetings of the Sacramento City Council, Redevelopment Agency of the City of Sacramento, Housing Authority of the City of Sacramento and the Parking Authority of the City of Sacramento.

COMMITTEE NAME: LAW AND LEGISLATION

MEETING DATE: October 20, 1992

MEETING TIME: 1:00 p.m.

LOCATION: 915 I STREET, 2ND FLOOR, COUNCIL CHAMBER

I HEREBY CALL Special Meetings of the Sacramento City Council, Redevelopment Agency of the City of Sacramento, Housing Authority of the City of Sacramento, and Parking Authority of the City of Sacramento to be conducted concurrently with the Council committee meetings listed below, which are incorporated herein by reference. The Special Meetings are called to permit Members who are not on the listed committees to attend the meetings and participate in the discussions. In the event five (5) or more members of the City Council are present at a Committee meeting, only those items listed on the agenda can be acted on or discussed.

The meeting was called to order at 1:00 p.m. by Chair Lynn Robie.

PRESENT: Committeemembers Robie, Chinn, Pane and Serna.*

*Committeemember Serna arrived at 1:21 p.m.

1. Follow-up on Proposed Sacramento Service Station Fair Dealing Ordinance.

Recommendation of Staff:

Hear testimony and make a recommendation to full Council.

Committee Action:

Supported resolution, as revised, to be reviewed by full Council on November 10th.

Voting Record:

Moved: Chinn
Seconded: Pane
Ayes: Chinn, Pane, Robie
Noes: Serna

MINUTES:

Chair Robie explained that this Committee has only one hour to hear testimony regarding this matter, and that the oil company representatives would be heard first because they didn't get much time at the last hearing. She said that David Martinez, Deputy City Manager has three alternatives that he will go over with the Committee.

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Deputy City Attorney Diane Balter stated that a proposed ordinance was originally submitted to the City Attorney's office, where a legal review was done, and it was the opinion of the City Attorney's office that the City Council did have authority to enact the fair dealing ordinance to create those causes of action and standards. She noted that no policy review or modification of the ordinance was done; it was simply presented to the Committee in the form that it was originally submitted.

David Martinez, Deputy City Manager, noted that at the August 25th meeting of this Committee it was requested that the oil companies and dealers meet to see if they could reach common agreement. He said that on September 29th he met with representatives of the oil companies and the service station operators, and noted that he feels there has been good cooperation and good will on both parts, although they are far apart in terms of their views. He then explained the four alternatives that could be taken by the Committee: (1) support the ordinance and pass that on to the full Council; (2) revise the ordinance; (3) send this matter to the full Council with the recommendation not to approve it; or (4) forego the ordinance route and instead acknowledge that this is an important issue but out of the sphere of the City Council or local government, but encourage the parties to seek federal or state legislation and review this matter again at a later time. Mr. Martinez continued, saying that at the September 29th meeting Mr. Nagler, who represents the service station operators, requested some amendments to the proposed ordinance, which are attached to the staff report for today's meeting. He concluded by saying that since this issue has been before the Committee for some time, he encouraged the Committee to take action today to relieve the Committee's busy calendar.

Committeemember Chinn expressed his opinion that at the present time he cannot support alternatives 1, 2 or 3, because he feels that this has always been a matter for federal legislation rather than confined to only one community, and that Sacramento would be the first community to act on this type of issue. He said alternative 4 is very close to what he would propose, except for the following changes: not to indicate that the problem exists, but that it may exist, and that state and federal legislation may be required to address this relationship. He said that as far as he's concerned, the City should just leave it alone, ask the state or federal government to review it, but to not render an opinion.

Bob Machon, Manager of Public Relations for Arco Products Company, spoke at this time. He expressed his extreme concern with this ordinance as it exists, for many reasons. He said this ordinance has the ability to radically change franchise relationships

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within the City, and that over time, this ordinance would lock into place outdated programs and stifle entrepreneurship, making those retail marketing programs that exist within the City of Sacramento outdated and costly. He said every decision that would be made by a franchisor ultimately would be subject to review by the dealers, and every decision they didn't like or agree with would be subject to review by the courts. He asked, "What is fair? How do we define reasonable?" He said this is a vague standard. He explained that under federal and state laws, franchisors are required to promulgate their programs in a uniform manner across the board to all dealers, which, by its very definition, is non-discriminatory, and that if every decision made by a franchisor is subject to individual dealer scrutiny, a problem is created that can only be resolved in the courts, which he feels is one of the major problems with this ordinance. He continued by saying that the people at Arco, as well as Exxon, Shell, and others, are vitally concerned with their dealers' financial health and want them to be successful, and that every program they put in place is aimed at giving the dealers the most up-to-date technological and innovative consumer-oriented programs possible. He discussed several programs that have been put in place over the past few years which, had this ordinance been in place, wouldn't have been implemented because some of the dealers wouldn't have wanted the change. He pointed out that in 1978 the U.S. Congress passed a law called the Petroleum Marketing Practices Act (PMPA), which is called the backbone legislation of petroleum marketing, and since its inception has been considered dealer protection legislation, as well as legislation allowing the best programs to aid the consumer. He then read a couple of paragraphs from the record which explains why Congress rejected the issue of "reasonable business judgments."

*Committeemember Serna arrived at 1:21 p.m.

Mr. Machon said there is already a huge body of law that protects petroleum retail dealers (the PMPA, the anti-trust laws, laws regulating franchises at federal and state levels, and the California Business & Professions Code), which means that as a class of businessmen they are the most protected, yet with all this protection you don't see "fair" and "reasonable" at any level of government. He concluded that this type of law definitely should be left to the state, if not the Congress, and that this proposed ordinance won't lower prices, won't help the consumer, won't result in better service, and won't help the majority of the dealers, and will instead send the wrong message to the Sacramento business community. He expressed his feeling that California and the City of Sacramento do not need any more anti-business messages. Mr. Machon then urgently requested that the Committee consider this proposed ordinance and reject it.

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Committeemember Serna asked Mr. Machon what he meant by anti-consumer, and said he was concerned about the fact that the small business station owner is essentially becoming extinct. Serna said he is reminded of the service stations in Europe, where there are no small dealers left at all, and the price of gasoline has skyrocketed. Mr. Machon said he couldn't speak about Europe, but that in California and the five states on the west coast smaller dealers are alive and well and healthy; that it is a myth they are being driven out by company-operated stations; and that if a survey of stations in the City of Sacramento were taken it would be seen that the absolute lowest priced stations would be operated by the independent dealer.

Mr. Marty Appel of Chevron spoke at this time. He responded to Serna's question regarding the cost of gasoline in Europe, saying that most of the cost of gasoline there is the exorbitant taxes, and that the cost of the actual gasoline is about the same as in the United States. There was some discussion. Mr. Appel remarked that he believes the proposed ordinance would be bad for the service station dealers, the oil companies, and the consumers. He noted that Chevron has 18 stations in Sacramento, of which one is company operated, 14 are lessee-dealer locations, and three are contract dealer locations. He said the proposed ordinance is written on behalf of the lessee-dealer, and each lessee-dealer station represents an investment by Chevron of \$1 to \$2 million. He pointed out that Chevron has no plan to replace dealers in favor of company operation, as some groups claim. He went on to explain the service station industry today, and how Chevron works to keep customers coming to Chevron. He said the proposed ordinance would impose the vague requirement that an oil company always act fairly and reasonably in all of its dealings with the dealer, so that any time the dealer is unhappy about anything it would have to be decided by a jury. He said that the success of an oil company dealer depends upon its ability to consistently provide the consumer's needs, and this ordinance would allow a dealer to stop or slow important consumer-based programs and harm the consumer rather than provide a benefit; therefore, this vague and one-sided ordinance would only subject every business decision to unnecessary and costly review by judges and jurors in an already overworked judicial system. He strongly urged that this ordinance be rejected.

Bill Nagley, the Government Affairs Manager for the Sacramento Metropolitan Chamber of Commerce, spoke for Mary Ose, the local government chair, and Kay Backer, the president. He said the Chamber of Commerce urges opposition to the proposed ordinance, as it is inappropriate for city government to interfere in a contractual arrangement between two parties. He went on to note that federal and state regulations govern service station dealer franchise agreements at this time, and any proposed changes to the law should be made at those levels of government. He also noted that legislation similar to this proposed ordinance has been considered and rejected at both the state and

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federal levels. He said the terms "fair" and "reasonable" would promote excessive litigation which will prove costly and burdensome. He said the Chamber feels that if this ordinance should pass, it would send one more negative message to employers that Sacramento is not a good place to do business.

David Nagler, an attorney representing the service station dealers via the California Service Station and Automotive Repair Association, spoke at this time. He said that they are the sponsors of the ordinance, and he thanked everyone for the time spent on this matter. He then introduced John Atkinson, who has been serving as their legal counsel.

John Atkinson said that he wanted to address why this ordinance is different from a typical contractual relationship, and why they are here. He explained that the relationship they are talking about is governed in some parts by federal law, which is what makes it different. He noted that the relationship here is different and unique in America, where dealers have a right under federal law to remain in the relationship -- they cannot walk away. He said the dealers now have no power and need extra help, so "fair" and "reasonable" is not only appropriate but necessary for the survival of these dealers. He noted that the idea of going to court could be avoided by adding some language relating to arbitration, and he feels that this can be worked out for both sides.

Mr. Nagler spoke again, noting that this issue is as complex as people have been led to believe. He pointed out that at a meeting of representatives of the dealers and oil companies, the oil companies agreed there may be an issue worth addressing and that there may be a process worth implementing, but that also declared it inappropriate to deal with this at the local level. He conveyed the fact that, at the meeting, the oil companies asked the City to drop this issue and said they would then sit down and talk about state legislation. Mr. Nagler said the oil companies told him that nothing could be done overnight. Mr. Nagler then explained that some of the bills on this issue have been in state negotiations stages for at least two years. He commented that the issue isn't whether or not there is conversion from a station that provides services to a station that sells Twinkies; the issue isn't whether or not dealers want to make corporate oil company decisions and have them implemented as if the dealers know better than the corporation; the issue isn't even really that the dealers want to recover damages or money through a legal battle; the issue simply boils down to this: Whether or not the oil companies represent to you that they treat their dealers fairly or not, examples occur day after day where the dealers feel that because of the existence of PMPA and because of the unequal bargaining position between the parties, decisions are implemented which put the dealers entirely at risk, for which they have no capacity to have a neutral outside party observe.

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He then noted some examples of this practice. He concluded that this ordinance as written need not be the final version of the ordinance; simply have an outside party look at this disproportionate bargaining position to view this as a neutral outside party would, so that there would be a standard of fairness and reasonableness. He said the dealers would be willing to have the ordinance talk about binding arbitration, and the only way a dealer would have standing in court would be if the oil company or dealer refuses to go to binding arbitration. He said the dealers are willing to give up the right to appeal, and all rights that would fall out of a typical suit of this sort, if the arbitrator could say that a practice by either the dealer or the oil company is unfair to the other and must be stopped. He said the dealers aren't out there to rake the oil companies over the coals or to end the relationship; they're simply saying that they want some place to go.

Chair Robie asked the Committee to look at the four options presented. Chinn made some comments regarding the fact that he rejects recommendations 1, 2, and 3 because they don't support any solution at all, and he also said he opposes any ordinance that is vague and subjective, and that this ordinance uses the words "fair" and "reasonable," which words he feels are very, very subjective. He discussed arbitration, and reminded everyone that the arbitration issue was raised by him in his discussion with John Hawthorne, but that arbitration would only work if you have a fundamental ordinance which is objective. He said he therefore does not feel that arbitration would work with this ordinance. He then recommended that item 4 be changed as follows:

"Recommend that the full City Council approve a Resolution which indicates [rather than acknowledges] that a problem may exist in the relationship between service station operators and oil companies and that legislation on the state or federal level may be required to better address this relationship. The resolution would acknowledge that the City of Sacramento is not the most appropriate entity to regulate this activity. The resolution would urge the state and federal legislators to review the situation and act accordingly."

Pane asked Chinn whether the binding arbitration would be included in Chinn's motion. Chinn stated that this should be taken out.

Serna said he supports this ordinance because this supports small business. He said the fair and reasonable part of this ordinance is important, as this is the only kind of contractual relationship that exists in America that essentially provides for a small contractor to be locked into a lease or to "take it or leave it," which to him is offensive.

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Serna said he would like to find a balance where small businesses can compete effectively. He said he would like to see the City become an instrument of a reasonably responsible compromise here, and to use the ordinance as a method of finding solutions. He said he is not prepared to drop the ordinance until the dealers and oil companies agree to jointly sponsor state legislation providing for binding arbitration between the two parties, and that if this doesn't happen, the ordinance should be passed.

Chinn said he would like to add to his motion, at about the middle of item 4 of the staff report:

"The Resolution would urge state and federal legislators to develop appropriate legislation in this area which may include a provision for binding arbitration between service station operations and oil companies."

He pointed out that he is very aware of small business needs, and that he is not siding with the big oil companies; however, if this ordinance passes, the only small business it would favor is the lawyers.

Serna told Chinn that he feels the language he introduced doesn't encourage both groups to come to the table and talk about jointly sponsoring legislation, but rather, gets them to arbitration. Chinn said he didn't think anything should be done about this ordinance today, but that the oil companies and dealers should meet again and come up with some language about arbitration, then bring it back to the full Council. Robie suggested making some of the changes suggested by Tom, leaving the recommendation the way it is, and having the resolution acknowledge that the City of Sacramento is not the most appropriate government entity to regulate this activity, then urge the state and federal legislators to develop appropriate legislation which could include provisions about binding arbitration between the dealers and oil companies. She noted that this can then be reviewed in one or two years to determine whether progress has been made.

Serna said he wanted to make this a final vote, up or down, at the next Council meeting. Pane commented that he doesn't support having this type of ordinance at the City or County level, and he would prefer not to have a clause on binding arbitration put in the ordinance at all. Robie reminded him that the recommendation was: "...which could include...arbitration." Serna said he feels the legislature won't do anything with this at all, since it is so vague, and then neighborhood station owners will disappear from the face of the City of Sacramento, which isn't good and healthy business practice.

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It was agreed that the Committee's recommendation would be as Chinn moved. Robie said that if this passes as written, there most likely will be a lot of lawsuits, but that this Committee doesn't back away from lawsuits. Serna asked whether he still has the option of presenting the whole ordinance to the full Council on his own. There was some discussion about how ordinances go from this Committee to the Council. Robie asked that everyone interested in this issue be given adequate notification of when it will be before the Council. At Pane's request, Chinn's motion was re-stated. Chinn moved, Pane seconded, Robie concurred, and Serna voted no. At Chinn's request, the Committee directed staff to place this item on the November 10 City Council agenda.

The meeting was adjourned at 2:05 p.m.

* * * * *

LYNN ROBIE, Chair

ATTEST:



JUDY SANDERS, Secretary

October 20, 1992



*Serving the
Sacramento Region*

The Honorable Josh Pane
Law and Legislation Committee
Sacramento City Council
915 I Street
Sacramento, CA 95814

Dear Councilmember Pane:

On behalf of our 2,200 member businesses, the Sacramento Metropolitan Chamber of Commerce urges your opposition to the proposed Service Station Fair Dealing Ordinance.

It is inappropriate for city government to interfere in a contractual arrangement between two parties. Federal and state regulations govern service station dealer franchise agreements. Any proposed changes to the law should be at those levels of government. It is interesting to note, however, that legislation similar to this ordinance has been considered and rejected at both the state and federal levels.

In addition, the Chamber believes that the vague language of what is "fair and reasonable" will promote excessive litigation which will prove costly and burdensome. Service station dealers already have the same right that any party has in a contract dispute to sue if it is believed that terms of the agreement are not being fulfilled.

At a time when the business community and the public sector are working together to bring new industry to Sacramento and to keep local company facilities here, passage of this ordinance just sends one more negative message to employers. The Sacramento Metropolitan Chamber of Commerce respectfully requests your opposition to this proposal.

Thank you very much for your time and consideration.

Sincerely,

THE SACRAMENTO METROPOLITAN CHAMBER OF COMMERCE

by: Mary Ose, Chair
Local Government Committee

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BUSINESS

JOB MARKET

SECTION

J

SUNDAY

SHOPTALK

What does Fortune know, anyway

Fortune magazine recently came out with a list of the best cities for business, and Sacramento failed to make the first team.

Drippy Seattle was No. 1 and San Francisco (San Francisco?) came in third. The Big Tomato was listed among 60 cities that were evaluated but did not crack the top 10.

In explaining our shocking absence from the top cities' list, the magazine said we have a few things in our favor.

Our growth in manufacturing and high technology has been faster than the national average, Fortune said. And the education system here is better than in any of the other California cities that were surveyed.

So what's the problem?

Well, it seems we ranked in the bottom 10 when it comes to the training of our work force. And (city officials take note!), we ranked next to last among the 60 cities when it comes to a pro-business attitude.