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DEPARTMENT OF PARKS
AND COMMUNITY SERVICES

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September 29, 1992

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

**SUBJECT: WATER CONSERVATION LANDSCAPE ORDINANCE - AMENDMENT
OF CHAPTER 9, SECTIONS 9.1300 THROUGH 9.1311 OF THE SACRA-
MENTO CITY CODE**

DIVISIONS:
GOLF
CROCKER ART MUSEUM
HISTORY AND SCIENCE
METROPOLITAN ARTS
SACRAMENTO ZOO
PARKS AND RECREATION
• NORTH
• SOUTH

LOCATION

City-wide, All Districts.

SUMMARY

This report provides information regarding the implementation of a Water Conservation Landscape Ordinance, which is a state-mandated program that must be enacted by January 1, 1993.

STAFF RECOMMENDATION

It is recommended that the Law and Legislative Committee approve this report and forward it to the City Council for adoption of the ordinance. It is also recommended that the City Council, by resolution, approve a fifty dollar (\$50.00) fee per landscape plan to recover staff time and overhead to review the plans under the required criteria.

BACKGROUND INFORMATION

In September 1990, Assembly Bill 325 (Clute) was passed, which mandated that local agencies adopt a water conservation landscape ordinance by January 1, 1993. As part of the bill, the Department of Water Resources was to establish a model water efficient landscape ordinance. After the January 1, 1993 deadline, local agencies that have not adopted their own ordinance will be required to comply with the State model ordinance.

Agencies that chose to adopt their own version of the ordinance, must comply with the provisions of the statute, which include the following:

1. To promote the values and benefits of landscapes while recognizing the need to invest water and other resources as efficiently as possible; and

2. Establish a structure for designing, installing, and maintaining water efficient landscapes in new and rehabilitated landscaping for public agency projects and private development projects; and
3. Establish provision for water management practices and water waste prevention for established landscapes.

According to the Department of Water Resources, as of May 15, 1992, seventy-seven cities and ten counties had adopted water efficient landscape ordinances. Sacramento County adopted their ordinance in October 1990.

Staff from the departments of Planning and Development, Parks and Community Services, and Utilities have coordinated efforts to develop standards and procedures for the design review, installation and management of landscapes. The proposed ordinance is consistent with the state model ordinance and is closely patterned after the County's ordinance.

The proposed ordinance would require submittal of a planting plan, irrigation plan, water use calculations, and an irrigation schedule for all new and rehabilitated landscaping for industrial, commercial, office, and institutional developments. Also included are parks and other public recreational areas, multi-family (four or more units) residential and PUD common areas, model home complexes and City road medians and corridors.

The City Attorney's office has reviewed the attached proposed amendment and finds it to be in compliance with the statute.

FINANCIAL DATA

A fee of fifty dollars (\$50.00) is proposed to recover staff costs to review the landscape plans under the ordinance. This fee is based on the cost (salary, benefits and overhead) for a Landscape Architect to review a typical plan. The fee also includes the cost for field inspection and review of re-submittals where they may be necessary.

The fee will be collected by the Building Division at the time all other permit fees are paid. The revenue will be deposited in the Parks Department revenue account.

POLICY CONSIDERATION

Adoption of a water conservation landscape ordinance by January 1, 1993 has been mandated by the State of California. If the proposed ordinance is not adopted by the deadline, the state model ordinance would automatically go into effect and the City would be required to comply with its provisions and criteria.

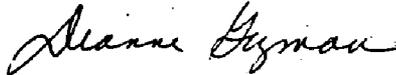
MBE/WBE EFFORTS

No impact.

Respectfully submitted,



Walt Ueda, Acting Director
Parks and Community Services

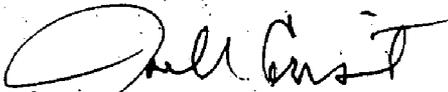


Dianne Guzman, Director
Planning and Development



Don Dodge, Director
Utilities

RECOMMENDATION APPROVED:



for DAVID R. MARTINEZ
Deputy City Manager

Contact Person:

Walt Ueda, Acting Director, Parks and Community Services
264-5385

WU:ja

K:Council/MNRH20Ord

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AN ORDINANCE ADDING ARTICLE XXIX (SECTIONS 9.1300 THROUGH 9.1311) TO CHAPTER 9 OF THE SACRAMENTO CITY CODE RELATING TO WATER USE AND CONSERVATION AND WATER CONSERVING LANDSCAPE REQUIREMENTS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

Article XXIX (Sections 9.1300 through 9.1311) is hereby added to Chapter 9 of the Sacramento City Code to read as follows:

XXIX. Water Conserving Landscape Requirements

§ 9.1300 Purpose

The purpose of this article is to define the standards and procedures for the design, installation, and management of landscapes in order to utilize available plant, water, land, and human resources to the greatest benefit of the people of the City of Sacramento. Skillful planting and irrigation design, appropriate use of plants, and intelligent landscape management can assure landscape development that avoids excessive water demands and that is less vulnerable to periods of severe drought. The regulations contained in this article shall be known as the City of Sacramento "Water Conserving Landscape Requirements."

§ 9.1301 Applicability

These requirements shall be applicable to new and rehabilitated landscaping for industrial, commercial, office and institutional developments; to parks and other public recreational

FOR CITY CLERK USE ONLY

ORDINANCE NO.: _____

DATE ADOPTED: _____

areas; to multi-family (four or more units) residential and PUD common areas; to model home complexes with three or more model homes; and to City road medians and corridors.

§ 9.1302 Implementation

To assure that the purpose of this article is carried out, improvement plans and building permits will not be approved until a submittal conforming to the specific provisions of this article shall have been approved by the City of Sacramento, Department of Planning and Development. A fee set by resolution of the City Council shall accompany the submittal.

§ 1303 Exceptions

The Director may authorize conditional exceptions to any of the design and improvement standards in this article. Such exceptions may be granted if the Director finds in writing that the proposed design or improvement is in substantial compliance with the purpose and intent of the standard to be excepted.

§ 1304 Definitions

Unless the context specifically indicates otherwise, the meaning of terms used in this article shall be as defined in this section.

1. **Amendment.** Any material added to the soil to alter the pH or improve the physical properties of the soil.
2. **Application Rate.** The rate of irrigation (inches/hour or gallons per minute) at which water is applied by an irrigation system.
3. **Automatic Control Valve.** A valve in an irrigation system which is activated by an automatic electric controller via an electric control wire.
4. **Automatic Irrigation System.** An irrigation system that can be controlled without manual manipulation and which operates on a pre-set program.
5. **Contour.** A line drawn on a plan which connects all points of equal elevation above or below a known or assumed reference point.

6. **Controller.** An automatic timing device with enclosure, which signals automatic valves to open and close on a pre-set program.
7. **Coverage.** A general term used with respect to the spacing of sprinkler heads, which defines the manner in which water is applied.
8. **Cycle.** In irrigation, the complete operation of a controller station.
9. **Designer.** A person authorized to practice landscape architecture pursuant to Business and Professions Code Division 3, Chapter 3.5.
10. **Director.** The Director of the Planning and Development Department, or the Director's designee.
11. **Drip Irrigation.** Low volume irrigation.
12. **Grading.** Earthwork performed to alter the natural contours of an area to be planted.
13. **Hydrozone.** A portion of the planting area having plants grouped according to water need.
14. **Infiltration Rate.** The rate (inches per hour) in which water moves through soil under natural conditions.
15. **Irrigation System.** A complete connection of system components, including the water distribution network and the necessary irrigation equipment and downstream from the backflow prevention device.
16. **Median.** A planted area which separates two roadways or divides a portion of a road into two or more lanes.
17. **Mulch.** Materials such as bark or sawdust placed on the soil surface to retain moisture, retard weed growth, or prevent erosion.
18. **Overspray.** Water which is discharged from a pop-up or spray head which lands outside of the planting area.

19. **P.S.I.** Pounds per square inch gauge water pressure.
20. **Percolation.** The movement of water through soil.
21. **Permeability.** The quality of a soil which allows water and air to pass through it.
22. **Planting Area.** The parcel area less building pad(s), driveway(s), patio(s), deck(s), walkway(s) and parking area(s). Planting area includes water bodies (i.e. fountains, ponds, lakes) and natural areas.
23. **Planting Plan.** A plan showing the features, contours, and dimensions of a plot of land, along with the location and dimensions of elements to be constructed.
24. **Point of Connection.** Point at which the irrigation system is connected to the public water system. This location is normally identified by the point at which a water meter is located or will be installed.
25. **Precipitation Rate.** The amount of water, in inches per hour, discharged by a group of sprinkler heads.
26. **Rain Shutoff.** A feature of an automated irrigation system which interrupts the normal irrigation cycle when it detects a significant amount of rainfall.
27. **Rehabilitated Landscape.** Any planting area in which 50 percent of existing landscape materials are replaced or modified within any 12-month period. Examples include a change of plants or ground cover, installation of a new irrigation system, and grading modifications.
28. **Runoff.** Water which is not absorbed by the soil to which it is applied. Runoff usually occurs when water is applied at too great a rate or when water is applied to a steep slope.
29. **Station.** A position on an automatic irrigation controller which indicates the control point of automatic irrigation valves.

30. **Tensiometer (or Moisture Sensor).** An instrument for measuring the moisture content of the soil and capable of interrupting the irrigation cycle when excessive or adequate moisture is detected.
31. **Toe of Slope.** A horizontal section located at the base of a slope.
32. **Turf.** A surface layer of earth containing grass with its roots.

§ 9.1305 Submittals

The following shall be submitted to the City of Sacramento, Planning and Development Department, for review and approval:

1. **Planting Plan.** The planting plan shall be drawn on project base sheets in a clear and legible fashion.

- (a) A scale of no smaller than 1" = 40 ft. shall be used.

- (b) **Plan:** The planting plans shall accurately and clearly identify:

Landscape materials, trees, shrubs, ground cover, turf, etc. Planting symbols shall be clearly drawn and plants labeled by botanical name, common names, container size, spacing and quantities of each group of plants indicated.

Property lines.

Streets, driveways, walkways, and other paved areas.

Building and structures including elevation if applicable.

Natural features: rock outcropping, existing oak and ornamental trees, shrubs, etc., to remain.

Tree staking, soil preparation details, and any other applicable details.

2. **Irrigation Plan.** The irrigation plan shall be drawn on project base sheets in a clear and legible fashion.

- (a) The scale shall be equal to that used for the planting plan.
- (b) Plan: The irrigation plan shall accurately and clearly identify:
Flow rate and P.S.I. at the point of connection.

Coverage of all components of the irrigation system, including main and lateral lines.

Valves.

Controllers.

Heads.

Quick couplers.

Head precipitation rates.

Meter size.

Moisture sensor devices.

Rain switches.

Backflow prevention device.

- 3. **Sloped Areas.** Sloped areas shall be indicated by contour lines (this may be shown on grading plan).
- 4. **Soil Tests.** Unless excused pursuant to Section 9.1310, a soils report shall be prepared by a soil testing company and submitted with the plans. Soil samples shall be sufficiently numerous to account for any soil variations that may be present in the planting area. As a minimum, the following shall be included:

Soil infiltration.

Soil texture test.

Cation exchange capacity.

Soil fertility, including tests for nitrogen, potassium, phosphorous, pH, organic matter, and specific conductance (E.C.).

Amendments shall be added to correct for problems as noted by the soils report. A copy of the soils report shall be attached to the irrigation schedule which will be delivered to the owner and controller operator.

5. **Water Use.** Estimated plant water use calculations for each hydrozone shall be submitted with the planting plan.
6. **Irrigation Schedule.** An annual irrigation program with a minimum four-season water schedule shall be required for both the plant establishment period and established landscape. The water schedule shall include run time and frequency of irrigation for each station. The total average planting area precipitation shall not exceed 30" per year for established landscapes (See "Plant Selection," Section 9.1307). A copy of the schedule shall be delivered, along with as-builts and any other information normally forwarded to the owner and controller operator.

§ 9.1306 Irrigation System Design Criteria

1. Irrigation systems shall be designed so that the application rate does not exceed the infiltration rate of the soil and will minimize overspray and runoff. The designer shall refer to Section 9.1310, "Soil Infiltration Rates," and the results of the soil tests to meet these design criteria. In general, low volume sprinkler heads, drip emitters and pressure compensation bubblers shall be used throughout the system.
2. Irrigation stations shall be separated (e.g. drip vs. overhead spray systems). Additional control valves shall be installed to account for different site specific characteristics (i.e. full sun/full shade, level/sloping, shrubs/lawns, street trees, etc.).
3. Maximum sprinkler spacing for both turf and non-turf areas shall be 50% of the diameter of the throw. (Example: 30' diameter nozzle should be no more than 15' apart.) Spacing of sprinklers shall take into account on-site wind conditions.
4. All irrigation systems shall be operated by an automatic controller. At a minimum, each controller shall have a rain shutoff operation, a 7-day calendar, two independent programs, and three cycles/day capabilities.

5. The irrigation system shall be designed to allow a complete watering cycle within a 7-hour period.
6. All turf areas shall utilize either pop-up rotary impact heads or spray heads with a minimum riser height of three inches.

§ 9.1307 Plant Selection

1. **Water Use Criteria.** All landscapes shall comply with the following water use criteria:
 - (a) The maximum amount of water that can be applied per year to any planting area shall average no greater than 30" of supplemental water.
 - (b) The planting plan shall balance the water demands of different plant species to create an overall landscape which requires a moderate amount of water. For design purposes, hydrozones shall be defined as low use, medium use, or high use areas. Water use values (Table D) reflect the relative water use of each type of hydrozone. To check a landscape design for compliance, multiply the water use value for each hydrozone by its respective area.

Example: Assume a two acre planting plan consists of 20% high use plants (turf), 50% medium use plants, and 30% low use plants.

20% (2 acres)	$0.40 \text{ acres} \times 1.6 = 0.64$
50% (2 acres)	$1.00 \text{ acres} \times 1.0 = 1.00$
30% (2 acres)	$0.60 \text{ acres} \times 0.4 = \underline{0.24}$
	1.88

Since the sum of the water use factors is less than the area (2 acres), the design is acceptable. If the sum of the water use factors exceeded 2, the design would not be acceptable, and the designer would be required to substitute low or medium use species for some high use species to reduce the sum of water use factors to 2 or less.

TABLE I

PLANTING TYPE	WATER USE VALUES
Low use	0.40
Medium use	1.00
High use (includes turf and water bodies)	1.60

Water use calculations, including plant key and hydrozones, shall be shown on the planting plan according to the format in the following example:

Assume a landscape design involves 2600 sq. ft. of planting area. The planting plan consists of 600 sq. ft. of Cistus purpureus (CP), 600 sq. ft. of Nerium oleander (N), 400 sq. ft. of Pittosporum tobira (PT), Juniperus horizontals (JH), and Liquidamber styraciflua (LS), and 1000 sq. ft. of turf.

WATER USE CALCULATION

<u>Water Use</u>	<u>Plant Key</u>	<u>Hydrozone Sq. Ft.</u>	<u>Water Use Factor (Total Sq. Ft. x Use Value)</u>
Low	CP	600	1200 x 0.4 = 480
	NP	600	
Medium	PT, JH and LS	400	400 x 1.0 = 400
High	Turf	<u>1000</u>	1000 x 1.6 = <u>1600</u>
		2600	

2. Turf Selections and Use.

- (a) Turf shall not be permitted in areas six feet or less in width or in median strips.

- (b) Under no circumstances shall turf be installed on slopes greater than 20%. The toe of any sloping section shall be a minimum of 24" behind a curb or sidewalk.
- (c) Turf areas which exceed 2500 square feet are required to use soil moisture sensors and rain shutoff devices as a part of the irrigation system. Device type and installation shall be per manufacturer's recommendations.
- (d) Turf shall not be installed within ten feet of the dripline of native oak trees.
- (e) Turf shall be of a variety well suited to the local climate (e.g. warm season grasses and tall fescue).

3. Non-Turf Selections.

- (a) Plants selected for use in non-turf areas should be well suited or adaptable to the climate of this region. Plants shall be grouped in hydrozones according to their water needs and irrigated separately. Species of different water needs may be grouped (i.e. low with medium and medium with high) but the higher water use value of the two shall be used to determine compliance with the ordinance. Low and high use species may not be used in the same hydrozone. To use species other than those listed by the Director pursuant to section 9.1311, the designer may provide the City with information indicating the water requirement of the species. Information may include the listing of a plant in an acceptable reference stating its water requirement characteristics, comparing it to a species in the plant list, field data, etc.
- (b) A minimum of three inches of an organic mulch shall be placed in shrub areas on the soil surface after planting. Non-porous materials shall not be placed under the mulch.

§ 9.1308 Landscape Certificate

Upon completion of the installation of the landscaping, the designer shall certify that the landscape complies with all requirements of this article. Certification shall be

accomplished by completion of a Landscape Certificate on a form approved by the Director. Failure to submit a complete and accurate Landscape Certificate will delay final approval of the project and/or discontinue water service.

§ 9.1309 Model Home Landscape Criteria

- (a) For each subdivision with three or more model homes, the developer shall submit a landscape plan and install landscaping for one model home which incorporates the requirements of this article. The intent of this requirement is to demonstrate to prospective home buyers the feasibility and aesthetic qualities of water conserving landscape design. The landscape plan shall be reviewed and approved by the Director prior to the opening of the model home complex.
- (b) Signs identifying aspects of the water conserving landscape design and irrigation system shall be placed around the model. All signage shall be reviewed by the Director as part of the model home complex/temporary sales office permit. All signage shall be installed prior to the opening of the model home complex. These signs should be clearly marked on the landscape plan for the model. The following criteria shall be used in developing and placing the signs.
 1. **Front Yard Sign Identifying Model.** A sign large enough to be visible from the street and sidewalk (minimum size 2 feet by 2 feet, maximum size 3 feet by 3 feet) shall be located in front of the model home. The sign shall indicate that the model is landscaped with water conserving plant materials and irrigation systems.
 2. **Other Exterior Signs.** A sign shall be placed within the landscaped area identifying the irrigation system used, the different sub-areas of the landscape, and any other features that contribute to the overall water conserving theme.
 3. **Interior Signs or Displays.** A drawing, or combination of drawings, shall be displayed inside the model providing a schematic of the landscape. These drawings shall include a key identifying the plants in the yards. The drawings may be a simplified rendering of the landscape plan itself, using common names rather than the Latin names for the plants. The drawing(s) should be colorful and easy to read. A one-page handout of the schematic

(black and white acceptable) shall be available at the model or the sales office.

Literature describing water conserving landscapes shall be available to individuals touring the model. Copies of all literature and handouts shall be placed on file with the City Planning Division.

§ 9.1310 City Soil Map.

No soil test shall be required if the soil type can be determined by reference to the City soil map maintained by the Director and the soil is amended as required by the Director; provided, however, that a soils test shall be required if substantial amounts of soil are imported to the property.

§ 9.1311 Soil Infiltration Rates

Soil Texture, Type	Percent of Slope Infiltration Rate (IR)				
	Inches/Hour 0-4%	5-8%	8-12%	12-16%	Over 16%
Course Sand	1.25	1.00	.75	.50	.31
Medium Sand	1.06	.85	.64	.42	.27
Fine Sand	.94	.75	.56	.38	.24
Loamy Sand	.88	.70	.53	.35	.22
Sandy Loam	.75	.60	.45	.30	.19
Fine Sandy Loam	.63	.50	.38	.25	.16
Very Fine Sandy Loam	.59	.47	.35	.24	.15
Loam	.54	.43	.33	.22	.14
Silt Loam	.50	.40	.30	.20	.13
Silt	.44	.35	.26	.18	.11
Sandy Clay	.31	.25	.19	.12	.08
Clay Loam	.25	.20	.15	.10	.06
Silty Clay	.19	.15	.11	.08	.05
Clay	.13	.10	.08	.05	.03

Note: Rates based on full cover. These figures decrease with time and percent of cover.
Derived from USDA information.

§ 9.1312 List of Relative Water Requirements of Commonly Used Plants

The Director shall develop a list of plants that are commonly used in landscape designs with water requirement classifications of low, medium, and high to assist landscape designers to choose species of appropriate water demands to comply with this Article and to group species of similar water demands to facilitate efficient irrigation.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

ORDINANCE NO.: _____

Statement by John Geoghegan
Representing the Western States Petroleum Association
on the
The Proposed "Petroleum Franchise Fair Dealing Ordinance":

August 25, 1992

My name is John Geoghegan, representing the Western States Petroleum Association. I appreciate very much the opportunity to appear before your Law and Legislation Committee to present our views on the proposed "Petroleum Franchise Fair Dealing Ordinance".

My presentation will be an overview of our opposition to this ordinance and why we think it is a mistake for the city and its gasoline consumers. Others will present more details on some of the key issues I will raise.

We certainly understand and share the concerns Mr. Serna has for small business in Sacramento. As you are probably aware, the large majority of service stations in the city are run by independent dealers. If these aren't successful, neither are the companies they represent. Therefore, the success of these small businesses is in everyone's best interest, including the public which benefits from the competition.

This ordinance, however, will reduce competition and hurt more dealers than it will help. It states that parties in a franchise agreement involving gasoline stations must act "fairly and reasonably" toward one another. This concept seems simple enough but in fact the proposed ordinance is not fair and reasonable. It will lead to extensive litigation, unnecessary regulation and higher prices for consumers. There is simply no public benefit to be served by the city regulating in this highly competitive sector of commerce.

Consider, for example, that the fuels marketplace is one of the most competitive of all markets. Adjusting for inflation, fuel prices are as low as they have been since the mid-1940's. Studies have continually found that there is fierce competition selling fuels, and that government involvement with this highly competitive market has one net result—higher fuel prices.

(More)

Unfortunately, what some dealers attribute to unfair behavior on the part of oil companies is, in reality, competitive marketing in response to changes in consumer demand.

Many of the things that the oil companies have had to do to keep prices as low as possible, making adjustments required by changing consumer demands, could be blocked under the proposed ordinance.

For example, ARCO gave up its credit card in 1982. It was a dramatic move that resulted in real savings to consumers and helped dealers who benefited greatly from the increased business. However, at the time, some dealers were unhappy about the decision. Under the proposed ordinance an ARCO dealer could have claimed that the termination of the credit card program was "unfair" and the termination of the credit card program could have been stopped.

We are not challenging the notion that parties to an agreement be given adequate protections in terms of fair treatment. In fact, this is provided under current state and federal law. Federal law, including special protections granted by the federal Petroleum Marketing Practices Act, states that companies cannot implement policies or programs which are outside the normal course of business or intended to drive a franchisee out of business. These protections are augmented by state law and together provide special legal protection beyond that offered franchisees in other businesses.

If this ordinance is enacted, the primary purpose of any franchise – that is, systematic and consistent programs which are responsive to evolving consumer demands in a competitive marketplace – would be lost. In effect, a "fair and reasonable" provision would allow an individual dealer to go to court and challenge anything a company does that could have any effect on that dealer.

When legislation similar to this ordinance was introduced in the last session of the state legislature, among the opposition was the California Judicial Council, the administrative branch of the state court system. The Council opposed the measure on the grounds that it would have created a significant new caseload on the overburdened court system. The measure failed in its house-of-origin. There is no question that under the vague standards set forth in the ordinance, every conceivable business decision would be subject to review by judges, juries and arbitrators. The heart of the ordinance is that the courts will decide what is fair and reasonable and in effect run the business.

We know that you have heard on many previous occasions about the impact a particular action you are about to take will have on the business environment of the city and we don't claim to have any better intuition than you do on that subject. But we do ask you to consider the kind of message the adoption of this ordinance would send. People in other types of businesses that involve franchises would have reason to wonder whether this concept could be expanded to cover their operations. Certainly oil companies, who make the capital investments to build service stations, will find it more economical to invest in adjacent jurisdictions without this ordinance. Over time this can only hurt city fuel consumers and taxpayers.

We strongly urge that this committee reject this ordinance today and end the effort to legislate contract law on a city by city basis which will lead to an unacceptable climate for businesses which depend upon contractual relationships. For a single city to attempt to regulate this area of commerce is inappropriate and will only lead to extensive litigation, higher prices for consumers and a decline in fuel service for city residents.

Other witnesses will discuss in more detail some of the issues I have raised and are prepared to answer any questions you might have.

Thank you again for the opportunity to present our views.

Statement by Michael C. Tooley
on the

Proposal "Petroleum Franchise Fair Dealing Ordinance"
August 25, 1992

Good afternoon, members of the committee. My name is Michael Tooley and I have been a service station dealer in Sacramento for 15 years. I oppose the Petroleum Franchise Fair Dealing ordinance because I believe it is totally unnecessary. I believe it is inappropriate for the city to enact unnecessary regulation, which I believe this is, which will inhibit the development of new businesses and jobs in Sacramento just to appease a few individuals. With the passage of this legislation, and the resulting uncertainty, oil companies will be reluctant to invest within the city limits. While our country, as well as Sacramento, is trying to work out of an economic slump, we should not be considering legislation that would enhance the current negative business climate.

Federal and State laws already give me and other franchise owners the right to sue if we believe our legal rights are being violated. Also, we have substantial rights under the Petroleum Marketing Practices Act. More importantly, this new ordinance does nothing to help the consumer. Every business decision made by an oil company, including those which mean better prices for consumers, would be subject to lengthy litigation by individual dealers who could claim the decision is unfair and unreasonable.

Gas stations, like any other business, must change with consumer demand and today's consumer demands lower prices and longer hours of operation. This is why many stations are run on a high volume and low margin philosophy, are open 24 hours and contain food marts. Most dealers I know are anxious to change their operations from auto care to food marts. Cars need less care and maintenance than models of the 50's, 60's and 70's. Batteries are maintenance free, tires last longer and oil changes are not

needed as frequently.

The oil industry is changing but many who are not willing to change will instead cry "unfair" when their profits shrink. However, where does this stop? We are now trying to single out one business but as a local businessman, I wonder about other businesses in the future. Do we legislate against factory outlet stores because they are a threat to Macy's?

Businesses which lose their competitive edge have options at both ends of the competitive spectrum. They can update their business to better compete and meet consumer demand or petition the government for protection against "unfair competition". I choose to compete because it is better for me and the consumer. This is my choice. When the government steps in, the results are usually higher prices and lower quality.

At a time when business pressures in California are so extreme, there can be no justification for adding unnecessary regulation to protect competitors from the very competition which made our free market system the greatest in the world.

Thank you.

THE PETROLEUM FRANCHISE ORDINANCE: A BAD DEAL FOR CONSUMERS

The "Petroleum Franchise Fair Dealing Ordinance" is another in a long line of attempts by independent service station operators and some wholesalers (known as "jobbers") to remove legitimate competition from the marketplace. While the sponsors may consider the ordinance a "fair deal," consumers will likely get a raw deal.

- ▶ The ordinance's vague, subjective language would allow independent service station operators to sue refiners essentially arbitrarily if they don't act "fairly and reasonably." The ordinance could easily be used to reduce competition; for example, every time a refiner-operated station reduced prices, independent owners could claim the reductions are unfair and sue.
- ▶ The ordinance could mean fewer service stations operating 24 hours a day on a high-volume, low margin strategy – the best combination for consumers. The ordinance would also allow the courts to be used to increase profits for dealers by raising the pump price paid by consumers.
- ▶ According to *USA Today*, consumers are enjoying gasoline prices which, when adjusted for inflation, are about half what they were in the mid-1970s and actually less than in the 1960s.
- ▶ Contrary to claims, Sacramentans have more choices about how and where they want their vehicles serviced. Between 1984 and 1991, the number of authorized auto repair locations in Sacramento rose by almost 17%, according to the Bureau of Automotive Repair.
- ▶ At a time when the U.S. is helping Russia and Eastern Europe move toward free markets, the ordinance would do just the opposite by removing competition. It would also set a bad precedent for business in Sacramento: Similar ordinances could be developed which lead to commercial rent control (rents in line with the market could be attacked by tenants as "unfair and unreasonable") or which prevent the opening of popular discount retailers and factory outlet stores.
- ▶ Service station operators already share the right held by any party in any contract to sue if it is believed the agreement is not being fulfilled. However, this ordinance gives one portion of a single industry special abilities to use the law to enhance their profits at the expense of competition.

QUESTIONS AND ANSWERS ABOUT THE "PETROLEUM FAIR DEALING ORDINANCE"

Q. Does the trend toward lower-price, self-serve gas stations mean there has been a decrease in the availability of repair facilities?

A. No. The number of repair facilities in Sacramento is up almost 17% since 1984, according to the Bureau of Automotive Repair. Today's cars are also better than models from the 1950s and 1960s, which were the cars traditional service stations were built to maintain. Modern cars require much less routine servicing: Batteries are commonly maintenance free, tires are more durable and less prone to flats, recommended oil changes are less frequent, tune-ups are not required as often, etc. Services formerly provided by traditional service stations which are still required – although less often – for today's cars are being met by more efficient service stations, independent shops, motorists themselves and specialty repair shops.

Q. Are traditional dealers being treated "unfairly"?

A. No. Independent and refiner-operated stations are both subject to the demands of the marketplace like any other business. What some dealers attribute to unfair behavior on the part of oil companies is, in reality, competitive marketing in the free market in response to changes in consumer demand.

Clemson University economist David N. Laband summarized the situation in a recent article by saying, in effect, a business can lead, follow, or get out of the way. He noted that businesses that lose their competitive edge, for whatever reason, can change their product mix to better compete and meet consumer demand. They can also petition the state for protection against "unfair competition." The first response enhances "... consumer welfare. But when the state steps in and mandates protectionism, the result is higher prices and lower quality."

Q. Isn't "fair and reasonable" treatment a fair and reasonable request?

A. No. It is a standard which is vague and will be decided in court through numerous expensive lawsuits. Current law at the federal and state levels gives more than enough protection to petroleum dealers.

Q. Does the ordinance only affect petroleum product marketers?

A. It sets a dangerous precedent for Sacramento. It could lead to similar laws which affect all franchisors, including fast-food companies and convenience stores. Under the philosophy of the ordinance, commercial tenants could declare any rent increase "unfair and unreasonable," leading to court battles and what would essentially be commercial rent control.

Q. Is this the type of law that should be enacted on a local level?

A. Absolutely not. Holding parties to a contract subject to varying substantive legal requirements on a city or county level will result in commercial chaos.

Q. What can I do about the ordinance?

A. You can write or call members of the Sacramento City Council and let them know you believe the "Petroleum Franchise Fair Dealing Ordinance" is unnecessary, will cost consumers, and is bad for business in Sacramento.

THE PETROLEUM FRANCHISE ORDINANCE: "FAIR AND REASONABLE" FOR WHOM?

The "Petroleum Franchise Fair Dealing Ordinance" states that parties in a franchise agreement involving gasoline stations must act "fairly and reasonably" toward one another. While that seems simple and innocuous, it is actually a ticket to higher prices for consumers, extensive litigation, and unnecessary regulation.

Under existing federal law, refiners must implement their policies and programs in good faith.

Under existing law, including special protections granted by the federal Petroleum Marketing Practices Act, refiners cannot implement policies or programs which are outside the normal course of business or intended to drive a franchisee out of business. Policies and programs must be uniformly applied and non-discriminatory.

The ordinance will raise havoc with the franchise system and make it impossible for refiners to respond to changing marketplace conditions and consumer preferences.

The primary purpose of any franchise – systematic and consistent programs which are responsive to evolving consumer demands in a competitive marketplace – would be lost if the ordinance is enacted. In effect, a "fair and reasonable" provision would allow an individual dealer to go into court and challenge anything a refiner does that could have any effect on that dealer. A refiner couldn't even update a contract without running the risk of incurring lengthy and costly litigation.

Programs which save money for consumers and increase sales volumes could be blocked.

As an example, ARCO gave up its credit card in 1982. It was a successful move which resulted in real savings to consumers. ARCO's station volumes today are significantly higher than they were, yet some ARCO dealers were unhappy about that decision in 1982.

If the ordinance had been law at that time, an ARCO dealer could have claimed that the termination of the credit card program was "unfair" to that particular dealer because of some special circumstances affecting him – perhaps because he was involved in an automotive repair business where credit cards were used often.

If that dealer had been successful in litigation, the practical effect would have been to preclude the termination of the credit card system (or set up a special system solely for that dealer) despite the enormous benefits that elimination of the program provided for consumers, for ARCO dealers, and for ARCO. Obviously, it would make no economic sense to maintain a very expensive credit card system for just a few dealers.

Rational business planning would be impossible.

Under the incredibly vague standards set forth in the ordinance, every conceivable business decision (including all decisions related to gasoline prices) would be subject to review by judges, juries and arbitrators. The courts would run the business.

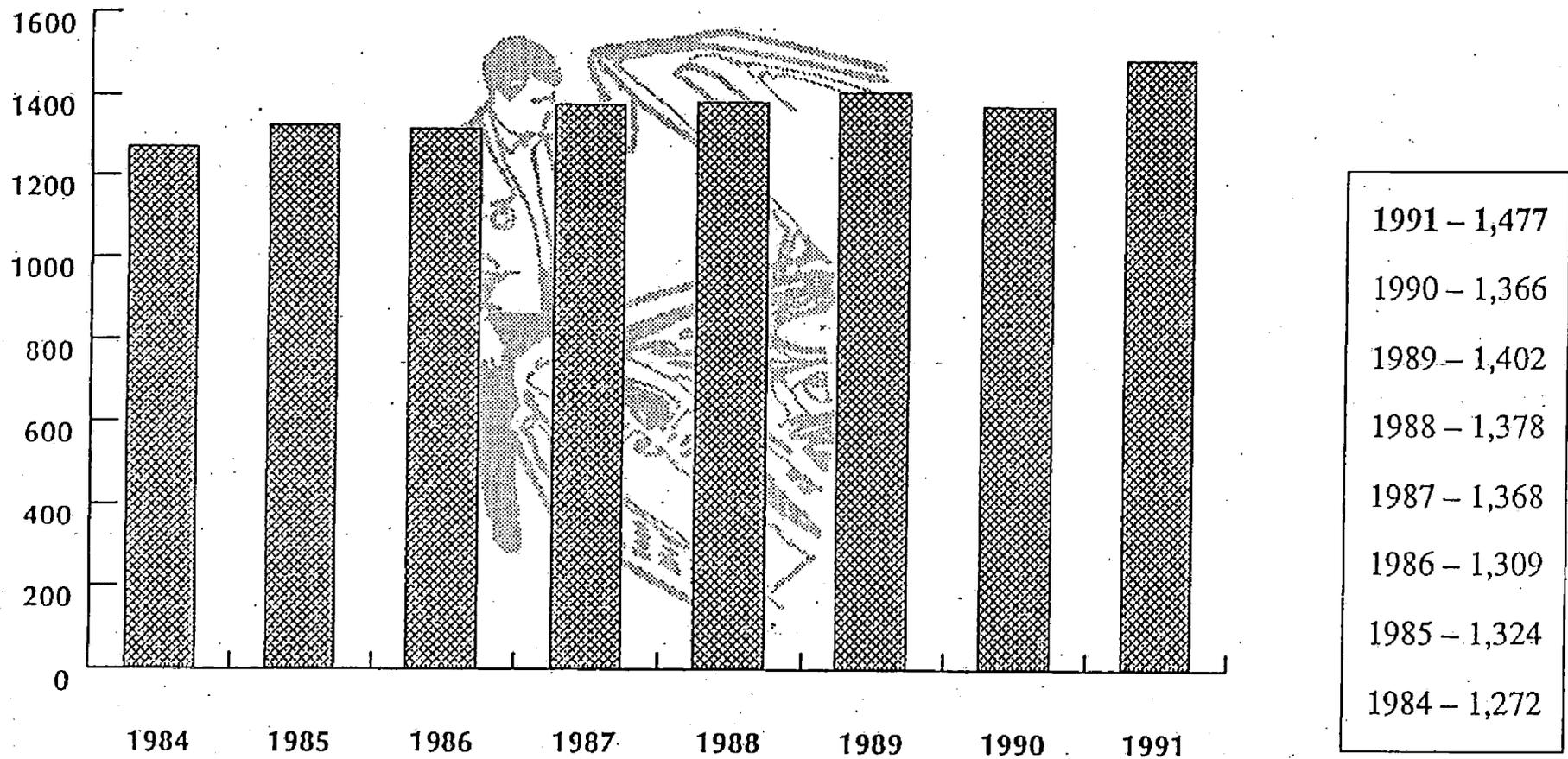
A local ordinance as proposed would conflict with national policies and add an unnecessary burden to the judicial system.

Removing price controls from gasoline has led to lower prices and better service for consumers; this ordinance would have the opposite effect. Dealers could argue that a refiner's price changes were not "fair and reasonable," thus establishing *de facto* price controls and increasing prices for consumers.

The ordinance would add a significant and unnecessary burden to the judicial system which would cost taxpayers. Gasoline is an interstate commodity already regulated by the federal government. Franchising and petroleum marketing are regulated by both the federal and state governments. There is no need or purpose for further regulation.

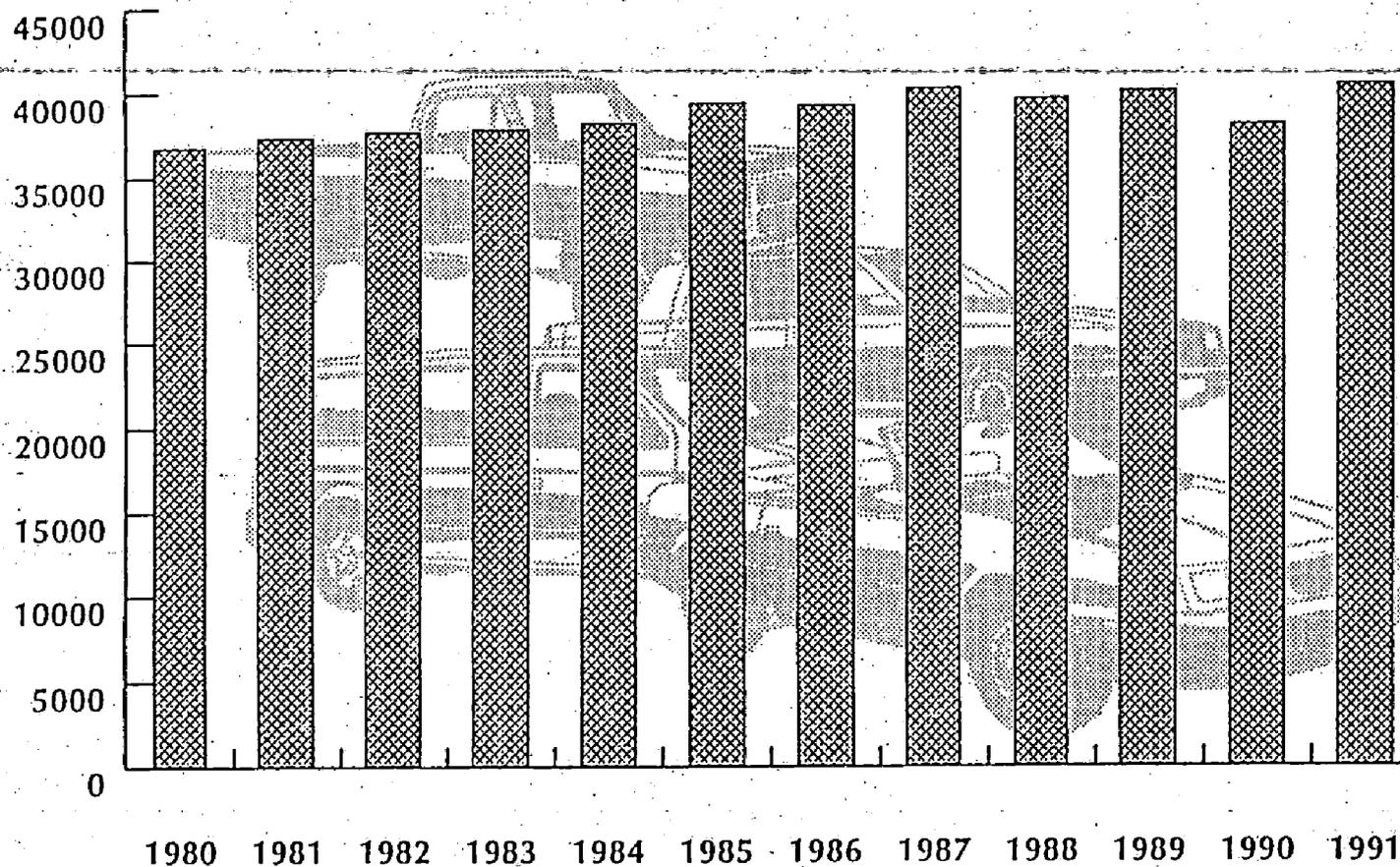
In addition, as the result of an agreement with Congress, the national dealer association has agreed to give up its pursuit of a national "fair and reasonable" provision. It seems ironic that Sacramento dealers would sponsor a "fair and reasonable" provision at the municipal level when the national association has dropped it at the federal level.

Sacramento Auto Repair Dealer Registration and Official Station Licensing Valid December 31, 1992



Source: California Bureau of Automotive Repair

California Auto Repair Dealer Registration and Official Station Licensing Valid December 31, 1992



1991 - 40,240
1990 - 37,892
1989 - 39,848
1988 - 39,590
1987 - 39,980
1986 - 39,118
1985 - 39,222
1984 - 38,016
1983 - 37,676
1982 - 37,534
1981 - 37,175
1980 - 36,641

Source: California Bureau of Automotive Repair

THE BUSINESS JOURNAL

Serving Greater Sacramento

WEEK OF JULY 20, 1992

COMMENT

City's proposed service-station ordinance unneeded

While the United States assists the former Soviet Union and Eastern Bloc countries in their move toward free market economies, and as America calls for the opening of the marketplace throughout Asia, the Sacramento City Council is considering taking the opposite approach and reducing competition that benefits consumers.

A proposal called the "Petroleum Franchise Fair Dealing Ordinance" seems innocuous enough, simply stating that oil refiners must act "fairly and reasonably" in their dealings with service-station franchises. In truth, the ordinance unnecessarily creates more bureaucracy, which could easily lead to higher gasoline prices for consumers, and generally adds to an increasingly negative business climate in Sacramento.

As the owner of six service stations selling different major brands of gasoline, I have my share of disagreements with distributors and refiners. However, I do not need this ordinance to remedy these disagreements.

For one thing, federal and state laws already give me and other franchise owners the right to sue if we believe we are being treated unfairly or unreasonably. Also, we have substantial additional rights under the federal Petroleum Marketing Practices Act. But more importantly, the proposed ordinance does nothing to help consumers and little to help dealers in general.

The ordinance could easily lead to higher gasoline prices. Every business decision by a refiner, including those which mean better prices or services for consumers, could be subject to litigation by individual dealers who could claim the decision is unfair and unreasonable. These dealers could use the courts to insulate themselves against competition, which keeps prices higher.

Programs which ultimately benefit a majority of dealers, as well as consumers, could also be held up by individual dealers who are looking out for themselves rather than the industry as a whole, or the customer. Some companies have made major changes to long-standing programs which ultimately have led to real savings for consumers and increased sales for dealers. For example, some companies, such as Arco, have eliminated credit-card programs, a change initially unpopular with many dealers.

Had the ordinance then been in effect, an affected dealer could have claimed that the termi-

Michael Tooley

ANOTHER VOICE

nation of the credit-card program was "unfair" because of some special circumstances. If the dealer had been successful in court, it would have precluded termination of a company's credit-card program (or required setting up an expensive system just for that dealer or the city of Sacramento) despite the substantial benefits to the public and the company's dealers.

Proponents of the ordinance claim it is necessary to maintain the traditional service station and the availability of auto repair facilities in Sacramento, but experience and evidence indicates otherwise. According to the Bureau of Automotive Repair, the number of repair facilities in Sacramento is up almost 17 percent since 1984.

In fact, a major reason for the change in neighborhood gas stations is that today's cars require much less service and maintenance than models from the 1950s and 1960s, the cars traditional stations were built to service. Batteries are now commonly maintenance-free, tires are more durable and less prone to flats, and oil changes and tuneups aren't needed as often as they used to be. When these services are needed they are readily available at more efficient service stations, independent shops and specialty repair shops. More motorists are also choosing to do the job themselves.

Gas stations, like any other business, must change with consumer demand, and what today's consumers are demanding are lower prices and longer hours. That's why many stations today are run on a high-volume, low-margin philosophy, are open 24 hours, and contain food marts and other ancillary services. These provide customers with the services they want and allow dealers to make a reasonable return on their investments.

I believe consumers have benefitted from these changes. When adjusted for inflation, the price consumers generally pay for gasoline today is not only lower than it was in the 1960s, it's lower than prices during the 1930s.

As a local businessman concerned about Sacramento's economy, I also see the frightening pre-

cedent the ordinance could set and how the principle behind it could easily spread outside the oil industry. With very few changes, the ordinance could be modified to institute what would, in effect, be commercial rent control by allowing tenants to claim any rent increase is "unfair." Discount stores and factory outlets popular with consumers could also be challenged by retailers who could claim "unfair competition."

The ultimate result would be that competitive new businesses and franchises, if they came to the area at all, would locate their operations and jobs in West Sacramento, Folsom, Citrus Heights, or anywhere outside Sacramento city limits.

Clemson University economist David N. Laband recently summarized the situation presented by this ordinance and attempts at other similar regulations around the country. He noted that when businesses lose their competitive edge, for whatever reason, they have options at both ends of the competitive spectrum: They can update their business operations to better compete and meet consumer demand, or they can petition the state for protection against "unfair competition."

I choose to compete, because I believe it is better for my business and consumers in the long run. I agree with Laband, who wrote, "When the state steps in and mandates protectionism, the result is higher prices and lower quality."

America was built on fair competition and open markets, principles the ordinance would undermine in subtle but substantial ways. At a time when pressures on business in California are so extreme, there can be no justification for adding unnecessary regulations and bureaucracy. The Petroleum Franchise Fair Dealing Ordinance is a bad deal for Sacramento and the City Council should not allow the ordinance to be used to protect competitors from the very competition which has made our free-market system the greatest in the world.

Michael Tooley is the owner of six service stations marketing Shell and BP products in the Sacramento area. The ordinance in question is scheduled to come before the Sacramento City Council's law and legislation committee on July 21.

Week of August 24, 1992

THE BUSINESS JOURNAL

Serving Greater Sacramento

LETTERS TO THE EDITOR

Check the city's dipstick

Dear Editor:

I think Mike Tooley spoke for many local service station dealers in his commentary ("City's proposed service station ordinance unneeded," July 20). It would be very easy for the ordinance to cause more problems than it would solve, and it would open up a can of worms that would probably make running our service station much more difficult.

But there is another disturbing element which Mr. Tooley didn't discuss. The ordinance also makes it easier for an oil company to litigate up to two years after the fact. If the ordinance passed, I would be greatly concerned about unending litigation initiated by dealers or companies delaying important marketing decisions needed to help our business grow.

Litigation will not solve disputes as fast as working the situation out one-on-one with our oil company representatives, as we do now. This ordinance, scheduled to be heard by the City Council's Law and Legislation Committee on Tuesday, Aug. 25, might have been meant with good intentions toward service station dealers. But in the long run, it would hurt much more than it would help.

*Craig L. Schwab
Pocket Road Shell
Sacramento*