

MINUTES OF THE CITY COUNCIL

CITY OF AUSTIN, TEXAS

Even Session

February 22, 1973
7:00 P.M.

Council Chambers, City Hall

The meeting was called to order with Mayor Butler presiding.

Roll call:

Present: Councilmen Dryden, Nichols, Mayor Pro Tem Love,
Councilmen Lebermann, Friedman, Handcox, Mayor Butler
Absent: None

PUBLIC HEARING ON CONSUMER PROTECTION

Mayor Butler opened the hearing on Consumer Protection. It was decided that presentations should be made first by the groups that had been working on this: TexPRIG, Consumer Counseling and the Texas Consumer Association. Ms. Traci Harte, a staff member of Texas Public Interest Research Group, TexPIRG, was the first speaker, summarizing the plan developed by the three consumer interest groups, and including members of The Retired Teachers Association and the Retired Persons Association.

The original consumer protection ordinance was presented January 18 to the Council by Councilman Friedman, and the organizations listed began an intensive study and with Mayor Butler and Councilman Lebermann's suggested amendments. Their plan is in part modeled after the Dallas consumer protection ordinance. The proposed ordinance provides a fine for any action intended to mislead or confuse the consumer. A fine could be levied for failure to honor warranties, misrepresenting the need for repairs, advertising goods or services without intent to sell them as publicized, and misrepresenting the quality or condition of goods. Violation would carry a fine not to exceed \$200. The City would be empowered to seek injunctions preventing further infringement. To protect the merchant, having insufficient notice of the illegality of his conduct, the City could accept written assurances of voluntary compliance instead of seeking prosecution.

As a part of this, a City-County office of consumer affairs would be created as an enforcement agency for the ordinance. Their ordinance also requires the City to contract with an independent agency or agencies to provide individual complaint processing, public education and research on consumer problems and needs. A grant request has been made by Consumer Counseling Services, Inc. and TexPIRG. This type of agency could draw on student volunteer manpower and the research expertise of the University community, and input could be channeled

through a 15-member Citizen's Advisory Council on Consumer Affairs. The various groups which Ms. Harte represented believed that the plan above would assure maximum protection for all Austin consumers, from students or retired persons.

Mr. Jim Boyle, First Vice-President of the Texas Consumer Association, explained why legislation on the local level is needed. The State Attorney General's office has only 12 attorneys to enforce all the laws of the state and it is important to get the maximum kind of enforcement on a local level. A penalty is needed to encourage someone to act better and not to engage in deceptive practices.

The next speaker was Mr. John McLaren, a member of the founding Board of Directors of Consumer Services, Inc. He explained the work of the organization in a pilot program to assist consumers, launched in February of 1972. He is a staff attorney in charge of consumer protection in Legal Aid, and he works closely with volunteers. As some of the clients do not qualify financially for Legal Aid, they are referred to the Lawyer Referral Service of the Travis County Bar, or in the case of University of Texas students to the office of the Student Attorney. In other cases, the counselor contacts the merchant, listens to the explanation of the situation and usually at that point asks the merchant for a suggested compromise solution. This requires an average of about 3.5 man hours for each completed case. A book is distributed to all consumers who come for counseling, which informs them of their rights and duties under the contract for agreement of the issue, and a number of cases require only this explanation with not contact with the merchant. He requested funding by the City of Austin, or a joint City-County funding arrangement.

Miss Kathy Alelman, a Vice-President of Orange Jackets at the University and Chairman of the local Board of Directors of TexPIRG, explained the progress made by the Department of Consumer Affairs in Dallas. A policy of mediating complaints in lieu of prosecution has netted refunds or adjustments in the amount of \$20,085. This policy has resulted in satisfactory compliance, with violators being given at least one warning before prosecution. Six consumer protection cases and 19 weights and measures cases have been filed in Corporation Court, with fines assessed to a total of \$1,882.50. Educational programs have been vigorously pursued through news releases and meetings with business organizations, civic clubs and consumer groups. There may be a need for new ordinances to control specific abuses, such as electronic repairs, automotive repairs, and public auction sales. Also considered are possible ordinances for a cooling off period on door to door and telephone sales; open dating on perishable food products, see-through packaging, unit pricing, and gasoline octane rating disclosures.

At this time speakers were taken in order as they had signed cards. One advocated a neutral arbiter between the consumer and businessman. Mr. Hardy Hollers spoke against the ordinance, pointing out that he believed certain sections would not stand up in Court. Mr. W. S. Bussey stated that the Dallas ordinance has been very favorably received, and recommended that the Council study the matter carefully and confer with their fellow Councilman and Mayor in Dallas, and see what the result has been up there. The next speaker, a merchant in Austin, Mr. William Diamond, mentioned the shoplifting and passing of bad checks by consumers, and felt the ordinance should protect the merchant too. A businessman, associated with the Wholesale Automotive Jobbers Association, stated they did most of their own policing, and that the Better Business Bureau was also helpful. A lady consumer pointed out her difficulties in getting a refund for an unused airline ticket, Colonel Ralph Pearson related difficulties

with misleading advertising in catalogues. Ms. Melissa Singler advocated a workers-consumers committee to solve these problems. Mr. James Sutton with the Consumer Credit Commissioner explained the Consumer Credit Code as it relates to automobile sales, secondary mortgages and loans, which is covered under State law. He said there was enough difficulty enforcing the State law, and that his organization is not well known; however, it does encourage and assist in the establishment of non-profit consumer credit counseling services.

The next speaker, Mr. Will Davis, a local practicing attorney, who represented a group of retailers, passed out two alternatives to the proposed ordinance, one proposing the creation of a Director of Consumer Affairs, the other one leaving things under the direction of the City Attorney. He pointed out the implications of creating a new department to be financed by the taxpayers. Another question was who should impose the penalties...the City Attorney or by sanctions by the administrator. Also he did not see the need for the creation of the Citizens Advisory Committee since enforcement would be either through the City Attorney or through the administrative department. He did not think a City ordinance could grant to the County or District Court the power to grant injunctions. He would like more time to study the extent of penalties involved. He noted that the State Legislature now had before it two bills modeled after the Uniform Fair Trade Practices and Deceptive Acts. Broad investigative powers should have very deliberate consideration as well as the power to subpoena. He felt that rule-making power was something that should be left to the City Council.

Speaking not for the Better Business Bureau, but for several Better Business presidents and a number of retail people, Mr. Bonner McLane suggested that a separate department with a director would not be the best way try to protect the consumer. He also felt that the Senate bill in the Legislature might nullify the need for a City ordinance. One speaker, representing David Dillard, was against the ordinance. Mrs. Laura Fletcher, a consumer, was definitely for the need to educate the citizens, as was Mr. Mark Mitchell, a representative of the Student Action Committee at the University of Texas. Mrs. Hardcastle felt there should be a larger fine, and it was pointed out to her that the fine was assessed for each day. Mr. Les Johnson of Lamar Savings Association said his firm operated very successfully with the Legal Aid Society's help. One of the speakers, Mr. Barry Gillingwater, asked that real estate be removed from the ordinance, as it is treated uniquely by Federal and State law with which Councilman Friedman agreed. A representative of the University-City Council Lobbying Committee urged that the Advisory Committee include students who are also citizens of the City and County. An attorney representing Arthur Murray Dance Schools asked that an equal number of business representatives be on the Citizens Advisory Council along with consumer representatives.

At this point, Councilman Friedman explained that the ordinance being considered was not just his ordinance, but there were other people and Councilmen who had contributed to it. Mayor Butler stated he did not want this ordinance in its present form as he was not in favor of criminal penalties in a civil situation; however, he was in favor of certain kinds of consumer protection and education. Mr. Patrick Hazel, an attorney, felt it was good that the ordinance provided some agency or body to whom people can turn. Goerge Olivarri would like to see a jail term assessed for violation of the ordinance. The City Attorney explained the City has no authority under the State statutes to pass an ordinance which would require a jail term or a fine of more than \$200.

Representing the National Organization of Women and the Texas Women's Political Caucus, Ms. Dorothy DuBose spoke in regards to sex discrimination in the issuance of credit. Ms. DeCourcy Kelley recommended a City agency as opposed to State control, and would like to see the penalties remain, and also the Citizens Advisory Council. Also supporting an amendment to end sex discrimination regarding credit was Ms. Derrell DePasse of the Texas Women's Political Caucus. Mr. Lloyd Doggett summarized his feelings for the evening that people should start neighbor to neighbor to try to resolve their consumer problems, and that the Dallas ordinance was a good basis for the adoption of an ordinance in Austin. Counseling is needed too, as it helps not only the consumer but it helps the businessman, and encourages people to learn how to avoid having complaints in the first place. Another aspect of the proposal is the citizen participation through the Advisory Council. Ms. Jenny Wilmont said the Retired Teachers and the Retired Persons associations have come up with a project called the Consumer Information Desk, which now has an advisory committee of 35 organizations, and handles requests that are either telephoned or written, and the workers at this Desk try to find solutions for these.

At this time, Councilman Friedman announced that it had been his intention to introduce a motion at this meeting to pass the ordinance. However, there had been much discussion and now was the time to go back and work toward common ground. Therefore, he moved that on March 15, 1973, at 2 p.m. in the Council Chamber there should be another public hearing. This motion was seconded by Councilman Lebermann.

After further discussion in which Mayor Butler pointed out that the businessman too would like to be represented in the ordinance, Mayor Pro Tem Love made a substitute motion for the appointment of a 3-man committee constituted of the City Attorney, Mr. Lloyd Doggett and Mr. Will Davis to report back to the Council on March 15. There were further restatements and amendments to the motion, which was changed to the appointment of a 3-man or 3-woman committee to report back at their earliest convenience. This was seconded by Dr. Dryden.

Roll call:

Ayes: Councilmen Dryden, Nichols, Mayor Pro Tem Love, Councilmen Lebermann, Handcox, Mayor Butler

Noes: Councilman Friedman, as he wanted a specific timeframe.

Mayor Butler noted that when this comes back there will certainly be ample opportunity to look into the revised ordinance at that time.

The meeting was adjourned.

APPROVED: _____

Ray Butler
Mayor

ATTEST: _____

City Clerk