

ORDINANCE NO. 20-2007

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, ADDING A NEW CHAPTER 17 (EMERGENCY PRICE-GOUGING PROTECTIONS) TO ARTICLE IV (PUBLIC PEACE) OF THE CARSON MUNICIPAL CODE TO ENACT PROHIBITIONS AGAINST PRICE-GOUGING DURING AND FOR 60 DAYS AFTER THE DECLARED STATE OF EMERGENCY RELATED TO COVID-19 AND OTHER DECLARED STATES OF EMERGENCY

WHEREAS, in December, 2019, an outbreak of respiratory illness due to a novel coronavirus (COVID-19) was first identified in Wuhan City, Hubei Province, China; and

WHEREAS, the Center for Disease Control and Prevention (CDC) considers COVID-19 to be a very serious public health threat with outcomes ranging from very mild (including some with no reported symptoms) to severe, including illness resulting in death; and

WHEREAS, according to the CDC, there is no vaccine to prevent COVID-19 and there is no specific antiviral treatment recommended for COVID-19 at this time; and

WHEREAS, on January 30, 2020, the World Health Organization declared a Public Health Emergency of International Concern over the global spread of COVID-19; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a State of Emergency for the State of California, and the County of Los Angeles declared a public health emergency for the county on the same date, related to COVID-19; and

WHEREAS, on March 11, 2020, the World Health Organization characterized COVID-19 as a “pandemic”; and

WHEREAS, on March 12, 2020, Governor Newsom issued Executive Order N-25-20 regarding COVID-19; and

WHEREAS, on March 13, 2020, President Trump declared a National State of Emergency in response to increased spread of COVID-19; and

WHEREAS, on March 17, 2020, the City Council declared and proclaimed a state of emergency in the City of Carson in response to COVID-19; and

WHEREAS, one of the many effects of the COVID-19 pandemic is panicked demand for consumer goods and products that can help people prepare for or protect themselves from the pandemic, including sanitary face masks, medical supplies, hand sanitizer, soap, disinfectants, household products, and groceries, and some unsavory individuals attempt to take advantage of these market demands by offering the in-demand products for sale at outrageous prices, a practice known as price-gouging. By way of example, ABC7news.com reported on March 5, 2020, that some online sellers were offering a two-pack of hand sanitizer for \$84.99 and face masks at a markup of 582%, and KTLA5 news reported on March 13, 2020 that Los Angeles City authorities recently discovered a half-gallon of bleach being sold for over \$100 and two one-liter containers of hand sanitizer being sold online for \$149; and

WHEREAS, price-gouging is not limited to household goods, and can also occur in the context of rental housing with respect to increased rents. This can have the effect of precluding tenants from finding available housing and can also lead to evictions in the event an existing tenant cannot afford to pay rent. This concern is especially pertinent in the context of the COVID-19 pandemic, in light of the direction from all levels of government and health authorities regarding maintaining social distancing, avoiding large gatherings, self-quarantining, and sheltering in place, much of which is not possible to adhere to without a home; and

WHEREAS, during an address on March 4, 2020, Governor Gavin Newsom expressed a need to curb the abuse of price-gouging during the COVID-19 pandemic, and Attorney General Xavier Becerra issued a price-gouging alert, reminding Californians of laws prohibiting the practice; and

WHEREAS, specifically, California Penal Code Section 396 controls price increases for rental housing, consumer goods, and services related to emergency response and recovery for an initial period of thirty days after a declaration of an emergency by the President, Governor, or local agency, and generally prohibits charging a price that exceeds by more than 10 percent of the price of the rental units, goods or services as such existed before the declaration of emergency. Penal Code Section 396's rental housing price gouging restrictions apply to hotels, motels, and rental housing with an initial lease term of no longer than one year; and

WHEREAS, Penal Code Section 396 expressly: (1) permits a local legislative body to extend the prohibitions of Section 396 for additional thirty-day periods as needed to protect the lives, property or welfare of its citizens; (2) does not preempt a city's authority to adopt an ordinance that prohibits the same or similar conduct; and (3) allows a city to impose a more severe penalty than provided in Section 396 for the conduct prohibited by Section 396; and

WHEREAS, price-gouging is not limited to the COVID-19 pandemic, but rather can occur during any emergency situation that causes a panicked demand for certain types of products or services, whether such situation may arise from disease, natural disasters, wildfires, war, or otherwise; and

WHEREAS, based on the foregoing, the City Council seeks and intends to protect the residents and guests of the City of Carson by enacting protections against price-gouging, not only during and for 60 days the declared state of emergency related to the COVID-19 pandemic, but in any declared state of emergency necessitating these protections.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA DOES ORDAIN AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct and are incorporated herein as findings of fact.

SECTION 2. FINDINGS.

The City Council finds as follows:

A. One of the many effects of the COVID-19 pandemic is the panicked demand for consumer goods and products that can help people prepare for or protect themselves from the pandemic, including sanitary face masks, medical supplies, hand sanitizer, soap, disinfectants, household products, and groceries. Some unsavory individuals attempt to take advantage of these panicked market demands by offering the in-demand products for sale at outrageous prices, a practice known as price-gouging.

B. Price-gouging is not unique to the COVID-19 pandemic, but rather can occur during any emergency situation that causes a panicked demand for certain types of products or services, whether such situation may arise from disease, natural disasters, wildfires, war, or otherwise.

C. Price gouging is not limited to household goods. It can also occur in other contexts, including but not limited to the context of rental housing, with respect to increased rents. Of particular concern are those who may not be able to earn enough wages to pay for the next few months' of rent on their homes. Price-gouging in this context can have the effect of precluding tenants from finding available housing, and can lead to evictions. This concern is especially pertinent in the context of the COVID-19 pandemic, and, logically, in other pandemics involving contagious diseases, where it becomes necessary, in order to combat the spread of the disease, to maintain social distancing, avoid large gatherings, self-quarantine, and shelter-in-place, much of which is not possible without a home.

D. It necessary to take actions to prohibit and deter the practice of price-gouging during declared local emergency periods in order to protect the public health, safety and welfare of the residents of the City of Carson.

SECTION 3. A new Chapter 17 (Emergency Price-Gouging Protections) is hereby added to Article IV (Public Peace) of the Carson Municipal Code, to read in its entirety as follows:

“CHAPTER 17 – EMERGENCY PRICE-GOUGING PROTECTIONS

41701. Prohibitions on Price Gouging.

A. Consumer Goods. During an emergency declaration period and for 60 days thereafter, it is unlawful for a person, contractor, business, or other entity to sell or offer to sell any consumer food items or goods, including but not limited to goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels, for a price of more than 10 percent greater than the price charged by that person for those goods or services immediately prior to the emergency declaration period. However, a greater price increase is not unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to

provide the services, during the emergency declaration period, and the price is no more than 10 percent greater than the total of the cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business immediately prior to the onset of the emergency declaration period.

B. Rental Housing. During an emergency declaration period and for 60 days thereafter, it is unlawful for any person, business or other entity to increase the rental price, as defined in Section 41702, advertised, offered, or charged for housing, to an existing or prospective tenant, by more than 10 percent. However, a greater rental price increase is not unlawful if that person can prove that the increase is directly attributable to additional costs for repairs or additions beyond normal maintenance that were amortized over the rental term that caused the rent to be increased greater than 10 percent, or that an increase was contractually agreed to by the tenant prior to the proclamation or declaration.

C. Transient Housing. During an emergency declaration period and for 60 days thereafter, it is unlawful for any person, business or other entity to rent or lease a hotel or motel room, or other short-term or long-term rental unit, for more than 10 percent above the hotel, motel, or other short-term or long-term rental's regular rates, as advertised immediately prior to the emergency declaration period, unless that person, business or other entity can prove that the increase in price is directly attributable to additional costs imposed on it for goods or labor used in the business, to seasonal adjustments in rates that are regularly scheduled, or to previously contracted rates prior to the proclamation or declaration.

41702 Definitions.

1. "Building materials" means lumber, construction tools, windows, and anything else used in the building or rebuilding of property.

2. "Consumer food item" means any article that is used or intended for use for food, drink, or condiment by a person or animal.

3. "Emergency Declaration Period" means the period of effectiveness of a state of emergency or local emergency (whichever is longer if both exist concurrently), as provided in the declaration of the state of emergency or local emergency, and as may be extended from time to time.

4. "Emergency supplies" includes, but is not limited to, water, flashlights, radios, batteries, candles, blankets, soaps, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers.

5. "Gasoline" means any fuel used to power any motor vehicle or power tool.

6. "Goods" has the same meaning as defined in subdivision (c) of Section 1689.5 of the Civil Code.

7. "Housing" means any rental housing with an initial lease term of no longer than one year, including, but not limited to, a space rented in a mobile home park or campground.

8. "Local Emergency" means a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, pandemic, plant or animal infestation or disease, or other natural or manmade disaster for which a local emergency has been declared by the City Council or City official vested with such authority to make such declaration.

9. "Medical supplies" includes, but is not limited to, prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products.

10. "Rental Price" for housing means any of the following:

A. For housing rented within one year prior to the time of the proclamation or declaration of emergency, the actual rental price paid by the tenant. For housing not rented at the time of the declaration or proclamation, but rented, or offered for rent, within one year prior to the proclamation or declaration of emergency, the most recent Rental Price offered before the proclamation or declaration of emergency. For housing rented at the time of the proclamation or declaration of emergency but which becomes vacant while the proclamation or declaration of emergency remains in effect, the actual rental price paid by the previous tenant or the amount specified in subparagraph B of this definition, whichever is greater. This amount may be increased by 5 percent if the housing was previously rented or offered for rent unfurnished, and it is now being offered for rent fully furnished. This amount shall not be adjusted for any other good or service, including, but not limited to, gardening or utilities currently or formerly provided in connection with the lease.

B. For housing not rented and not offered for rent within one year prior to the proclamation or declaration of emergency, 160 percent of the fair market rent established by the United States Department of Housing and Urban Development. This amount may be increased by 5 percent if the housing is offered for rent fully furnished. This amount shall not be adjusted for any other good or service, including, but not limited to, gardening or utilities currently or formerly provided in connection with the lease.

C. Housing advertised, offered, or charged, at a daily rate at the time of the declaration or proclamation of emergency, shall be subject to the rental price described in subparagraph A of this definition, if the housing continues to be advertised, offered, or charged, at a daily rate. Housing advertised, offered, or charged, on a daily basis at the time of the declaration or proclamation of emergency, shall be subject to the rental price in subparagraph B of this definition, if the housing is advertised, offered, or charged, on a periodic lease agreement after the declaration or proclamation of emergency.

D. For mobile home spaces rented to existing tenants at the time of the proclamation or declaration of emergency which are subject to rent control pursuant to

Chapter 7 of this Article, the amount authorized under that Chapter, and for new tenants who enter into a rental agreement for a mobile home space that is subject to rent control, but not rented at the time of the proclamation or declaration of emergency, the amount of rent last charged for a space in the same mobile home park. However, no rent increase shall be granted for any mobilehome space that is subject to rent control pursuant to Chapter 7 of this Article except in accordance with that Chapter. For mobile home spaces not subject to rent control and not rented at the time of the proclamation or declaration of emergency, the amount of rent last charged for the space.

11. "State of Emergency" means a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, pandemic, plant or animal infestation or disease, or other natural or manmade disaster for which a state of emergency has been declared by the President of the United States or the Governor of the State of California.

12. "Transportation, freight, and storage services" means any service that is performed by any company that contracts to move, store, or transport personal or business property or that rents equipment for those purposes, including towing services.

41703 Penalties for Violations.

Any person violating any of the provisions of this chapter shall be subject to a penalty of \$10,000 for a first-time violation, and thereafter \$10,000 for each additional violation. A violation of any provision of this chapter is also punishable as a misdemeanor pursuant to Section 1200 of this Code, and constitutes a basis for the City's Finance Director to suspend or revoke the violator's City business license, if any, pursuant to Section 6383 of this Code."

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE. This ordinance shall take effect thirty (30) days after its adoption.

SECTION 6. CERTIFICATION. The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted and codified in the manner required by law.

[signatures on the following page]

PASSED, APPROVED and ADOPTED at a regular meeting of the City Council on this ___ day of _____, 2020.

ALBERT ROBLES, Mayor

ATTEST:

DONESIA GAUSE-ALDANA, City Clerk

APPROVED AS TO FORM:

SUNNY K. SOLTANI, City Attorney