



Legislation Text

File #: 2020-205, Version: 1

Report to Mayor and City Council

Tuesday, April 07, 2020

Discussion

SUBJECT:

CONSIDERATION OF: (1) ORDINANCE NO. 20-2006U, AN URGENCY 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 THE DECLARED STATE OF EMERGENCY RELATED TO COVID-19 AND OTHER DECLARED STATES OF EMERGENCY; AND (2) INTRODUCTION OF ORDINANCE NO. 20-2007, A REGULAR ORDINANCE OF THE CITY COUNCIL BEARING THE SAME TITLE (CITY COUNCIL)

I. SUMMARY

The novel coronavirus causing the disease known as COVID-19 was first detected in Wuhan City, Hubei Province, China in December 2019. On January 30, 2020, the World Health Organization declared COVID-19 a public health emergency of international concern. On January 31, 2020, The United States Health and Human Services Secretary declared this global outbreak a public health emergency for the United States. The Centers for Disease Control and Prevention (CDC) announced on February 25, 2020 that community spread of COVID-19 was likely to occur in the United States.

The State of California proclaimed a State of Emergency on March 4, 2020, and Los Angeles County declared a Local Health Emergency for the County of Los Angeles on the same date. On March 12, 2020, Governor Newsom issued Executive Order N-25-20, declaring that state and local public health officials may, as they deem necessary in the interest of public health, issue guidance limiting or recommending limitations upon attendance at public assemblies, conferences, or other mass events, which could cause the cancellation of such gatherings through no fault or responsibility of the parties involved, thereby constituting a force majeure. On March 13, 2020, President Trump declared a National State of Emergency. On March 17, 2020, the City Council declared a local state of emergency in the City of Carson.

As of March 30, 2020, there were over 152,000 confirmed cases of COVID-19 and 2,800 deaths from the virus in the United States, including over 6,300 confirmed cases and 132 deaths in California. Worldwide, there were over 764,000 confirmed cases and almost

37,000 deaths. Los Angeles County has reported that, as of the same date, there were 2,136 confirmed cases in the county, with 37 deaths.

Due to the rapid spread of the disease, some individuals may exploit this emergency and increase the price of household goods, particularly those related to sanitization, paper goods, and toiletries. Additionally, it is now more important than ever to ensure that people are able to remain in their homes to slow the spread of COVID-19, notwithstanding the adverse economic effects caused by the pandemic, including mass unemployment related to the closure of bars, restaurants, entertainment venues, and other businesses. The Governor has imposed a statewide moratorium on residential rental evictions through May 31, 2020, but residential rent price-gouging protections will serve to buttress the eviction protections.

California Penal Code Section 396 prohibits price gouging during specified times of declared emergencies and makes violations misdemeanors punishable by up to 1-year's imprisonment and fines of up to \$10,000. However, additional action is necessary at the local level to deter price-gouging and protect the community, and particularly its more vulnerable members.

The proposed urgency ordinance would make it illegal in the City of Carson to engage in price-gouging (i.e. price increases of more than 10% not necessitated by increased costs) related to any and all consumer goods, consumer food items, emergency supplies, housing, and the like during a state of emergency declared by the federal, state, or local government and for 60 days thereafter. It would also make it illegal to engage in price-gouging with respect to residential rental rates during this time period. Violations of the proposed ordinance would be punishable by administrative fines of \$10,000 per violation, would constitute misdemeanor offenses, and would subject the violator to suspension or revocation of any City-issued business license held by the violator.

If passed by a two-thirds affirmative vote of the City Council, the urgency ordinance would go into effect immediately. A regular, nonurgency version of the ordinance (Exhibit 2) is also proposed for introduction and first reading (by title only, with further reading waived) at this meeting, and if approved for introduction, would then be proposed for adoption at the City Council's next regular meeting. This is a standard recommended approach whenever the City adopts an urgency ordinance, as the regular ordinance serves as a "backup" that would take effect 30 days from its adoption even if the urgency provisions of the urgency ordinance are subjected to legal challenge.

II. RECOMMENDATION

TAKE the following actions:

1. INTRODUCE, READ BY TITLE ONLY WITH FURTHER READING WAIVED, and ADOPT ORDINANCE NO. 20-2006U, AN URGENCY 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 (Exhibit 1).

2. INTRODUCE for first reading, by title only and with further reading waived, 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 (Exhibit 2).

III. ALTERNATIVES

1. DO NOT APPROVE the recommendation.
2. TAKE another action the City Council deems appropriate.

IV. BACKGROUND

One of the many effects of the COVID-19 pandemic is the panicked increased demand for consumer goods and products, including sanitary face masks, medical supplies, hand sanitizer, soap, disinfectants, household products, and groceries. Some unsavory individuals may 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.

Price gouging is not limited to household goods, and can also occur in 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. This can have the effect of precluding tenants from finding available housing and can lead to evictions in the event an existing tenant is faced with a rent increase that he or she cannot afford to pay. This concern is especially pertinent in the context of the instant 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 follow without a home.

Price gouging 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.

California Penal Code Section 396 controls price increases for consumer goods, contractor's services related to emergency response and recovery, hotel and motel room rates, and rental housing rates for an initial period of thirty days after a declaration of an emergency by the President, Governor, or local agency. The provisions of Section 396 generally prohibit increasing prices by more than percent (10%) of the price charged immediately before the declaration of emergency. However, this conduct is generally not illegal if the seller can prove that the higher price increase was due to costs imposed on it. For example, with respect to consumer goods, the higher prices do not constitute illegal price-gouging if the seller can prove that the increase was directly attributable to additional costs imposed on it by the supplier of the goods during the state of emergency, 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 prior to the declared state 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.

Penal Code Section 396 permits a local legislative body to extend the price controls for additional thirty-day periods as needed to protect the lives, property or welfare of its citizens. Penal Code Section 396 expressly provides that it does NOT preempt a city's ability to adopt an ordinance that prohibits the same or similar conduct, and expressly allows a city to impose a more severe penalty for the conduct prohibited by Penal Code Section 396.

Proposed Urgency Ordinance

The proposed ordinance (Exhibit 1) provides that it is illegal in the City of Carson for any person, business, or other entity to take any of the following actions during the effective period of a declared national, state, or local state of emergency, and for 60 days thereafter:

(a) **Charge prices reflecting an increase of more than ten percent (10%) over the price normally charged by a seller for any consumer food items or goods**, including 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. Increasing prices by more than 10% would be permitted only if the seller can prove that the increase is directly attributable to additional costs imposed by a supplier of the goods or additional labor or materials to provide services.

(b) **Increase the residential rental rates of housing by more than ten percent (10%)** for an existing or prospective residential tenant. An increase of more than 10% would be permitted only when the landlord can prove the increase is directly due to costs of repairs or additions beyond the normal maintenance or that the increase is due to a contract agreed to by the tenant prior to the declaration of emergency.

(c) **Increase rates for short-term rental units or hotel or motel rooms by more than ten percent (10%)** of its regular rates for that time of year, as advertised immediately

prior to the declaration of a national, state, or local emergency. An increase of more than 10% would be permitted only if the owner or operator can prove that the increase is due to the additional costs imposed for goods or labor used in the business, seasonal adjustments in rates, or previously contracted rates prior to the declaration of emergency.

The penalty for violating the proposed ordinance is a \$10,000 administrative fine for a first-time violation, and subsequent \$10,000 fines for each additional violation. Violations are also punishable as misdemeanors in accordance with Carson Municipal Code Section 1200 (\$1,000 fine and/or imprisonment of up to one year), and subject to the violator to suspension or revocation of its City business license, if any, by the Finance Director pursuant to Carson Municipal Code Section 6383.

Because the proposed ordinance is an urgency ordinance, a two-thirds affirmative vote of the City Council is necessary, per Carson City Charter Section 313(F). If passed, the ordinance would take effect immediately. A regular “backup” version of the ordinance is also proposed for introduction, and if passed, would be proposed for second reading and adoption at the Council’s next regular meeting.

V. FISCAL IMPACT

None. Any administrative costs in enforcing the proposed ordinance would likely be made up for via the fines and penalties associated with the violations.

VI. EXHIBITS

1. Proposed Ordinance No. 20-2006U (Urgency Ordinance). (pgs 6-13)
2. Proposed Ordinance No. 20-2007 (Regular Ordinance) (pgs 14-20)

Prepared by: City Attorney's Office