

Council Agenda Report

To: Mayor Mullen and the Honorable Members of the City Council

Prepared by: Christi Hogin, City Attorney
Gregg Kettles, Assistant City Attorney

Date prepared: November 26, 2018 Meeting date: December 4, 2018

Subject: Urgency Ordinance Prohibiting Price Gouging

RECOMMENDED ACTION: Consider adopting Ordinance No. 440U adding Chapter 5.46 to Title 5 (Business Licenses and Regulations) of the Malibu Municipal Code to prohibit price gouging during and following a declared emergency; determining the urgency thereof; and determining the ordinance is exempt from the California Environmental Quality Act.

FISCAL IMPACT: City staff time may be necessary as the City finds instances of price gouging. City staff time would also be necessary to document these instances and to coordinate with the Los Angeles County District Attorney in prosecuting those individuals who violate this ordinance or California law. There is no evidence to indicate that the time required would exceed current staff capacity.

DISCUSSION: On November 8, 2018, a large and deadly fire started that devastated Malibu and neighboring communities. The Woolsey Fire burned 96,949 acres of land in Los Angeles and Ventura Counties, prompting the declaration of state of local emergency by the City and declarations of emergency for the area by the Governor of California and the President of the United States. Three lives were confirmed lost due to the Woosley Fire and the fire burned thousands of structures. In the City, the Woolsey Fire destroyed structures on 443 properties disrupting the lives and causing great loss to many members of the community.

The magnitude of the loss, regrettably, creates a high risk of price gouging by persons offering housing for rent or other needed goods and services in the City. In reviewing best practices implemented by the cities of Santa Rosa and Chico during their recent emergencies, staff discovered that those cities had extended the state law protections against price gouging. Before the Council tonight is an urgency ordinance to protect Malibu residents from price gouging for housing, hotels, motels, personal housing put out as rentals, goods, and services, all of which are in critical need at this time.

During the Santa Rosa wildfire incident, residents experienced significant differences in rental pricing for housing. There are reports that individuals were paying over \$8,000 a month for a small three-bedroom home, which was much higher than market rate. To combat this type of gouging during disasters, the state enacted Penal Code Section 396, which capped increases on housing rentals/leases, motel and hotels prices, and prices for goods, services, and restoration services to no more than 10 percent or 10 percent over actual costs if the business or individual could provide evidence that actual costs of services and goods exceeded the pricing on their books prior to the disaster.

California Penal Code Section 396 also authorizes the local governing body to extend pricing protection in 30 day increments as necessary to ensure residents are protected from predatory pricing increases, otherwise known as price gouging. In order to maximize the tools available to protect residents, City staff recommends the City Council immediately implement and extend the California Penal Code 396 protections for housing; goods and services; and restoration services. This would be accomplished by adopting an urgency ordinance adding Chapter 8.36 to the Malibu Municipal Code.

ATTACHMENTS: Ordinance No. 440U

ORDINANCE NO. 440U

AN ORDINANCE OF THE CITY OF MALIBU ADDING CHAPTER 5.46 TO TITLE 5 (BUSINESS LICENSES AND REGULATIONS) OF THE MALIBU MUNICIPAL CODE TO PROHIBIT PRICE GOUGING DURING AND FOLLOWING A DECLARED EMERGENCY; DECLARING THE URGENCY THEREOF; AND DETERMINING THE ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council of the City of Malibu does ordain as follows:

SECTION 1. Findings.

A. The Woolsey Fire of November 2018 destroyed structures on 443 properties in the City, resulting in devastation and displacement of members of the community.

B. The City's Director of Emergency Services delated a state of emergency on November 9 and 16, which was ratified by the City Council on November 20, 2018. On November 9, 2018 the Governor of California proclaimed a state of emergency for the counties of Los Angeles and Ventura, and on November 12, 2018 the President of the United States declared the existence of a major disaster in the State of California and ordered federal aid to supplement State and local recovery efforts in the areas affected by wildfire.

C. City officials have been alerted to the possibility of price gouging by persons offering housing for rent or other needed goods and services in the City of Malibu, and have seen from other similar events that such gouging may also include eviction of existing tenants of rental property, so that landlords may take advantage of fire victims whose insurance companies may pay rental rates in excess of what was previously charged for existing tenants.

D. California Penal Code Section 396 controls price increases for rental housing, goods and services related to emergency response and recovery for an initial period of thirty days after declaration of an emergency by the President, Governor or local agency, and generally prohibits charging a price that exceeds by more than 10% the price of the rental unit, good or service before the declaration of emergency.

E. California 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 allows for a city to prohibit the same or similar conduct or impose a more severe penalty for the conduct prohibited by Penal Code Section 396.

F. Penal Code Section 396 applies to hotels, motels and any other rental housing restricting set rates and lease to what was advertised immediately prior to the emergency declaration.

G. The extreme number of homes damaged in the City and the surrounding area increases the pressure on rental housing demand and render victims vulnerable to price gouging.

H. Section 36937 of the Government Code provides that an ordinance takes effect immediately if it is for the preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the city council; and

I. The Malibu City Council finds that this ordinance is necessary for the preservation of the public peace, health, and safety of residents living within the City of Malibu and finds an urgency to approve said ordinance immediately based on the facts described above.

SECTION 2. Urgency Findings.

The City Council finds and declares that the adoption of this urgency ordinance is necessary for the immediate preservation of the public peace, health, and safety. Currently, the City is without a local regulation of price gouging under states of emergency. The proposed ordinance addresses local regulation allowed pursuant to Penal Code section 396 and creates a local penalty provision. The Woolsey Fire destroyed or substantially damaged over 473 residential units in the City and burned 96,000 acres of land in Los Angeles and Ventura Counties, prompting the declaration of state of emergency by the Governor of California for the Counties of Los Angeles and Ventura. The loss of so many housing units has resulted in a high risk of price gouging by persons offering housing for rent or other needed goods and services in the City of Malibu. Therefore, the City Council finds and determines that the immediate preservation of the public peace, health, and safety requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937 and take effect immediately upon adoption. Based on the foregoing, the City Council declares this Ordinance is necessary for the immediate preservation of the public peace, health, and safety.

SECTION 3. Municipal Code Amendment.

Chapter 5.46 of Title 5 of the Malibu Municipal Code is hereby added to read as follows:

Chapter 5.46
Prohibition of Price Gouging

Section:

5.46.010 Findings.

5.46.020 Prohibition of Price Gouging.

5.46.030 Restrictions on Evictions.

5.46.040 Repair and Reconstruction Services.

5.46.050 Definitions.

5.46.010 Findings.

A. California Penal Code Section 396 controls price increases for rental housing, goods and services related to emergency response and recovery for an initial period of thirty days after declaration of an emergency by the President, Governor or local agency, and generally prohibits charging a price that exceeds by more than 10% the price of the rental units, goods or services as such existed before the declaration of an emergency event. 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; and

B. While the pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, when a declared state of emergency or local emergency results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of essential consumer goods and services be prohibited. The City seeks to prohibit to price gouging during times of emergencies to protect residents from excessive and unjustified increases in the prices charged for goods and services that are vital and necessary for the health, safety, and welfare of consumers during or shortly after a declared state of emergency or local emergency.

5.46.020 Price Gouging Prohibited.

A. Rental Housing. It is unlawful for any person, business or other entity during a declared emergency within the City to rent, lease or offer to rent or lease, or increase the rental price, to any existing or prospective tenant for any housing unit, of any kind, within the City, for a price of more than 10% above the price charged for that housing unit immediately prior to the occurrence of a declared emergency, unless that person, business or entity can prove that the increase in price is directly attributable to additional costs for labor or materials used to provide the rental unit, in which case, the price shall not be more than 10% above the total cost of providing that rental unit.

B. Transient Housing. It is unlawful for any person, business or other entity during a declared emergency to rent or lease a hotel or motel room, or other short-term or long-term rental unit, including a vacation rental unit, in the City, for more than 10% above the hotel, motel or other short-term or long-term rental's regular rates, as advertised immediately prior to the occurrence of a declared emergency, 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.

C. Sales of Goods and Services. It is unlawful for any person, contractor, business, or other entity during the emergency declaration period to sell or offer to sell any consumer food items or goods, 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, in the City, for a price of more than 10% above the price charged by that person for those goods or services immediately prior to the occurrence of a declared emergency. 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, provided that in those situations where the increase in price is attributable to additional costs imposed by the seller's supplier or additional costs of providing the good or service during the state of emergency, the price represents no more than 10% above 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 state of emergency.

5.46.030 Restrictions on Evictions.

It shall be unlawful for any person to evict an existing tenant or terminate an existing lease or month-to-month rental agreement during a declared emergency and subsequently rent or lease the same dwelling unit, including a vacation rental unit, in the City for more than the average retail price, unless such person can prove that the excess is directly attributable to additional costs resulting from the labor or materials necessary to provide the rental. In such instances, only the actual cost increase may be added to the average retail price. This section does not prohibit an owner from evicting a tenant for any lawful reason, including pursuant to Section 1161 of the Code of Civil Procedure. It shall not be a violation of this subdivision for a person, business, or other entity to continue an eviction process that was lawfully begun prior to the proclamation or declaration of emergency.

5.46.040 Repair and Reconstruction Services.

During a declared emergency, it shall be unlawful for a contractor to sell or offer to sell any repair or reconstruction services or any services used in emergency cleanup for a price of more than 10% above the price charged by that person for those services immediately prior to the proclamation or declaration of emergency. 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 state of emergency or local emergency, and the price represents no more than 10% greater than the total of the cost to the contractor plus the markup customarily applied by the contractor for that good or service in the usual course of business immediately prior to the onset of the state of emergency or local emergency. Nothing in this ordinance shall limit, shorten or otherwise affect the provisions of Penal Code Section 396 applicable to repair or reconstruction services.

5.46.050 Definitions.

For the purposes of this Chapter, the following terms have the following meanings:

"Average retail price" means the rental price for the dwelling unit during the thirty day period immediately preceding a declared emergency.

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

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

"Declared emergency" means a state of emergency or local emergency or declared disaster by the City, the Governor of California, or the President of the United States and shall include the longer of the period of time stated in the declaration of a state of emergency, the declaration of a local emergency, or such other period of time established by the City Council by ordinance or resolution.

"Emergency supplies" means those general items necessary or convenient to residing or working in the City for example includes, but is not limited to, water, flashlights, radios, batteries, candles, blankets, soaps, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers.

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

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

"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.

"Local emergency" means a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, 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.

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

"Repair or reconstruction services" means services performed by any person who is required to be licensed under the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), for repairs to residential or commercial property of any type that is damaged as a result of a disaster.

"State of emergency" means a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, 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 California. A state of emergency includes a declared disaster.

"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.

SECTION 4. Environmental Review.

The Council finds that the adoption and implementation of this ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment, CEQA Guidelines section 15064(e), which exempts purely economic regulations, and Public Resources Code Section 21080(b)(4) regarding actions to mitigate or prevent an emergency.

SECTION 5. Severability.

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 6. Effective Date.

This Ordinance shall be effective immediately upon its adoption by four-fifths of the City Council.

SECTION 7. Certification.

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted in the manner required by law.

PASSED, APPROVED AND ADOPTED this 4th day of December 2018.

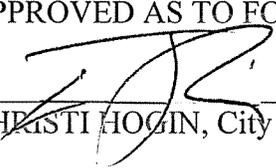
RICK MULLEN, Mayor

ATTEST:

HEATHER GLASER, City Clerk
(seal)

Date: _____

APPROVED AS TO FORM:



CHRISTI HOGAN, City Attorney