

ORDINANCE NO. 4396

AN URGENCY ORDINANCE OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS PROHIBITING PRICE GOUGING FOLLOWING THE REDWOOD COMPLEX FIRE

WHEREAS, on October 9, 2017, fires started within the County of Mendocino that later became known as the Redwood Complex Fire; and

WHEREAS, on October 9, 2017, by delegation, a local emergency was declared for Mendocino County, which was ratified by the Board of Supervisors at its meeting on October 10, 2017; and

WHEREAS, on October 9, 2017, Governor Edmund G. Brown, Jr., declared a state of emergency for Butte, Lake, Napa, Orange, Mendocino, Nevada, Sonoma and Yuba counties; and

WHEREAS, on October 10, 2017, President Donald J. Trump issued a major disaster declaration for the State of California as a result of the devastation caused by the fires in Butte, Lake, Mendocino, Napa, Nevada, Sonoma and Yuba counties; and

WHEREAS, on October 13, 2017, the health officer of the County of Mendocino declared a local health emergency, pursuant to Health and Safety Code section 101080, which was ratified by the Board of Supervisors at its meeting on October 17, 2017; and

WHEREAS, on October 18, 2017, Governor Edmund G. Brown, Jr., issued Executive Order B-43-17 to assist in streamlining recovery efforts in communities throughout the State that have been impacted by wildfires during October 2017; and

WHEREAS, as of the drafting of this ordinance, the Redwood Complex Fire had burned over 35,000 acres and destroyed or damaged several hundred homes and minor structures; and

WHEREAS, adequate, affordable housing presents an issue of public health and safety to those who have been displaced by the Redwood Complex Fire; and

WHEREAS, California Penal Code section 396, the anti-price gouging statute, becomes effective immediately after either the President of the United States or the Governor of California proclaims a state of emergency or a local official or board declares a local emergency; and

WHEREAS, on October 18, 2017, Governor Edmund G. Brown, Jr., declared that the provisions of section 396 will remain in effect until April 18, 2018 to protect the survivors in the affected counties; and

WHEREAS, the County of Mendocino desires to adopt these regulations on an urgency basis pursuant to Government Code section 25123, which allows ordinances to become effective immediately if the ordinance is for the immediate preservation of the public peace, health or safety, which shall contain a declaration of the facts constituting the urgency, and be passed by a four-fifths vote of the Board of Supervisors; and

WHEREAS, Government Code section 25131 expressly authorizes the Board of Supervisors to adopt such an urgency ordinance immediately upon its introduction.

NOW, THEREFORE, THE MENDOCINO COUNTY BOARD OF SUPERVISORS ORDAINS AS FOLLOWS:

Section 1. The above recitals are incorporated herein by this reference.

Section 2. Urgency Findings. The Board of Supervisors hereby finds that the adoption of this ordinance is for the immediate preservation of the public peace, health and safety. The Redwood Complex Fire has destroyed hundreds of residences and accessory buildings in Redwood Valley and the surrounding areas of the County. Due to the extraordinary losses of the Redwood Complex Fire, on October 18, 2017, Governor Edmund G. Brown, Jr., declared that the provisions of Penal Code section 396, relating to price gouging, will remain in effect until April 18, 2018 to protect the survivors in the affected counties. The greater penalties are created by this Ordinance are needed to protect residents impacted by the Redwood Complex Fire.

Section 3. Authority. Penal Code section 396 permits a local jurisdiction to adopt an ordinance to prohibit the same or similar conduct and to impose a more severe penalty than that imposed pursuant to state law.

Section 4. Purposes and Prohibitions.

- (A) Penal Code section 396 states that public interest requires that excessive and unjustified increases in the prices of essential consumer goods and services be prohibited. Section 396 generally prohibits charging a price that exceeds, by more than 10%, the price of an item immediately before the declaration of emergency. This law applies to, but is not limited to: food, emergency supplies, emergency cleanup services, goods, storage services, building materials, construction services and housing (defined as any rental housing with an initial lease term of no longer than one year.)
- (C) A violation of Penal Code section 396 is subject to criminal prosecution as a misdemeanor punishable by imprisonment in the County jail for a period not to exceed one year, or by a fine of up to ten thousand dollars (\$10,000), or both. Additionally, a violation may be subject to a civil enforcement action as an unlawful business practice and an act of unfair competition which includes penalties of up to five thousand dollars (\$5,000) per violation, injunctive relief, and mandatory restitution. Both the Attorney General and the County District Attorney may enforce Penal Code section 396.
- (D) The purpose of this Ordinance is to impose a more severe penalty than that provided in Penal Code section 396 to ensure that victims of the Redwood Complex Fire are not further victimized by unscrupulous landlords and others wishing to take financial advantage of this disaster.
- (E) Specifically, it shall be unlawful for any person to offer for rent or lease a dwelling unit in the unincorporated areas of the County of Mendocino for more than 10% above the dwelling units' prior housing price, unless such person can prove that the excess is directly attributable to additional costs resulting from the labor or materials used to rent or lease the

dwelling unit. In such instances, only the actual cost increase may be added to the prior housing price. For purposes of this ordinance, "prior housing price" shall be the rental price for the dwelling unit during the thirty-day period immediately preceding the State of Emergency.

(F) The prohibitions of this ordinance shall remain in effect until April 18, 2018.

Section 5. Penalties.

A violation of this ordinance is a misdemeanor punishable by imprisonment in the County jail for a period not to exceed one year, or by a fine of up to twenty thousand dollars (\$20,000), or both. Additionally, a violation may be subject to a civil enforcement action as an unlawful business practice and an act of unfair competition which includes penalties of up to five thousand dollars (\$5,000) per violation, injunctive relief, and mandatory restitution.

Section 6. CEQA. The Board of Supervisors hereby finds that this ordinance is not a project subject to the California Environmental Quality Act (Public Resources Code section 21000 et seq.; "CEQA") pursuant to CEQA Guidelines (14 Cal. Code Regs. section 15000 et seq.) sections 15060(c)(3) and 15378(b)(4), as the adoption of this ordinance has no potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment.

Section 7. Effective Date. This ordinance is an urgency ordinance adopted pursuant to Government Code Section 25123 and shall become effective immediately upon its adoption if adopted by at least four-fifths of the Board of Supervisors.

Section 8. Severability. If any section, subsection, sentence, clause phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

PASSED AND ADOPTED by a four-fifths vote of the Board of Supervisors of the County of Mendocino, State of California, on this 31st day of October, 2017, by the following vote:

AYES: Supervisors Brown, McCowen, Croskey, Gjerde and Hamburg
NOES: None
ABSENT: None

WHEREUPON, the Chair declared the Ordinance passed and adopted
and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

Karla Van Hagen
Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT
County Counsel

K Elliott

John McCowen
JOHN MCCOWEN, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO
Clerk of the Board

Karla Van Hagen
Deputy