

ORDINANCE NO. 4441

AN URGENCY ORDINANCE OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS PROHIBITING PRICE GOUGING FOLLOWING THE OCTOBER, 2019 WIND EVENT

WHEREAS beginning on October 23, 2019, a significant wind event struck California, resulting in nearly statewide red flag warnings due to extremely dangerous fire weather conditions; and

WHEREAS, on October 27, 2019, Governor Gavin Newsom declared a state of emergency for the State of California based on the historic wind event, extreme fire danger, de-energization, and “cascading impacts . . . which will likely extend beyond the conclusion of the weather event . . .”; and

WHEREAS, on October 30, 2019, the Mendocino County Chief Executive Officer/Director of Emergency Services proclaimed that a local emergency exists throughout Mendocino County; and

WHEREAS, adequate, affordable housing and reasonably priced consumer goods and services present an issue of public health and safety to those who have been displaced by this emergency and/or fires and other emergencies in neighboring jurisdictions; 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, 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.

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.)

- (B) 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.
- (C) 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 October 23, 2019 wind events are not further victimized by unscrupulous landlords and others wishing to take financial advantage of this disaster.
- (D) 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' housing price prior to the October 23, 2019 wind events, 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.
- (E) The prohibitions of this ordinance shall remain in effect until January 5, 2019.

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 5th day of November, 2019, by the following vote:

AYES: Supervisors Brown, Haschak, Gjerde, and Williams
NOES: None
ABSENT: Supervisor McCowen

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

ATTEST: CARMEL J. ANGELO
Clerk of the Board

CARRE BROWN, Chair
Mendocino County Board of Supervisors

Deputy

APPROVED AS TO FORM:
CHRISTIAN M. CURTIS
Acting County Counsel

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

Deputy