

URGENCY ORDINANCE NO. 20-0011-U

AN URGENCY ORDINANCE OF THE CITY OF MANHATTAN BEACH AMENDING THE MANHATTAN BEACH MUNICIPAL CODE TO ESTABLISH RESTRICTIONS ON EXCESSIVE AND UNJUSTIFIED INCREASES IN CONSUMER PRICES DURING A DECLARED EMERGENCY AND DECLARING THE URGENCY THEREOF

THE MANHATTAN BEACH CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

Section 1. Urgency Findings.

A. International, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2," and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19").

B. On March 4, 2020, the Los Angeles County Board of Supervisors and Department of Public Health declared a local emergency and local public health emergency to aid the regional healthcare and governmental community in responding to COVID-19.

C. On March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19.

D. On March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19.

E. On March 13, 2020, the Manhattan Beach City Council adopted RESOLUTION NO. 20-0039, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH PROCLAIMING THE EXISTENCE OF A LOCAL EMERGENCY. On March 17, 2020, the Manhattan Beach City Council ratified RESOLUTION NO. 20-0039.

F. The Centers for Disease Control and Prevention, the California Department of Health, and the Los Angeles County Department of Public Health have all issued recommendations including but not limited to social distancing, staying home if sick, canceling or postponing large group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus.

G. There have been reports of “price gouging” (i.e., the practice of raising the price of something to an unreasonable level, typically in response to a sudden shortage or increase in demand) involving basic household staples since the COVID-19 outbreak.

H. California Penal Code Section 396 makes it illegal for a person, contractor, business, or other entity to increase the price of a product or service item more than ten percent for the following 30 days after a proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration.

I. Pursuant to California Penal Code Section 396(k), municipalities are authorized to enact local legislation prohibiting excessive and unjustified increases in the prices of essential consumer goods and services when a declared state of emergency results in abnormal disruptions of the market.

J. Article XI, Section 7 of the California Constitution and California Government Code Section 37100 provide the City with authority to enact local ordinances to protect the health, safety, and welfare of its residents; and Government Code Section 36937(b) also authorizes the City Council to adopt an urgency ordinance to become effective immediately upon a four-fifths (4/5) vote, when such an ordinance is necessary for the immediate preservation of public peace, health, and safety.

K. This urgency ordinance is intended to prohibit the act of price gouging in the City. Unless this ordinance takes effect immediately as provided herein, there is a possibility that essential consumer goods and services could be subject to excessive and unjustified increases in the prices that may lead to the detriment of the public health, safety and welfare.

L. For all these reasons, *inter alia*, the City Council finds there is a current and immediate threat to the public health, safety and welfare and that excessive and unjustified increases in the prices of essential consumer goods and services would result in that threat to the public health, safety or welfare absent implementation of the restrictions contained in this ordinance. Accordingly, there is an urgent need for the immediate preservation of the public peace, health, and safety to enact this ordinance on an urgency basis.

Section 2. The City Council hereby adds Chapter 4.142 (“Price Gouging”) to Title 4 (“Public Welfare, Morals and Conduct”) of the Manhattan Beach Municipal Code to read as follows:

“Chapter 14 - Price Gouging

Section 4.142.010 - Findings and Intent

Section 4.142.020 - Definitions

Section 4.142.030 - Prohibition Against Excessive and Unjustified Increases in Consumer Prices During a Declared Emergency
Section 4.142.040 - Extension of Time Period During Which Prohibition is in Effect

Section 4.142.010 - Findings and Intent.

The City Council hereby finds that during emergencies and major disasters elsewhere, including, but not limited to, earthquakes, fires, floods, or civil disturbances, some merchants have taken unfair advantage of consumers by greatly increasing prices for essential consumer goods and services. While the pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, when a declared state of 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. It is the intent of the City Council in enacting this chapter to protect citizens from excessive and unjustified increases in the prices charged during or shortly after an emergency for goods and services that are vital and necessary for the health, safety, and welfare of consumers. Further it is the intent of the City Council that this chapter be liberally construed so that its beneficial purposes may be served.

Section 4.142.020 - Definitions.

“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 local emergency or state of emergency as further described in Chapter 3.08 of this code.

“Emergency supplies” 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 used to power any motor vehicle or power tool.

“Goods” has the meaning ascribed in Civil Code Section 1689.5(c).

“Housing” means any rental housing leased on a month-to-month term.

“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 California contractors' state license law (chapter 9, commencing with section 7000, of division 3 of the California Business and Professions Code), for repairs to residential or commercial property of any type that is damaged as a result of an event that led to a declared emergency or state of war emergency.

“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 rents equipment for those purposes.

Section 4.142.030 - Prohibition Against Excessive And Unjustified Increases In Consumer Prices During A Declared Emergency.

A. Consumer Goods And Services:

1. Upon the proclamation of a declared emergency or an event triggering a state of war emergency, and for a period of 30 days following the proclamation of a declared emergency or the event that triggered a state of war emergency, it is unlawful for a person, contractor, business, or other entity 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 for a price of more than ten percent above the price charged by that person for those goods or services immediately prior to the proclamation of a declared emergency or the event that triggered a state of war emergency.
2. A person may increase prices in excess of the amount permitted in subsection (A)(1) of this section if the seller or vendor can demonstrate that the increase in price is directly attributable to additional costs imposed on that person 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 goods or service during the declared emergency or state of war emergency, the price represents no more than ten percent 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 proclamation of a declared emergency or the event that triggered a state of war emergency.
3. A business offering an item for sale at a reduced price immediately prior to the proclamation of a declared emergency or the event

triggering a state of war emergency may use the price at which it usually sells the item to calculate the price increase permitted pursuant to this subsection.

B. Construction, Repair, And Cleanup Services:

1. Upon the proclamation of a declared emergency or an event triggering a state of war emergency, and for a period of 180 days following the proclamation of a declared emergency or the event that triggered a state of war emergency, it is 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 ten percent above the price charged by that person for those services immediately prior to the proclamation of a declared emergency or the event that triggered a state of war emergency.
2. A person may increase prices in excess of the amount permitted in subsection (B)(1) of this section if the seller or vendor can demonstrate that the increase in price is directly attributable to additional costs imposed on that person 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 the additional costs imposed by the contractor's supplier or additional costs of providing the service during the declared emergency or state of war emergency, the price represents no more than ten percent above 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 proclamation of a declared emergency or the event that triggered a state of war emergency.
3. A business offering services at a reduced price immediately prior to the proclamation of a declared emergency or the event triggering a state of war emergency may use the price it usually charges for such services to calculate the price increase permitted pursuant to this subsection.

C. Hotel And Motel Rates:

1. Upon the proclamation of a declared emergency or an event triggering a state of war emergency, and for a period of 30 days following the proclamation of a declared emergency or the event that triggered a state of war emergency, it is unlawful for an owner or operator of a hotel or motel to increase the hotel or motel's regular rates, as advertised immediately prior to the proclamation of a

declared emergency or the event that triggered a state of war emergency, by more than ten percent.

2. A hotel owner or operator may increase prices in excess of the amount permitted by subsection (C)(1) of this section if the owner or operator can prove that the increase in price is directly attributable to additional costs imposed on it for goods or labor used in its business, to seasonal adjustments in rates that are regularly scheduled, or to previously contracted rates.

Section 4.142.040 - Extension of Time Period During Which Prohibition is in Effect.

The provisions of this chapter may be extended for additional 30-day periods by the Director of Emergency Services, Assistant Director of Emergency Services or the City Council, if deemed appropriate to protect public health, safety, or welfare.”

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause, or phrase would be subsequently declared invalid or unconstitutional.

Section 4. Compliance with California Environmental Quality Act. The City Council finds that Ordinance No. 20-0011-U is not subject to the California Environmental Quality Act pursuant to Section 15060(c)(2), constituting an activity that will not result in a direct or reasonably foreseeable indirect physical change in the environment, and pursuant to Section 15060(c)(3), constituting an activity that is not a project as defined in Section 15378.

Section 5. Effective Date. This Ordinance is an urgency ordinance for the immediate preservation of the public peace, health, and safety within the meaning of Government Code Section 36937(b); and therefore shall be passed immediately upon its introduction and shall become effective immediately upon its adoption.

Section 6. Certification and Publication. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be published or posted in the manner prescribed by law.

Section 7. This Ordinance shall be punishable as set forth in Manhattan Beach Municipal Code Chapters 1.04 and 1.06.

ADOPTED on March 17, 2020.

AYES: Hersman, Napolitano, Stern, Hadley and Mayor Montgomery.
NOES: None.
ABSENT: None.
ABSTAIN: None

/s/ Richard Montgomery
RICHARD MONTGOMERY
Mayor

ATTEST:

/s/ Liza Tamura
LIZA TAMURA
City Clerk

APPROVED AS TO FORM:

/s/ Quinn M. Barrow
QUINN M. BARROW
City Attorney

APPROVED AS TO CONTENT:

/s/ Bruce Moe
BRUCE MOE
City Manager