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MARY C. WICKHAM
County Counsel

February 4, 2016

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

**Re: Ordinance Amending Title 2 – Administration and Title 8 –
Consumer Protection, Business and Wage Regulations of the
Los Angeles County Code**

Dear Supervisors:

Pursuant to your Board's December 15, 2015 motion, enclosed please find for your consideration, the analysis and ordinance amending Section 2.68.160 to include the Director of the Department of Consumer and Business Affairs as a member of the Emergency Management Council and adding Chapter 8.09, relating to the overpricing of vital and necessary goods and services following the proclamation of a state of emergency or the declaration of a local emergency.

Very truly yours,

MARY C. WICKHAM
County Counsel

By

EMILY D. ISSA
Deputy County Counsel

APPROVED AND RELEASED:

DESTER J. TOLNAI
Acting Chief Deputy

EDI:do

Enclosures

c: Sachi A. Hamai, Chief Executive Officer
Patrick Ogawa, Acting Executive Officer, Board of Supervisors

ANALYSIS

This ordinance amends Title 2 – Administration and Title 8 – Consumer Protection, Business and Wage Regulations, of the Los Angeles County Code by:

- Amending Section 2.68.160 to include the Director of the Department of Consumer and Business Affairs as a member of the Emergency Management Council; and
- Adding Chapter 8.09 relating to the overpricing of vital and necessary goods and services following the proclamation of a state of emergency or the declaration of a local emergency.

Very truly yours,

MARY C. WICKHAM
County Counsel

By



EMILY D. ISSA
Deputy County Counsel
Government Services Division

EDI:do

Requested: 12/15/2015
Revised: 01/28/2016

ORDINANCE NO. _____

An ordinance amending Title 2 – Administration of the Los Angeles County Code, relating to membership of the Emergency Management Council, and Title 8 – Consumer Protection, Business and Wage Regulations relating to the overpricing of vital and necessary goods and services following the proclamation of a state of emergency or the declaration of a local emergency.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Section 2.68.060 is hereby amended to read as follows:

2.68.160 - Created—Membership.

The eCounty of Los Angeles eEmergency mManagement eCouncil is created and will consist of the following:

- A. The eChief ~~administrative~~Executive eOfficer, who shall be chair;
- B. The sSheriff, who shall be vice-chair;
- C. The fFire eChief;
- D. The dDirector, dDepartment of pPublic wWorks;
- E. The dDirector, dDepartment of hHealth sServices;
- F. The dDirector, iInternal sServices dDepartment;
- G. The dDirector, dDepartment of pPublic sSocial sServices;
- H. The eChief mMedical eExaminer-eCoroner, dDepartment of the eCoroner;
- I. The dDirector, dDepartment of mMental hHealth;
- J. The eCounty sSuperintendent of sSchools, who shall be an ex officio

member and without vote;

K. The eCounty eCounsel, who shall be an ex officio member and without vote;

L. The eChief pProbation eOfficer, who shall be an ex officio member and without vote;

M. The dDirector, dDepartment of eChildren and fFamily sServices, who shall be an ex officio member and without vote;

N. The aAdministrator, eChief administrativeExecutive eOffice/eOffice of eEmergency mManagement, who shall be an ex officio member and without vote;

O. The dDirector, eChief administrativeExecutive eOffice/eOffice of pPublic aAffairs, who shall be an ex officio member and without vote;

P. ~~One member to be nominated by the Los Angeles Chapter of the American Red Cross and appointed by the board, who shall be an ex officio member and without vote~~The Director, Department of Consumer and Business Affairs, who shall be an ex officio member and without vote;

Q. ~~Such other ex officio nonvoting members appointed by the chair of the council, as appropriate~~One member to be nominated by the Los Angeles Chapter of the American Red Cross and appointed by the Board, who shall be an ex officio member and without vote;

R. Such other ex officio nonvoting members appointed by the chair of the Council, as appropriate.

SECTION 2. Chapter 8.09 is hereby added to read as follows:

**Chapter 8.09 Overpricing of Goods and Services Following the
Proclamation of a State of Emergency or the Declaration of a Local Emergency.**

8.09.010 Findings.

8.09.020 Authority.

8.09.030 Definitions.

**8.09.040 Overpricing Following the Proclamation or Declaration of an
Emergency Prohibited.**

8.09.050 Reporting.

8.09.060 Penalties and Enforcement.

8.09.010 Findings.

The Board of Supervisors finds that in emergencies and major natural or manmade disasters including, but not limited to, earthquakes, floods, fires, storms or civil disturbances, there may be a temporary spike in demand for food, repair or reconstruction services, emergency or medical supplies, hotels, motels, housing, or gasoline. Under such circumstances, there is a heightened risk to consumers that prices for goods and services that are vital and necessary for their health, safety, and welfare may be significantly increased. Therefore, the County of Los Angeles has an interest in ensuring that County residents are protected against overpricing of vital and necessary goods and services during a state of emergency as proclaimed by the President of the United States or the Governor of California, or during a local emergency as declared pursuant to law.

8.09.020 Authority.

Pursuant to California Penal Code section 396 (i), the County is authorized to enact local legislation prohibiting the overpricing of vital and necessary goods and services following the proclamation of a state of emergency or the declaration of a local emergency and impose penalties. This Chapter does not apply where prohibited or preempted by federal or State law.

8.09.030 Definitions.

Unless otherwise provided below, the definitions provided by California Penal Code section 396 shall apply:

A. "State of emergency" means a natural or manmade disaster or emergency resulting from an earthquake, flood, fire, riot, or storm for which a state of emergency has been proclaimed by the President of the United States or the Governor of California.

B. "Local emergency" means a natural or manmade disaster or emergency resulting from an earthquake, flood, fire, riot, or storm for which a local emergency has been declared pursuant to California Government Code section 8630 and County Code Section 2.68.110.

C. "Vital and necessary" means required to sustain the health, safety, and welfare of a person or animal.

8.09.040 Overpricing Following the Proclamation or Declaration of an

Emergency Prohibited.

A. Upon the proclamation of a state of emergency resulting from an earthquake, flood, fire, riot, storm, or other natural or manmade disaster proclaimed by the President of the United States or the Governor of California, or upon the declaration of a local emergency resulting from an earthquake, flood, fire, riot, storm, or other natural or manmade disaster declared pursuant to California Government Code section 8630 and Los Angeles County Code Section 2.68.110, the following shall be unlawful:

1. Goods and Services. For a period of 30 days following that proclamation or declaration, it is unlawful for a person, contractor, business, or other entity to sell or offer to sell any vital and necessary 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 10 percent above the price charged by that person for those goods or services immediately prior to the proclamation or declaration of emergency, subject to the conditions set forth in subsection (C) of this Section.

2. Construction Goods and Services. For a period of 180 days following that proclamation or declaration, it is unlawful for a contractor to sell or offer to sell any vital and necessary repair or reconstruction services or any services used in

emergency cleanup for a price of more than 10 percent above the price charged by that person for those services immediately prior to the proclamation or declaration of emergency, subject to the conditions set forth in subsection (C) of this Section.

3. Hotels and Motels. For a period of 30 days following that proclamation or declaration, it is unlawful for an owner or operator of a hotel or motel to increase the hotel's or motel's regular rates, as advertised immediately prior to the proclamation or declaration of emergency, by more than 10 percent, subject to the conditions set forth in subsection (C) of this Section.

B. A business offering an item for sale at a reduced price immediately prior to the proclamation or declaration of the emergency may use the price at which it usually sells the item to calculate the price pursuant to subsections (A)(1) or (A)(2) of this Section.

C. For the pricing of goods and services, construction goods and services, and hotel and motel rates described in subsections (A)(1), (A)(2), and (A)(3) of this Section, a greater price increase is not unlawful if the person, contractor, business, owner, operator or other entity selling the goods or services 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, goods 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 seller's or contractor's supplier or additional costs of providing the goods or services during the state of emergency, the

price represents no more than 10 percent above the total of the cost to the seller or contractor plus the markup customarily applied by the seller or contractor for that good or service in the usual course of business immediately prior to the onset of the state of emergency. In addition, a greater price increase is not unlawful if an owner or operator of a hotel or motel can prove that the increase in price is due to seasonal adjustments in rates that are regularly scheduled, or to previously contracted rates.

D. The provisions of this Section may be extended pursuant to California Penal Code section 396 (e) for additional 30-day periods by the Board of Supervisors or the California Legislature, if deemed necessary to protect the lives, property, or welfare of the citizens.

8.09.050 Reporting.

Any person believing that a violation of this Chapter has been committed may file a complaint with the Department of Consumer and Business Affairs, who shall forward the complaint to the District Attorney for prosecution when the Department of Consumer and Business Affairs has evidence of a violation of this Chapter.

8.09.060 Penalties and Enforcement.

A. Any person who shall be convicted of violating the provisions of this Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000 or by imprisonment in the County jail for not more than six months, or by both such fine and imprisonment.

B. A violation of this Chapter is a violation of California Penal Code section 396, and shall constitute an unlawful business practice and an act of unfair competition within the meaning of section 17200 of the California Business and Professions Code. The remedies and penalties provided by this Section are cumulative with the remedies and penalties under section 396 of the California Penal Code, section 17200 of the California Business and Professions Code, and the remedies and penalties available under all other laws of this State.

C. The Department of Consumer and Business Affairs shall be responsible for the administration of this Chapter, including, but not limited to, public education and outreach, and investigation of complaints that a person has violated any provision of this Chapter. Additionally, the Department of Consumer and Business Affairs shall be designated as the enforcement officer, as defined in subsection B of Section 1.25.020 of the County Code, responsible for final determination and imposition of administrative fines to be issued and for appearances before the administrative hearing officer as provided for in Chapter 1.25 of the County Code. The Department of Consumer and Business Affairs shall also recommend rules governing this Chapter. Such rules shall be presented to the Board of Supervisors and shall become effective when approved by a majority vote of the Board.

D. The District Attorney shall be the enforcement officer responsible for prosecution of criminal charges pursuant to California Penal Code section 396.

E. The District Attorney, or the County Counsel with agreement of the District Attorney, may bring a civil action pursuant to California Business and Professions Code section 17206 to enforce this Chapter.

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