

ORDINANCE NUMBER O- 19410 (NEW SERIES)

ADOPTED ON SEP 06 2005

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 1, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING A NEW DIVISION 2, SECTIONS 51.0201, 51.0202, 51.0203 AND 51.0204, ALL RELATED TO EMERGENCIES AND MAJOR DISASTERS; UNFAIR PRICING PRACTICES.

WHEREAS, the City Council of the City of San Diego finds that some unscrupulous merchants are taking advantage of citizens during and after both natural and manmade disasters by engaging in unfair pricing practices during and shortly after a state of emergency; and

WHEREAS, the state law provides protections to citizens from unfair pricing practices during and shortly after a state of emergency, through both civil and criminal remedies; and

WHEREAS, state law allows local governments to enact ordinances which prohibit unfair pricing practices during and shortly after a state of emergency and to impose penalties; and

WHEREAS, the City Council of the City of San Diego finds that local regulation is needed to further deter and curb unfair pricing practices and to protect the health, safety, and welfare of its citizens; and

WHEREAS, the City Council pursuant to Charter section 17, is authorized to pass an emergency ordinance for the immediate preservation of the public peace, property, health, or safety; and

WHEREAS, gas prices have risen to unprecedented levels, exacerbated by Hurricane Katrina; and

WHEREAS, Hurricane Katrina has resulted in a dramatic increase in gasoline prices which economists predict will raise the prices of consumer food items, heating oil, and other basic necessities essential to public health and safety; and

WHEREAS, the City Council finds that an emergency ordinance is necessary due to the rapidly increasing price of gasoline, which affects the ability of the City to deliver basic public services, including fire and police services; and

WHEREAS, these basic City services are needed to protect the health, and safety of the citizens of San Diego and to preserve the public peace; and

WHEREAS, as to all unfair pricing practices, there is currently no enforcement mechanism to prevent unfair pricing absent a declaration of a state of emergency in California by the Governor or local officials; and

WHEREAS, an enforcement mechanism is needed to protect San Diego consumers from the effect of unfair pricing in the local market; and

WHEREAS, the City Council declares an emergency under Charter section 17 and desires to enact an ordinance which provides those further protections to its citizens; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 5, Article 2 of the San Diego Municipal Code is amended by adding a new Division 2, Section 51.0201, 51.0202, 51.0203 and 51.0204, to read as follows:

DIVISION 2

EMERGENCIES AND MAJOR DISASTERS;

UNFAIR PRICING PRACTICES.

§ 51.0201 Authority

Pursuant to California Penal Code Section 396(i), 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. This Division does not apply where prohibited or preempted by state or federal law.

§ 51.0202 Purpose

It is the intent of the City Council to ensure that citizens are protected from excessive and unjustified increases in the prices charged during or shortly after a declared state of emergency for goods and services that are vital and necessary for the health, safety, and welfare of consumers. This ordinance shall apply when there is a proclamation of a state of emergency resulting from an earthquake, flood, fire, riot, storm, or natural or man made disaster declared by the President of the United States or the Governor, or executive officer or body of the City of San Diego. This ordinance shall also apply to declarations of a local or national emergency outside the jurisdiction of the City of San Diego which causes excessive and unjustified increases in the prices of goods and services vital and necessary for the health, safety, and welfare of consumers within the City of San Diego.

§ 51.0203 Definitions

- (1) “State of Emergency” means an emergency resulting from an earthquake, flood, fire, riot, storm, 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, the executive officer or body of the City of San Diego, or any Governor of any of the United States of America.
- (2) “Local Emergency” means an emergency resulting from an earthquake, flood, fire, riot, storm, or other natural or manmade disaster, for which a state of emergency has been declared by the executive officer or governing body of any city or county in the United States.
- (3) “Consumer food item” means any article that is used or intended for use for food, drink, confection, or condiment by a person or animal.
- (4) “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 any type that is damaged as a result of a disaster.
- (5) “Emergency supplies” includes, but is not limited to, water, flashlights, radios, batteries, candles, blankets, soaps, diapers, temporary shelters, tape, toiletries, plywood, nails and hammers.

- (6) "Medical supplies" includes, but is not limited to, prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products.
- (7) "Building materials" means lumber, construction tools, windows, and anything else used in the building or rebuilding of property.
- (8) "Gasoline" means any fuel used to power any motor vehicle or power tool.
- (9) "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.
- (10) "Housing" means any rental housing leased on a month-to-month or one year term.
- (11) "Goods" has the same meaning as defined in subdivision (c) of Section 1689.5 of the Civil Code.

§ 51.0204 Unlawful Pricing Practices

- (a) Upon the proclamation of a state of emergency as defined in Section 52.0203, and for a period of 30 days following that declaration, 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 10

percent above the price charged by that person for those goods or services immediately prior to the proclamation 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 upon 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 sellers' supplier or additional costs of providing the good or service during the state of emergency, the price represents no more than 10 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 onset of the state of emergency. A business offering an item for sale at a reduced price immediately prior to the proclamation of the emergency may use the price at which it usually sells the item to calculate the price pursuant to this section.

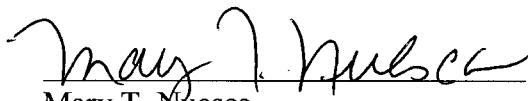
- (b) The provisions of this section may be extended for additional 30-day period by the local legislative body if deemed necessary to protect the lives, property, or welfare of the citizens.
- (c) A violation of this section is a misdemeanor punishable by imprisonment in a county jail for a period not exceeding six months, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment.

- (d) A violation of this section shall constitute an unlawful business practice and an act of unfair competition within the meaning of section 17200 of the Business and Professions Code. The remedies and penalties provided by this section are cumulative to each other, the remedies under section 17200 of the Business and Professions Code and the remedies or penalties available under all other laws of this State.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. That this emergency ordinance shall take effect and be in force on the day of its adoption by the Council of the City of San Diego in accordance with Charter section 17.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Mary T. Nuesca
Deputy City Attorney

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09/02/05
Or.Dept:City Atty
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