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ORDINANCE NO. 2522

**AN EMERGENCY ORDINANCE OF THE COUNCIL OF THE CITY
OF CHICO ADDING CHAPTER 9.55 TO THE CHICO MUNICIPAL
CITY CODE TO IMPOSE A PROHIBITION ON PRICE GOUGING
DURING AND FOLLOWING A DECLARED EMERGENCY**

WHEREAS, the Camp Fire of November 2018 destroyed over 125,000 acres and burned over 6,500 structures in Butte County, resulting in a large displacement of residents from the Town of Paradise and other surrounding communities; and

WHEREAS, on November 9, 2018, the Governor of California proclaimed a State of Emergency for the County of Butte and on November 12, 2018, the President of the United States declared the existence of a major disaster in the State of California and ordered Federal aid to supplement State and local recovery efforts in the areas affected by wildfire; and

WHEREAS, City officials have been alerted to the possibility of price gouging by persons offering housing for rent or other needed goods and services in the City of Chico, and have seen from other similar events that such gouging may also include eviction of existing tenants of rental property, so that landlords may take advantage of fire victims whose insurance companies may pay rental rates in excess of what was previously charged for existing tenants; and

WHEREAS, California Penal Code Section 396 controls price increases for rental housing, goods and services related to emergency response and recovery for an initial period of thirty (30) days after declaration of an emergency by the President, Governor or local agency, and generally prohibits charging a price that exceeds by more than ten percent (10%) the price of the rental unit, good or service before the declaration of emergency; and

WHEREAS, California Penal Code Section 396 permits a local legislative body to extend the price controls for additional thirty (30) day periods as needed to protect the lives, property or welfare of its citizens. Penal Code Section 396 allows for a city to prohibit the same or similar conduct or impose a more severe penalty for the conduct prohibited by Penal Code Section 396; and

WHEREAS, Penal Code Section 396 applies to hotels, motels and any other rental housing restricting set rates and lease to what was advertised immediately prior to the emergency declaration; and

WHEREAS, the Chico City Council has previously found that the City of Chico is experiencing a housing crisis, and prior to the Camp Fire there existed a severe lack of rental housing, particularly rental housing that is affordable to lower and moderate-income residents; and

WHEREAS, the extreme number of housing units damaged in the Town of Paradise and the surrounding area increases the pressure on rental housing demand and shortage in Chico by several orders of magnitude; and

1 WHEREAS, the destruction of housing units exacerbates the pressure of persons who lived and
2 worked in the Town of Paradise, and those who will be working to restore the viability of the Town
of Paradise, to relocate to other housing far from their home due to the housing shortage; and

3 WHEREAS, Section 612 of the Chico City Charter authorizes the adoption of an emergency
4 measure being effective immediately for the preservation of the public peace, welfare, health or
5 safety, with four (4) affirmative votes for a period not to exceed 6 months; and

6 WHEREAS, the Chico City Council finds that this ordinance is necessary for the preservation of
7 the public welfare, health and safety of residents living within the City of Chico and find an
urgency to approve said ordinance immediately.

8 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Chico does hereby adopt
9 the following ordinance establishing Chapter 9.55 Prohibition on Price Gouging:

10 **Section 1. Urgency Findings.**

11 The City Council finds and declares that the adoption of this Urgency Ordinance is
12 necessary for the immediate preservation of the public peace, health, and safety. Currently, the
13 City is without a local regulation of price gouging under states of emergency. The proposed
14 ordinance addresses local regulation allowed pursuant to Penal Code section 396 and creates a
15 local penalty provision. The Camp Fire destroyed over 6,500 structures, necessitating the
16 declaration of state of emergency by the Governor of California for the County of Butte. Instances
17 of price gouging have been reported to City officials. Therefore, the City Council finds and
determines that the immediate preservation of the public peace, health and safety requires that this
Ordinance be enacted as an urgency ordinance pursuant to Charter Section 612 and take effect
immediately upon adoption. Based on the foregoing, the City Council declares this Ordinance is
necessary for the immediate preservation of the public peace, health and safety.

18 **Section 2. City Code Amendment.**

19 **Chapter 9.55**
Prohibition of Price Gouging

20 **Section:**

21 **9.55.010 Findings.**

22 **9.55.020 Prohibition on Price Gouging.**

23 **9.55.030 Restrictions on Evictions.**

24 **9.55.040 Repair and Reconstruction Services.**

25 **9.55.050 Definitions.**

26 **9.55.060 Term of Ordinance.**

27 **9.55.010 Findings.**

28 The city council finds as follows:

- A. Beginning on the morning of November 8, 2018, a series of wildfire events, identified as the Camp Fire burned over 125,000 acres in the County of Butte and surrounding areas and damaged or destroyed over 6,500 homes and 260 commercial structures where the majority were within the boundaries of the Town of Paradise; and

- 1 B. On November 9, 2018, the Governor of California proclaimed a State of Emergency for
2 Butte County and on November 12, 2018, the President of the United States declared the
3 existence of a major disaster in the State of California and ordered Federal aid to
4 supplement State and local recovery efforts in the areas affected by wildfire; and
- 5 C. California Penal Code Section 396 controls price increases for rental housing,
6 goods and services related to emergency response and recovery for an initial period
7 of thirty (30) days after declaration of an emergency by the President, Governor or
8 local agency, and generally prohibits charging a price that exceeds by more than
9 ten percent (10%) the price of the rental units, goods or services as such existed
10 before the declaration of an emergency event. Penal Code Section 396 permits a
11 local legislative body to extend the price controls for additional thirty (30) day
12 periods as needed to protect the lives, property or welfare of its citizens. Nothing in
13 Penal Code Section 396 preempts a city's ability to prohibit the same or similar
14 conduct and allows a city to impose a more severe penalty for the conduct
15 prohibited by Penal Code Section 396. Penal Code Section 396 applies to hotels,
16 motels and any other rental housing restricting set rates and lease to what was
17 advertised immediately prior to the emergency declaration; and
- 18 D. The Council has previously found that the City of Chico is experiencing a
19 housing crisis, and a severe lack of rental housing, particularly rental housing
20 that is affordable to lower and moderate-income residents; and
- 21 E. The housing units damaged and destroyed by an emergency increase the rental
22 housing shortage further impairing the ability of persons who live and work in the
23 City of Chico to find housing or residents who have been displaced by an
24 emergency to relocate to other housing in Chico; and
- 25 F. City officials have been alerted to the possibility of price gouging by persons
26 offering housing for rent, goods and services in the City of Chico, and have
27 been informed that price gouging may also include eviction of existing tenants
28 of rental properties, so landlords may take advantage of victims of emergencies
whose insurance companies may pay rental rates in excess of what was
previously charged for existing tenants; and
- G. While the pricing of consumer goods and services is generally best left to the
marketplace under ordinary conditions, when a declared state of emergency or local
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, the events of the Camp Fire and other states of
emergency highlight the need for the City of Chico to establish local regulations
relating to price gouging during times of emergencies to protect residents from
excessive and unjustified increases in the prices charged during or shortly after a
declared state of emergency or local emergency for goods and services that are vital
and necessary for the health, safety, and welfare of consumers; and

1 H. Section 612 of the Chico City Charter authorizes the adoption of an emergency
2 measure, referred to as an emergency ordinance, for preserving the public peace,
3 welfare, health or safety and such an emergency measure requires at least four (4)
4 affirmative votes of the City Council for adoption and must be read in full; and,

5 I. The City Council has been provided with information upon which the findings
6 and actions set forth in this Ordinance are based, allowing the Council to adopt this
7 emergency ordinance to be effective upon adoption; and

8 J. The City Council hereby finds that this Ordinance is necessary for immediate
9 preservation of the public peace, health or safety based upon the findings
10 contained herein.

11 **9.55.020 Prohibition on Price Gouging.**

12 A. Rental Housing. It is unlawful for any person, business or other entity during the
13 emergency declaration period to rent, lease or offer to rent or lease, or increase the
14 rental price, to any existing or prospective tenant for any housing unit, of any kind,
15 within the City of Chico, for a price of more than 10 percent above the average
16 retail price charged for that housing unit immediately prior to the occurrence of
17 a Declared Emergency, unless that person, business or entity can prove that the
18 increase in price is directly attributable to additional costs for labor or materials
19 used to provide the rental unit, in which case, the price shall not be more than
20 10 percent above the total cost of providing that rental unit.

21 B. Transient Housing. It is unlawful for any person, business or other entity
22 during the emergency declaration period to rent or lease a hotel or motel
23 room, or other short-term or long-term rental unit, including a vacation rental
24 unit, in the City of Chico, for more than 10 percent above the hotel, motel or
25 other short-term or long-term rental's regular rates, as advertised immediately
26 prior to the occurrence of a Declared Emergency, unless that person, business
27 or other entity can prove that the increase in price is directly attributable to
28 additional costs imposed on it for goods or labor used in the business, to
seasonal adjustments in rates that are regularly scheduled, or to previously
contracted rates.

C. Sales of Goods and Services. It is unlawful for any person, contractor, business,
or other entity during the emergency declaration period 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, in the City of Chico, for a price of more than 10 percent above
the price charged by that person for those goods or services immediately prior
to the occurrence of a Declared 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 on it by the supplier of the goods, or

1 directly attributable to additional costs for labor or materials used to provide the
2 services, provided that in those situations where the increase in price is
3 attributable to additional costs imposed by the seller's supplier or additional
4 costs of providing the good or service during the state of emergency, the price
5 represents no more than 10 percent above the total of the cost to the seller plus
6 the markup customarily applied by the seller for that good or service in the usual
7 course of business immediately prior to the onset of the state of emergency.

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14 **9.55.030 Restrictions on Evictions.**

15 A. It shall be unlawful for any person to evict an existing tenant or terminate an
16 existing lease or month-to-month rental agreement during the emergency
17 declaration period and subsequently rent or lease the same dwelling unit,
18 including a vacation rental unit, in the City of Chico for more than the average
19 retail price, unless such person can prove that the excess is directly attributable
20 to additional costs resulting from the labor or materials necessary to provide
21 the rental. In such instances, only the actual cost increase may be added to the
22 average retail price. This section does not prohibit an owner from evicting a tenant
23 for any lawful reason, including pursuant to Section 1161 of the Code of Civil
24 Procedure. It shall not be a violation of this subdivision for a person, business, or
25 other entity to continue an eviction process that was lawfully begun prior to the
26 proclamation or declaration of emergency.

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28 **9.55.040 Repair and Reconstruction Services.**

During the emergency declaration period, it shall be 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 10 percent above the price charged by that person for those
services immediately prior to the proclamation or declaration 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 on it by the supplier of the goods, or directly
attributable to additional costs for labor or materials used to provide the services, during the
state of emergency or local emergency, and the price represents no more than 10 percent
greater than 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
onset of the state of emergency or local emergency. Nothing in this ordinance shall limit,
shorten or otherwise affect the provisions of Penal Code Section 396 applicable to
repair or reconstruction services.

9.55.050 Definitions.

For the purposes of this Chapter, the following terms have the following meanings:

- (1) "Declared emergency" means a State of Emergency or Local Emergency.
- (2) "Emergency declaration period" shall mean the longer of the period of time
stated in the declaration of a state of emergency, the declaration of a local
emergency, or such other period of time established by the City Council by
ordinance.
- (3) "State of emergency" means a natural or manmade emergency resulting from an
earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, or

1 other natural or manmade disaster for which a state of emergency has been declared by
2 the President of the United States or the Governor.

- 3 (4) "Local emergency" means a natural or manmade emergency resulting from an
4 earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, or
5 other natural or manmade disaster for which a local emergency has been declared by the
6 City Council or City official vested with such authority to make such declaration.
- 7 (5) "Consumer food item" means any article that is used or intended for use for food, drink,
8 confection, or condiment by a person or animal.
- 9 (6) "Repair or reconstruction services" means services performed by any person who is
10 required to be licensed under the Contractors' State License Law (Chapter 9
11 (commencing with Section 7000) of Division 3 of the Business and Professions Code),
12 for repairs to residential or commercial property of any type that is damaged as a result
13 of a disaster.
- 14 (7) "Emergency supplies" includes, but is not limited to, water, flashlights, radios, batteries,
15 candles, blankets, soaps, diapers, temporary shelters, tape, toiletries, plywood, nails, and
16 hammers.
- 17 (8) "Medical supplies" includes, but is not limited to, prescription and nonprescription
18 medications, bandages, gauze, isopropyl alcohol, and antibacterial products.
- 19 (9) "Building materials" means lumber, construction tools, windows, and anything else used
20 in the building or rebuilding of property.
- 21 (10) "Gasoline" means any fuel or energy source used to power any motor vehicle or power
22 tool.
- 23 (11) "Transportation, freight, and storage services" means any service that is performed by
24 any company that contracts to move, store, or transport personal or business property or
that rents equipment for those purposes, including towing services.
- (12) "Housing" means any rental housing with an initial lease term of no longer than one
year, including, but not limited to, a space rented in a mobile home park or
campground.
- (13) "Average retail price" means the rental price for the dwelling unit during the
thirty (30) day period immediately preceding Declared Emergency.
- (14) "Goods" has the same meaning as defined in subdivision (c) of Section 1689.5 of the
Civil Code.

25 **9.55.060 Term of Ordinance.**

26 A. This Ordinance shall be effective immediately upon its adoption.

27 B. For purposes of the Camp Fire, emergency declaration period is hereby
28 established to extend until May 16, 2019, unless otherwise extended by the City
Council, or until such later date as established by a declaration of a state of
emergency regarding the Camp Fire.

Section 3. Authority. This Ordinance is enacted pursuant to the City of Chico's general
police powers, Article II of the Charter of the City of Chico, Article VI of the Charter of
the City of Chico and Article XI of the California Constitution.

Section 4. Environmental Determination. The Council finds that the adoption and
implementation of this ordinance is exempt from the provisions of the California

1 Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3)
2 because it can be seen with certainty that there is no possibility that the Ordinance
3 may have a significant effect on the environment, Public Resources Code Section
4 21080(b)(3) regarding repairs and replacement work after a state-declared disaster,
5 Public Resources Code Section 21080(b)(4) regarding actions to mitigate or prevent an
6 emergency, and CEQA Guidelines Section 15269(a) regarding maintaining, repairing,
7 restoring, demolishing, or replacing property or facilities damaged or destroyed as a
8 result of a disaster in a disaster stricken area in which a state of emergency has been
9 proclaimed by the Governor pursuant to the California Emergency Services Act,
10 commencing with Section 8550 of the Government Code, and CEQA Guidelines Section
11 15269(c) regarding specific actions necessary to prevent or mitigate an emergency.

12 Section 5. Severability. If any section, subsection, sentence, clause, phrase or word of this
13 Ordinance is for any reason held to be invalid and/or unconstitutional by a court of
14 competent jurisdiction, such decision shall not affect the validity of the remaining portions
15 of this Ordinance.

16 Section 6. Effective Date. This Ordinance shall take effect immediately upon its adoption.

17 Section 7. Certification. The City Clerk shall certify to the passage and adoption of this
18 Ordinance and shall cause the same to be published or posted in the manner required by law.

19 THE FOREGOING ORDINANCE was adopted by the City Council of the City of Chico,
20 California at its Special City Council meeting held this 16th day of November 2018, by the
21 following votes to wit:

22 AYES: Coolidge, Ory, Schwab, Sorensen, Stone, Fillmer, Morgan


23 NOES: None

24 ABSENT: None

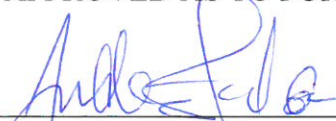
25 ABSTAIN: None

26 DISQUALIFIED: None

27 ATTEST:

28 
Deborah R. Presson, City Clerk

APPROVED AS TO FORM:


Vincent C. Ewing, City Attorney*

*Pursuant to The Charter of the City of Chico, Section 906(E)