

ORDINANCE NO. 1816 N.C. (2d)

**AN EMERGENCY ORDINANCE OF THE CITY OF VALLEJO ADDING
CHAPTER 7.300 TO TITLE 7 (PUBLIC HEALTH, SAFETY AND WELFARE)
OF THE VALLEJO MUNICIPAL CODE TO IMPOSE A PROHIBITION ON PRICE GOUGING
DURING AND FOLLOWING A DECLARED EMERGENCY**

WHEREAS, on November 9, 2018, the Governor of California proclaimed a State of Emergency for the County of Solano in response to severe wildfires occurring in 2017 and 2018 in jurisdictions adjacent to the City of Vallejo; and

WHEREAS, 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, the substantial number of housing units damaged in neighboring Napa and Sonoma Counties and the surrounding area resulted in an influx of displaced residents seeking housing in the City of Vallejo, which influx has increased the demand for rental housing and exacerbated an already severe shortage of housing – particularly rental housing that is affordable to lower and moderate-income residents within the City of Vallejo; and

WHEREAS, the City of Vallejo has been subjected to an influx of displaced residents and other related impacts resulting in a reduction of available rental housing stock from 3.35 percent to 1.7 percent meaning there is essentially no rental housing available in the City of Vallejo; and

WHEREAS, City officials have been alerted about price gouging by persons offering housing for rent in the City of Vallejo, 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 30 days after a declaration of an emergency by the President, Governor or local agency, and generally prohibits charging a price that exceeds by more than 10 percent the price of the rental unit, good or service before the declaration of emergency; and

WHEREAS, Penal Code Section 396 applies to hotels, motels and any other rental housing and generally prohibits setting new rental rates for such housing at an amount that exceeds more than ten percent of the rent for the unit that was charged or advertised immediately prior to the emergency declaration; and

WHEREAS, California Penal Code Section 396 permits a local legislative body to extend the price controls for additional 30 day periods as needed to protect the lives, property or welfare of its citizens; and

WHEREAS, California 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, Section 316 of the Vallejo City Charter provides that no ordinance shall become effective until 30 days after adoption, with the exception of an emergency ordinance adopted in the manner provided by the City Charter and the Municipal Code; and

WHEREAS, Section 312 of the Vallejo City Charter provides that any ordinance declared by the Council to be necessary as an emergency measure for preserving the public peace, health or safety and containing a statement of the reasons for its urgency may be introduced and adopted at the same meeting if passed by at least 5 affirmative votes; and

WHEREAS, the Vallejo City Council finds that due to the facts set forth above and in Section 1, Urgency Findings, of this ordinance, this ordinance is necessary for the preservation of the public welfare, health and safety of residents living within the City of Vallejo and finds an urgency to approve said ordinance immediately.

NOW THEREFORE, THE COUNCIL OF THE CITY OF VALLEJO DOES ORDAIN AS FOLLOWS:

SECTION 1. Urgency Findings.

The City Council finds and declares as follows:

- A. Penal Code Section 396 controls price increases for rental housing for an initial period of 30 days after a declaration of an emergency by the President, Governor or local agency, and generally prohibits charging a price that exceeds by more than 10 percent the price of the rental unit before the declaration of emergency. This statute permits the President, Governor, or local agency to extend the price controls for additional 30 day periods as needed to protect the lives, property or welfare of its citizens. Nothing in Section 396 preempts the City of Vallejo's ability to prohibit the same or similar conduct or impose a more severe penalty for the conduct prohibited by Section 396. Section 396 applies to hotels, motels and "... any rental housing with an initial lease term of no longer than one year."
- B. The City of Vallejo is currently experiencing a severe affordable housing shortage caused in part by multiple fast moving wildfires in 2017 and 2018, which ravaged Northern California's wine country and burned thousands of homes and other structures across hundreds of thousands of acres. As many as 250 wildfires burned in Northern California during this period, including 21 major fires throughout Napa, Lake, Sonoma, Mendocino, Butte and Solano Counties. These numerous wildfires destroyed over 8,000 structures, displaced thousands of people, and created extraordinary amounts of fire debris. In response to these numerous wildfires and the resulting economic impacts, Governor Brown issued a state of emergency in Napa County and Sonoma County on October 9, 2017, and a state of emergency on October 10, 2017 in Solano County. Thereafter, on October 18, 2017, Governor Brown issued Executive Order B-43-17, which activated the price gouging prohibitions of California Penal Code Section 396 for the affected counties, including Solano County, and waived the 30-day limitation set forth in the statute.
- C. The 2017 Tubbs fire, which started in Sonoma County and then spread to the City of Santa Rosa, resulted in the mandatory evacuation of the City of Santa Rosa after the Santa Rosa City Manager declared the fire to be a local emergency. This fire destroyed several neighborhoods, burning an estimated 27,000 acres to the ground.

- D. The 2017 Atlas fire, which burned just outside the City of Napa, is estimated to have destroyed 25,000 acres. This fire spread from Napa and Sonoma Counties into Solano County and depleted the area's housing stock and sent displaced residents in search of housing including to the adjacent City of Vallejo.
- E. On April 16, 2018, Governor Brown issued Executive Order B-51-18, which extended to December 4, 2018 the price gouging prohibitions contained in his original Executive Order, including the 10 percent rent increase limitations for several counties, including Solano County.
- F. On July 28, 2018, Governor Brown issued a proclamation declaring a state of emergency for Lake, Mendocino and Napa Counties as a result of fires occurring in those counties, including the River, Ranch, and Steele fires.
- G. Executive Order B-51-18 expired in December 2018, and was not extended, thereby aggravating the housing crisis in the City of Vallejo.
- H. On June 3, 2019, Governor Newsom issued Executive Order N-12-19, which extended the price gouging prohibitions of California Penal Code Section 396, including the prohibition on rent increases over 10 percent, for several counties, including Napa and Sonoma, but not Solano. This executive order was intended to help residents still recovering from the 2017 and 2018 fires, including the Mendocino Complex, Carr, Tubbs, Nuns, Atlas and Thomas fires.
- I. In May of 2019, the California Housing Partnership published Solano County's Housing Emergency Update containing the following key findings:
1. Cuts in Federal and State funding have reduced investment in affordable housing in Solano County by more than \$27 million annually since 2008, a 90 percent reduction.
 2. Solano County needs 13,801 more affordable rental homes to meet current demand.
 3. Renters in Solano County need to earn \$36.06 per hour – three times the State minimum wage – to afford the median asking rent of \$1,875 per month.
 4. Solano County's Low Income Housing Tax Credit production and preservation has declined since 2016, due to lack of local funding resources.
 5. In Solano County 80 percent of Extremely Low Income households are paying more than half of their income on housing costs compared to just 3.9 percent of moderate income households.
- J. According to pooled data analyzed by the Bay Area Equity Atlas, the City of Vallejo suffers an even more significant and disproportionate housing burden in terms of tenure and severity than the rest of California, with 60 percent of renters burdened, as compared to 49 percent of Bay Area (Nine County) renters and 56 percent of California residents burdened. In this context "housing burden" refers to the share of owner- and renter-occupied households that are cost-burdened (spending more than 30 percent of income on housing costs) and "severely" cost-burdened (more than 50 percent).

- K. Data from the 2018 American Community Survey shows that 34 percent of renters in the City of Vallejo pay more than 50 percent of their household income for rent,¹ with an additional 9 percent of renters paying between 40 percent and 50 percent of their household income towards rent, putting a significant portion of City residents at risk.
- L. City of Vallejo officials have received information that in at least two apartment complexes (Strawberry Hill and Holiday Gardens), landlords have given notices of a rent increase of almost 100 percent, nearly doubling existing rents as of July 1, 2019. These proposed rent increases would affect at least 154 units which are occupied by, and thus disproportionately affect, older Americans, immigrants, persons with disabilities, and low income families. Prior to the rent increase notices, rents in the subject apartment complexes had averaged about \$900.
- M. City of Vallejo staff and officials attempted to negotiate with the landlords to obtain a reasonable reprieve to avoid imminent displacement of the more than 460 residents of Strawberry Hill and Holiday Gardens who are at risk of imminent homelessness as a result of the proposed doubling of their rents, but were unable to obtain a reprieve to avoid the risk of homelessness and its effect on dozens of residents' health and wellbeing.
- N. The proposed rent increases at Strawberry Hill and Holiday Gardens are excessive and arbitrary, and were imposed to take advantage of the housing shortage resulting from the recent fires and as a means of avoiding the potential enactment of a rent control ordinance by the City of Vallejo.
- O. On June 25, 2019, the Vallejo City Council authorized a letter to be sent to Governor Newsom asking for Solano County to be included within Executive Order N-12-19 so that City of Vallejo residents could be protected from the price gouging occurring as a result of the housing shortage caused in part by the influx of residents from adjacent counties impacted by the wildfires.
- P. Based on the foregoing, the adoption of this Urgency Ordinance is necessary for the immediate preservation of the public peace, health, and safety. Currently, the City of Vallejo is without a local regulation precluding price gouging of rental rates under states of emergency. The proposed ordinance is a local regulation allowed pursuant to Penal Code section 396 and creates a local penalty provision.

¹ <https://www.towncharts.com/California/Housing/Vallejo-city-CA-Housing-data.html>;
<https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

SECTION 2. A new Chapter 7.300 is hereby enacted to read as follows:

Chapter 7.300.
PROHIBITION OF PRICE GOUGING

Sections:

- 7.300.010 Findings.**
- 7.300.020 Prohibition on Price Gouging.**
- 7.300.030 Restrictions on Evictions.**
- 7.300.040 Definitions.**
- 7.300.050 Retroactivity and Rent Rollback.**

7.300.010 Findings.

- A. The City of Vallejo is currently experiencing a severe affordable housing shortage resulting in part by multiple fast moving wildfires in 2017 and 2018, which ravaged Northern California's wine country and which burned thousands of homes and other structures across hundreds of thousands of acres. As many as 250 wildfires burned in Northern California during this period, with 21 becoming major fires throughout Napa, Lake, Sonoma, Mendocino, Butte and Solano Counties.
- B. The 2017 Tubbs fire, which started in Sonoma County then spread to the City of Santa Rosa, resulted in the mandatory evacuation of the City of Santa Rosa after the Santa Rosa City Manager declared the fire to be a local emergency. This fire destroyed several neighborhoods, burning an estimated 27,000 acres to the ground.
- C. The 2017 Atlas fire, which burned just outside the City of Napa, is estimated to have destroyed 25,000 acres. This fire depleted the area's housing stock and sent displaced residents in search of housing to the adjacent City of Vallejo.
- D. The numerous wildfires near the City of Vallejo destroyed over 8,000 structures, displaced thousands of people, and created extraordinary amounts of fire debris. In response to these wildfires and the resulting economic impacts, Governor Brown issued a state of emergency in Napa County and Sonoma County on October 9, 2017, and a state of emergency on October 10, 2017 in Solano County. Thereafter, on October 18, 2017, Governor Brown issued Executive Order B-43-17, which activated the price gouging prohibitions of California Penal Code Section 396 for the affected counties, including Solano County, and waived the 30-day limitation set forth in the statute. On April 16, 2018, Governor Brown issued Executive Order B-51-18, which extended to December 4, 2018, the price gouging prohibitions contained in his original Executive Order, including the 10 percent rent increase limitations for several counties, including Solano County. Executive Order B-51-18 expired in December 2018, and was not extended, thereby aggravating the housing crisis in the City of Vallejo.
- E. In June of 2019, up to 600 low-income, elderly, disabled and otherwise vulnerable City of Vallejo residents, many of whom are members of protected classes, faced imminent displacement and homelessness due to price-gouging rent increases, which included notices that doubled existing monthly rental amounts. Upon learning of the imminent homelessness of hundreds of residents as a result of these price gouging actions, along with an absence of available comparable housing in the City of Vallejo, on June 27, 2019, the City Manager, acting as the Director of Emergency Services for the City of Vallejo,

executed a Proclamation of Emergency declaring a housing crisis in the City of Vallejo pursuant to Vallejo Municipal Code Section 2.50.060. On July 3, 2019, within seven days thereafter, the City Council of the City of Vallejo confirmed and ratified the proclamation.

- F. 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 30 days after a declaration of an emergency by the President, Governor or local agency and generally prohibits charging a price that exceeds by more than 10 percent of the price of the rental units, goods or services as such existed before the declaration of an emergency event. Penal Code Section 396 permits a local legislative body to extend the price controls for additional 30 day periods as needed to protect the lives, property or welfare of its citizens. Nothing in Penal Code Section 396 preempts a city's ability to adopt an ordinance that prohibits the same or similar conduct and allows a city to impose a more severe penalty for the conduct prohibited by Penal Code Section 396. Penal Code Section 396 applies to hotels, motels and any other rental housing with an initial lease term of no longer than one year.
- G. The City Council has previously found that the City of Vallejo is experiencing a housing crisis, and a severe lack of rental housing, particularly rental housing that is affordable to lower and moderate-income residents of the City. Housing units damaged and destroyed by wildfires in adjacent counties have increased the demand for rental housing in the City of Vallejo, exacerbated the existing housing shortage in the City of Vallejo, and further impaired the ability of persons who live and work in the City of Vallejo and persons who have been displaced by the wildfires in neighboring areas to find housing in the City of Vallejo. City officials have been alerted about price gouging by persons offering housing for rent in the City of Vallejo and have been informed that price gouging may also include eviction of existing tenants of rental properties, so landlords may contract out their rental properties to higher-earning medical professionals who work at nearby medical centers and can afford to pay rental rates in excess of the amounts that previously were charged to existing tenants. 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 catastrophic loss of housing caused by the wildfires in Northern California, including the Atlas and Tubbs fires, have exacerbated the housing shortage in the City of Vallejo and have created the need for the City of Vallejo to establish local regulations precluding price gouging for rental units 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 because access to rental housing in the City of Vallejo is vital and necessary for the health, safety, and welfare of its residents and others seeking housing due to the loss of their homes as a result of the wildfires.
- H. Sections 200, 310, 311 and 312 of the Vallejo City Charter authorize the adoption of an emergency measure, referred to as an emergency ordinance, to preserve the public peace, health or safety, if such emergency measure contains a statement of the reasons for such urgency and requires at least 5 affirmative votes of the City Council for adoption. The ordinance must be read in full, unless copies are made available to the public before or during the meeting. The procedures and processes set forth in the City's Charter have been followed, and the City Council has been provided with information upon which the findings and actions set forth in this Ordinance are based, allowing the City Council to adopt this emergency ordinance to be effective immediately upon adoption. The City

Council hereby finds that this Ordinance is necessary for the immediate preservation of the public peace, health and safety based upon the findings contained herein.

7.300.020 Prohibition on Price Gouging.

- A. Rental Housing. It is unlawful for any person, business or other entity during the Emergency Declaration Period to increase the rental price, as defined in Section 7.300.040, advertised, offered, or charged for housing, to an existing or prospective tenant, by more than 10 percent. However, a greater rental price increase is not unlawful if that person can prove that the increase is directly attributable to additional costs for repairs or additions beyond normal maintenance that were amortized over the rental term that caused the rent to be increased greater than 10 percent or that an increase was contractually agreed to by the tenant prior to the proclamation or declaration.

- B. Transient Housing. It is unlawful for any person, business or other entity during the Emergency Declaration Period to rent or lease a hotel or motel room, or other short-term or long-term rental unit, in the City of Vallejo, for more than 10 percent above the hotel, motel or other short-term or long-term rental's regular rates, as advertised immediately prior to the occurrence of a Declared Emergency, unless that person, business or other entity can prove that the increase in price is directly attributable to 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.

7.300.030 Restrictions on Evictions.

It is unlawful for any person, business, or other entity to evict any residential tenant of residential housing after the 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 the City Council or other City official vested with authority to make that declaration, and for a period of 30 days following that proclamation or declaration, or any period that the proclamation or declaration is extended by the applicable authority, to rent or offer to rent to another person at a rental price greater than the evicted tenant could be charged under this section. It shall not be a violation of this subdivision for a person, business, or other entity to evict a tenant pursuant to Section 1161 of the California Code of Civil Procedure or to continue an eviction process that was lawfully begun prior to the proclamation or declaration of emergency.

7.300.040 Definitions.

The following words or phrases, whenever used in this Chapter, shall have the following definitions:

1. "Declared Emergency" means a State of Emergency or Local Emergency.

2. "Emergency Declaration Period" means the longer of the period of time stated in the declaration of a State of Emergency, or the declaration of a Local Emergency or such other period of time established by the City Council by ordinance.

3. "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.

4. "Local Emergency" means a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, or other natural or manmade disaster for which a local emergency has been declared by the City Council or City official vested with such authority to make such declaration.

5. "Rental Price" for Housing means any of the following:

- A. For Housing rented within one year prior to the time of the proclamation or declaration of emergency, the actual Rental Price paid by the tenant. For Housing not rented at the time of the declaration or proclamation, but rented, or offered for rent, within one year prior to the proclamation or declaration of emergency, the most recent Rental Price offered before the proclamation or declaration of emergency. For Housing rented at the time of the proclamation or declaration of emergency but which becomes vacant while the proclamation or declaration of emergency remains in effect, the actual Rental Price paid by the previous tenant or the amount specified in subparagraph B. of this definition, whichever is greater. This amount may be increased by 5 percent if the Housing was previously rented or offered for rent unfurnished, and it is now being offered for rent fully furnished. This amount shall not be adjusted for any other good or service, including, but not limited to, gardening or utilities currently or formerly provided in connection with the lease.
- B. For Housing not rented and not offered for rent within one year prior to the proclamation or declaration of emergency, 160 percent of the fair market rent established by the United States Department of Housing and Urban Development. This amount may be increased by 5 percent if the Housing is offered for rent fully furnished. This amount shall not be adjusted for any other good or service, including, but not limited to, gardening or utilities currently or formerly provided in connection with the lease.
- C. Housing advertised, offered, or charged, at a daily rate at the time of the declaration or proclamation of emergency, shall be subject to the Rental Price described in subparagraph A. of this definition, if the Housing continues to be advertised, offered, or charged, at a daily rate. Housing advertised, offered, or charged, on a daily basis at the time of the declaration or proclamation of emergency, shall be subject to the Rental Price in subparagraph B. of this definition, if the Housing is advertised, offered, or charged, on a periodic lease agreement after the declaration or proclamation of emergency.
- D. For mobile home spaces rented to existing tenants at the time of the proclamation or declaration of emergency, which spaces are subject to Chapter 5.64 (Mobile Home Parks Rent Control) of Title 5 (Business Licenses and Regulations) of the Vallejo Municipal Code, the amount authorized under that Chapter. For new tenants who enter into a rental agreement for a mobile home space that is subject to rent control pursuant to Chapter 5.64, but not rented at the time of the proclamation or declaration of emergency, the amount of rent last charged for a space in the same mobile home park. For mobile home spaces not subject to Chapter 5.64 and not rented at the time of the proclamation or declaration of emergency, the amount of rent last charged for the space.

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

7.300.050 Retroactivity and Rent Rollback.

This ordinance is retroactive to June 27, 2019, and any increases in Rental Price that have been imposed on or after that date shall be in conformance with this ordinance. This ordinance also shall apply retroactively to any increase in Rental Price for which notice was sent by the landlord or the landlord's agent to a tenant but such increase has not yet become effective. Any increase in Rental Price that does not conform to this ordinance shall be rolled back to the Rental Price that was in effect and being charged to a tenant on or before June 27, 2019."

SECTION 3. Authority.

This Ordinance is enacted pursuant to the City of Vallejo's general police powers, Articles II and III of the Charter of the City of Vallejo, and Article XI of the California Constitution, and Section 396 of the California Penal Code.

SECTION 4. Environmental Determination.

The City Council finds that the adoption and implementation of this ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061 (b)(3), because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment, because this ordinance preserves the status quo and the ability for tenants to continue to occupy rental units and in transient Housing within the City of Vallejo, Public Resources Code Section 21080(b)(4) regarding actions to mitigate or prevent an emergency, and CEQA Guidelines Section 15269(c) regarding specific actions necessary to prevent or mitigate an emergency.

SECTION 5. Severability.

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact one or more provisions may be declared invalid.

SECTION 6. Effective Date.

This Ordinance shall take effect immediately upon its adoption.

SECTION 7. Certification.

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

THE FOREGOING ORDINANCE was adopted by the City Council of the City of Vallejo, California at its Special City Council meeting held this 16th day of July 2019, by the following votes to wit:

AYES: Mayor Sampayan, Vice Mayor Dew, Councilmembers Brown, Sunga, and
Verder-Aliga
NOES: None
ABSTAIN: None
ABSENT: Councilmembers McConnell and Miessner



BOB SAMPAYAN, MAYOR

ATTEST:



DAWN G. ABRAHAMSON, CITY CLERK