ORDINANCE NO. 2020—02

AN EMERGENCY ORDINANCE OF THE CITY OF AVENAL ADDING CHAPTER 12 TO TITLE 4 OF THE AVENAL MUNICIPAL CODE RELATING TO PRICE GOUGING AND UNFAIR ADVANTAGE OF CONSUMERS.

THE CITY COUNCIL OF THE CITY OF AVENAL DOES ORDAIN AS FOLLOWS -

TITLE 4 – PUBLIC SAFETY
CHAPTER 12: PRICE GOUGING is added to the Avenal Municipal Code to read:

Section 1: The City of Avenal hereby finds that during a state of emergency or local emergency, including, but not limited to, an earthquake, flood, fire, riot, storm, drought, plant or animal infestation, disease, or other natural or manmade disaster, 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 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. It is the intent of the City in enacting this act to protect residents/public 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. Further, it is the intent of the City that this section be liberally construed so that its beneficial purposes may be served.

Section 2: Upon 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, and for a period of up to 90 days following that proclamation or 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, or building materials, for a price of more than **10 percent greater** than the price charged by that person for those goods or 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 is no more than **10 percent greater** than 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 or local emergency.

Section 3: The prohibitions of this section may be extended for additional 30-day periods, as needed, by the Council, if deemed necessary to protect the lives, property, or welfare of the residents/public.

Section 4: A violation of this section is a misdemeanor punishable by imprisonment in a county jail for a period not exceeding one (1) year, or by a fine of not more than one thousand dollars ($1,000), or by both a fine and imprisonment.

Section 5: 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 6: For the purposes of this section, the following terms have the following meanings:

1) "State of emergency" means a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation, 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.

2) "Local emergency" means a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation, disease, or other natural or manmade disaster for which a local emergency has been declared.

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) "Emergency supplies" includes, but is not limited to, water, flashlights, radios, batteries, candles, blankets, soaps, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers.

5) "Medical supplies" includes, but is not limited to, prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products.

6) "Building materials" means lumber, construction tools, windows, and anything else used in the building or rebuilding of property.

7) "Goods" has the same meaning as defined in subdivision (c) of Section 1689. 5 of the Civil Code.

Section 7: 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 subdivision (b).

Section 8: All businesses selling the goods or services outlined in this Chapter shall post notices provided by the City at front entrances informing the public of the provisions of this Section. Failure to post such notices shall be subject to Administrative Citation.

Section 9: This Ordinance is necessary for the immediate preservation of the public health, peace, property, and safety of the City and its residents/public.

THE FOREGOING ORDINANCE 2020-02 was adopted on March 24, 2020 as follows:

A motion was made by WOOLLEY to adopt Urgency Ordinance Number 2020 -02 which incorporated in the motion findings as stated in said Ordinance. Motion includes waiving both readings; finding that this is an urgency situation; and, Ordinance goes into effect immediately upon a four-fifths vote. The motion to adopt Ordinance No. 2020-02 was seconded by PRECIADO and passed by the following roll call vote:

AYES: WOOLLEY, PRECIADO, RAMIREZ, HERNANDEZ, OVALLE.
NOES: NONE.
ABSTAIN: NONE.
ABSENT: NONE.

BY: _____
Dagoberto Ovalle, MAYOR

ATTEST:

_____
Maria A. Ortiz, CITY CLERK