Print Form

FOR CLERK USE ONLY
City Council
Item No.

CITY COUNCIL AGENDA FACT SHEET

CITY ATTORNEY
Department

JUNE 1, 2010
Requested Date

1. **Request:**

Council Approval	☒	Information Only/ Presentation	☐
Other (specify)	☐	Hearing	☐

2. **Requested Action:**

Consider Resolution to extend the price-fixing limitations of Penal Code 396 for an additional 30 day period during the time of a continuing local emergency.

3. **Fiscal Impact:**

Revenue:	Increase	☐	Source:	
	Decrease	☐	Amount:	$
Cost:	Increase	☐	Source:	N/A
	Decrease	☐	Amount:	$
	Does Not Apply	☒		

4. **Reviewed By:**

Finance Dept. on _____ By: _____
Comments:

City Attorney on 5-24-10 By: _____
Comments:

Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.

CLERK USE ONLY:

CITY COUNCIL DATE:

Action	☐	Filing	☐
Consent	☐	Presentation	☐
Hearing	☐	Other(specify)	☐

Reviewed by: City Clerk _____ City Manager _____
Date _____ Date _____

Form FIN038 (Revised 07/2009)

CITY COUNCIL
AGENDA REPORT

SUBJECT: RESOLUTION TO EXTEND PROVISIONS OF CALIFORNIA PENAL CODE SECTION 396 RELATING TO UNFAIR BUSINESS PRACTICES WITHIN THE CITY OF CALEXICO DURING AND SHORTLY AFTER THE PROCLAMATION OF A STATE OF EMERGENCY FOR AN ADDITIONAL 30-DAY PERIOD

AGENDA DATE: June 1, 2010

PREPARED BY: Jennifer Lyon, City Attorney (item requested originally by Mayor)

APPROVED FOR AGENDA BY: Victor Carrillo, City Manager

RECOMMENDATION: That the City Council consider the resolution to extend the application of California Penal Code Section 396, prohibiting charging prices for goods and services above a certain specified percentage in times of declared emergencies for an additional 30-day period.

BACKGROUND INFORMATION: On April 4, 2010, the City Manager, as Director of Emergency Services of the City of Calexico, and the City Council of the City of Calexico, proclaimed a state of emergency in the City of Calexico due to an earthquake of a magnitude of 7.2 commencing on or about 3:40 p.m. on the day of 4th day of April, 2010. On April 5, 2010, Imperial County and Governor Schwartzenegger declared a state of emergency in the Imperial Valley. On April 6, 2010, the City Council ratified the April 4th declarations. Said proclamations were made pursuant to California Government Code Sections 8558(b), 8625, and 8630. The earthquake and the continuing aftershocks have caused/continue to cause considerable damage and created conditions that risk the health and safety of the citizens of Calexico. Since April 6, 2010, the City Council has continued to adopt resolutions extending the local state of emergency at every regular meeting.

On April 20, 2010, the City Council adopted a resolution informing citizens that certain practices regarding unfair competition in pricing for certain goods and services in the local economy were prohibited by state law, most notably California Penal 396, and were punishable by imprisonment, fines, and in some cases, suspension of professional licenses. There have been subsequent aftershocks and the threat to property, lives, and welfare of citizens due to the April 4, 2010 earthquake continues to exist in the City of Calexico as of June 1, 2010.

On May 4, 2010, the City Council of the City of Calexico adopted a resolution extending the effects, including penalties, of the provision of California Penal Code Section 396 for an additional 30-day period pursuant to California Penal Code Section 396(e).

DISCUSSION: The City Council of the City of Calexico may desire to further extend the protections provided to persons affected by the emergency from unfair competition and opportunistic business practice resulting from excessive and unjustified increases in prices for vital goods, services, and accommodations charged during or shortly after a declared state of

emergency by extending the effects, including penalties, of the provision of California Penal Code Section 396 for an additional 30-day period pursuant to California Penal Code Section 396(e). If Council wishes to extend this law, then the attached resolution can be approved.

Future Action:

The provisions of PC Section 396 may be further extended by the City Council for additional 30-day periods if deemed necessary to protect the lives, property, or welfare of the citizens. If deemed necessary, a resolution will be prepared for a June 15, 2010 agenda to extend the effects of the State law.

The provisions of California Penal Code Section 396 prohibiting contractors from selling any repair or reconstruction services or any services used in emergency cleanup for more than 10% of the price charged prior to the emergency are in effect for 180 days and thus do not need to be extended at this time.

Attachment: Resolution Extending the Effects of California Penal Code 396

RESOLUTION NO. ___

RESOLUTION TO EXTEND PROVISIONS OF CALIFORNIA PENAL CODE SECTION 396 RELATING TO UNFAIR BUSINESS PRACTICES WITHIN THE CITY OF CALEXICO DURING AND SHORTLY AFTER THE PROCLAMATION OF A STATE OF EMERGENCY FOR AN ADDITIONAL 30-DAY PERIOD

WHEREAS, the earthquake which occurred on April 4, 2010 having a magnitude of 7.2 caused significant structural damage to buildings and public infrastructure, including the water and wastewater treatment plants in the City of Calexico, creating a threat to public health and safety; and

WHEREAS, on April 4, 2010, the City Manager, the City Council, and the City's Disaster Council, acting pursuant to Government Code section 8630 and CMC section 2.36.060, proclaimed the existence of a local emergency based on conditions of extreme peril to the safety of persons and property caused by the earthquake; and

WHEREAS, California Penal Code section 396 makes it unlawful for persons, businesses, contractors, etc. to charge more than 10 percent above the prices charged prior to the proclamation of a state of emergency, and California Business and Professions Code section 17568 prohibits hotels and motels from charging rates higher than 10 percent above the rate advertised prior to the proclamation of a state of emergency; and

WHEREAS, on April 20, 2010, the City Council adopted a resolution informing the public that the provisions of California Penal Code section 396 and California Business and Professions Code section 17568.5 prohibit charging prices or rates more than 10% higher than prices or rates charged prior to the proclamation of the state of emergency; and

WHEREAS, on May 4, 2010, the City Council, pursuant to California Penal Code section 396(e), adopted a resolution extending the price and rate restrictions of Penal Code section 396 for an additional thirty (30) days, beginning May 4, 2010 and ending June 2, 2010; and

WHEREAS, California Penal Code section 396(e) provides for the extension of the provisions of California Penal Code section 396 for additional thirty (30) day periods if deemed necessary to protect the lives, property, or welfare of the citizens; and

WHEREAS, due to aftershocks and continuing damage to property in the City of Calexico, the conditions threatening the lives, property and welfare of the citizens existing at the time the state of emergency was proclaimed, continue to exist; and

WHEREAS, the City Council has adopted resolutions extending the local state of emergency continuously since April 6, 2010.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Calexico hereby finds and declares:

1. A continuing emergency has existed within the City since April 4, 2010 as the result of earthquake damage to various public facilities.

2. As of June 1, 2010, there is still an urgent need to repair property, there have been several aftershocks in the vicinity, and there continues to exist a threat of earthquakes, aftershocks, and resulting damage that threatens the lives, property and welfare of the citizens.

3. The provisions of California Penal Code section 396, prohibiting suppliers of goods and services, businesses, contractors and any other entity, from selling 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 following the proclamation of an emergency, subject to certain specified exceptions set out in California Penal Code section 396, are hereby extended for an additional thirty (30) day period beginning June 3, 2010 and ending July 2, 2010, pursuant to California Penal Code section 396(e). Any violations of this law shall be reported to local authorities for investigation and possible prosecution.

PASSED, ADOPTED, AND APPROVED by the City Council of the City of Calexico, California, at a regular meeting thereof, this 1st day of June, 2010.

_____
David B. Ouzan, Mayor

ATTEST:

_____
Lourdes Cordova, City Clerk

Approved as to Form:

_____
Jennifer M. Lyon, City Attorney

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL)
CITY OF CALEXICO)

I, Lourdes Cordova, City Clerk of the City of Calexico, do hereby certify under penalty of perjury that the foregoing Resolution No. 10- was duly adopted by the City Council at a meeting of said City Council held on the 1st day of June 2010, and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

_____
Lourdes Cordova, City Clerk
City of Calexico