
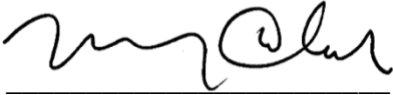
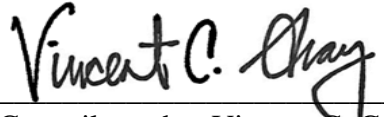



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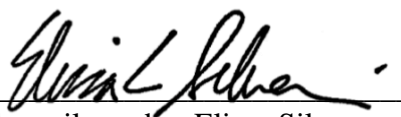

Chairman Phil Mendelson

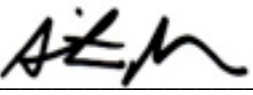

Councilmember Charles Allen

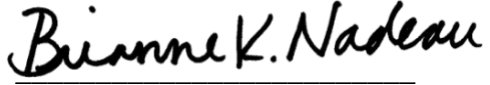

Councilmember Mary M. Cheh

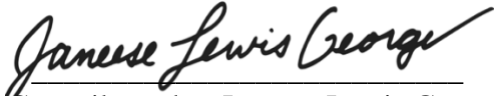

Councilmember Vincent C. Gray

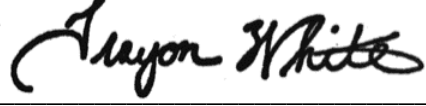

Councilmember Brooke Pinto



Councilmember Elissa Silverman



Councilmember Anita Bonds

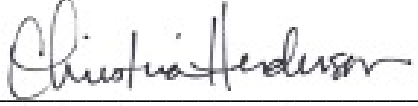

Councilmember Brianne K. Nadeau


Councilmember Janeese Lewis George


Councilmember Trayon White, Sr.


Councilmember Kenyan R. McDuffie


Councilmember Robert C. White, Jr.


Councilmember Christina Henderson

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To declare the existence of an emergency with respect to the need to prohibit price gouging in the infant formula market.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Infant Formula Consumer Protection Emergency Declaration Resolution of 2022”.

Sec. 2. (a) On February 17, 2022, Abbott Nutrition (“Abbott”), the largest manufacturer of

45 infant formula in the United States, initiated a voluntary recall of several lines of powdered formula
46 after the Food and Drug Administration (“FDA”) detected deadly bacteria inside the company’s
47 Sturgis, Michigan production plant. On February 28, 2022, Abbot expanded its recall.

48 (b) Even before the Abbott recall, District families were struggling to find infant formula.
49 The FDA attributed these initial shortages to supply chain challenges, and the recall has greatly
50 exacerbated them. Many District parents now have to devote hours each day to attempting to locate
51 infant formula, sometimes to no avail.

52 (c) Bad actors have taken advantage of parents’ desperation to greatly increase prices,
53 sometimes purchasing formula from stores to sell online or elsewhere for twice as much as it costs
54 in stores, if not more. That is why, on May 12, 2022, President Biden called on state attorneys
55 general to “crack down on any price gouging or unfair market practices related to sales of infant
56 formula.”

57 (d) Price gouging, however, is by no means limited to the secondary market. The pace at
58 which formula prices in stores have increased has outpaced similar increases in the prices of other
59 goods, and there are not reliable online alternatives to purchasing in-store. Even residents with
60 access to paid delivery services like Amazon Prime are finding that reasonably priced online
61 options are either out of stock or likely to arrive several weeks after the date of purchase.

62 (e) Few economists oppose price gouging protections that are limited in scope and duration
63 and designed to combat a steep rise in prices for an essential good due to a supply shock. And there
64 is little doubt that infant formula is an essential good. According to the Centers for Disease Control
65 and Prevention, at least one third of District infants are not breastfed. Additionally, breastfeeding
66 often requires the use of expensive equipment like pumps, and many people do not produce enough
67 milk to nourish their children. What’s more, medical conditions such as phenylketonuria require
68 certain infants to rely on specialty formulas, without which they can experience brain damage,

69 intellectual disabilities, seizure, or death. It is the case for everyone that formula cannot be safely
70 diluted or replaced by homemade alternatives. It is the case for some that no alternatives exist.

71 (f) Infant formula, then, is an essential good that must be made affordable and accessible
72 to District families. Without legislative action to restrict increases in the price of formula, a short-
73 term supply shock will lead to long-term harm. And without a meaningful enforcement
74 mechanism, any legislative action is likely to be ineffective at deterring the price gouging in the
75 infant formula market that is inconsistent with the District's public policy.

76 (g) Accordingly, it is necessary to locate short-term price gouging protections within
77 legislation enabling a government entity to engage in civil enforcement litigation with the potential
78 to impose significant penalties with a correspondingly significant deterrent effect. The appropriate
79 location for those protections is the Consumer Protection Procedures Act, which empowers the
80 Office of the Attorney General, an institution experienced in bringing price gouging enforcement
81 actions, to recover penalties of up to \$5,000 per initial violation and up to \$10,000 per subsequent
82 engagement in unfair or deceptive trade practices.

83 Sec. 3. The Council of the District of Columbia determines that the circumstances
84 enumerated in section 2 constitute emergency circumstances making it necessary to prohibit price
85 gouging in the infant formula market.

86 Sec. 4. This resolution shall take effect immediately.