Understanding California's Price Gouging Laws: The Do's & Don'ts of Price & Rent Increases during State Emergencies

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During Covid-19, we saw businesses sell personal protective gear and household goods and services at higher prices, making huge profits. Now, price gouging lawsuits are being filed against such businesses. But, price gouging laws do not only cover increases of consumer goods and services during an emergency. They also restrict **increases in housing rent *and evictions* by landlords**, and **hotel and motel room rates**, during Covid-19. Price increases of **repair and reconstruction services** are also covered.

This post discusses why such increases in the prices of goods and services, called price gouging, are illegal in California and the City of Los Angeles during an emergency, helping:

- **Businesses determine how much they can, and cannot, increase the price of their goods and services** based on increased costs during and after the Covid-19 emergency;
- **Landlords to assess whether they can increase rents or evict tenants** during this emergency; and
- **Hotel and motel owners determine how much they can increase hotel and motel room rates** during and after Covid-19.

It will also set out the criminal and civil penalties associated with a failure to conform to the prescribed price increases.

What is Price Gouging?

Price gouging is the excessive and unjustified increase in prices of essential consumer goods and services during a national, state, or local emergency. It is a criminal violation in California under Penal Code section 396 (Section 396).

The Los Angeles Municipal Code (LAMC) also addresses price gouging within the City of LA. On April 22, 2020, the Los Angeles

City Council amended and expanded the price gouging provision at section 47.12 of the LAMC (Section 47.12.) The amended LAMC section 47.12 also bars the *excessive accumulation for resale at inflated prices* of emergency supplies and medical supplies.

This discussion on price gouging covers both the California Penal Code and the LAMC provisions, which are similar for the most part. The April 2020 amendments to the LAMC that expand price gouging in the City of LA are also discussed. Both laws will apply to businesses and individuals within the City of Los Angeles.

Why are there restrictions on the pricing of goods and services in a free market?

When Section 396 was originally enacted, there were no laws generally regulating the price of goods and services across California. Both Section 396 and Section 47.12 were enacted to prevent merchants from taking unfair advantage of consumers by significantly increasing prices of goods and services vital and necessary for the health, safety, and welfare of consumers during natural or man-made disasters.

What sectors are covered by price gouging laws in California?

The price gouging laws in California are limited to a few key areas. Originally, Section 396 only covered consumer goods and services and repair and reconstruction services. However, due to natural disasters in 2004, increases in hotel and motel room rates were also restricted by Section 396. In 2018, the prohibitions of Section 396 was expanded to cover housing rent increases.

When are price gouging laws enforced?

Price gouging laws are enforced only during a state of emergency. The law defines a state of emergency or local emergency as a natural or man-made disaster or emergency resulting from an earthquake, flood, fire, riot, storm, drought, and plant or animal infestation or disease, or other natural or man-made disasters. The law also requires that a state of emergency be declared by the President of the United States, the Governor of California (state emergency), or the executive officer or governing body of a city or county in California (local emergency).

What is price gouging of Consumer Goods and Services under the California Penal Code?

During an emergency and for 30 days thereafter, businesses and individuals may not sell or offer to sell specified consumer goods and services for more than 10% above the price they charged for those goods or services immediately before the declaration of emergency.

There is an exemption. Businesses or individuals may charge a price greater than 10% of their pre-emergency price if they can prove that:

- The price increase is a direct result of increased costs to them charged by the suppliers of the goods and services, or
- Due to increases in the costs of labor or materials needed to provide those services during the emergency.

Even then, the increased price cannot be more than 10% greater than the total of the cost to the seller plus the seller's customary markup for that good or service in the usual course of business before the emergency. If an item was being sold on sale at a lower price before the emergency, the company or individual could use the regular non-sale price to calculate the 10% price increase.

What items are considered Consumer Goods?

The restriction on price increases applies to 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, and gasoline or other motor fuels. The categories of goods and services cover a wide range of products.

Thus, "consumer food" items include any article that is used or intended for food or drink by a person or animal. "Emergency supplies" include water, flashlights, radios, batteries, candles, blankets, soaps, diapers, temporary shelters, tape, toiletries, plywood, nails, hammers, and other emergency products. "Medical supplies" include prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, antibacterial products, and other medical products.

The amended LAMC Section 47.12 expands the definition of emergency supplies to also include “cleaning supplies, disinfectants, sanitizers, toiletries, household paper goods, and diapers.” The definition of medical supplies was also expanded to cover “personal protective equipment, including, but not limited to, masks, gowns, face shields, and gloves.”

“Building materials” include lumber, construction tools, windows, and anything else used in the building or rebuilding of property. “Gasoline” consists of any fuel used to power a motor vehicle or power tool. “Transportation, freight, and storage services” means any service that is performed by any company that contracts to move, store, or transport personal or business property or that rents equipment for those purposes, including towing services.

Are there restrictions on prices increase for Repair and Reconstruction Services during an emergency?

Yes, during an emergency and for 180 days thereafter, businesses and individuals offering any repair or reconstruction services or any services used in emergency cleanup are prohibited from increasing prices by more than 10% above the price they charged for those services immediately before the emergency. This applies to repairs for residential or commercial property of any type that is damaged due to a disaster and where the services are performed by any person required to be licensed under the California Contractor’s License laws.

However, a price increase greater than 10% is not unlawful if the contractor can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly due to additional costs for labor or materials used to provide the services, during the emergency, and the price is not more than 10% 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 emergency.

What are the restrictions on price increases of Hotel and Motel Room Rates during an emergency?

Hotels and motels may not increase the price of their regularly advertised room rates prior to the emergency by more than 10% during an emergency and for 30 days thereafter. As with other exceptions, a hotel or motel can increase room rates beyond 10% if the owner or operator can prove the price increase is a direct result of higher costs charged to it for goods or labor used in its business, to seasonal adjustments in rates that are regularly scheduled, or to previously contracted rates.

How are increases in Rental Housing Rates restricted during an emergency?

The rental price advertised, offered, or charged for housing to any existing or prospective tenant may not be increased by more than 10% during an emergency and for 30 days thereafter, or for any further authorized time period. This provision applies to any rental housing with an initial lease term of no longer than one year and includes mobile home parks and campgrounds.

An increase in rental prices beyond 10% is permitted if the landlord can prove the increase was due to the costs for repairs or additions beyond normal maintenance that were amortized over the rental term or the increase was contractually agreed to by the tenant prior to the emergency.

How is Rental Price calculated?

Rental price is calculated differently for different rental situations.

- For housing rented within one year prior to the emergency, the rental price will be the actual rent paid by the tenant.
- For housing not rented at the time of the emergency, the most recent rental price offered before the emergency will be the rental price.
- For housing that was vacant for more than a year before the emergency, the rental price is 160% of the fair market rent established by HUD, which may be increased by 5% if the landlord is now starting to rent the premises fully furnished.
- For housing that becomes vacant during the emergency and is subject to a rent stabilization ordinance, the rental price is the amount paid by the last tenant or 160% of the fair market

rent established by HUD, both of which may be increased by 5% if the landlord starts renting the premises fully furnished.

- For housing offered on a daily rate basis, the rental price is the daily rate offered at the time of the emergency. If the daily rate housing is rented through a lease agreement after the emergency, the lease rent must be 160% of the fair market rent established by HUD, which may be increased by 5% if the landlord is now renting the premises fully furnished.
- For mobile home parks renting to existing tenants and subject to a rent stabilization ordinance, the rental price is the amount authorized by the ordinance.
- For new tenants in mobile home parks subject to rent stabilization ordinances, the rental price is the amount of rent last charged for that space in the park.
- For mobile homes not subject to a rent stabilization ordinance and not rented at the time of the emergency, the amount of rent last charged for the space is the rental price.

Are there restrictions on Residential Evictions during an emergency?

It is unlawful to evict any tenant of residential housing and rent or offer the premises to another person for a rental price greater than what the evicted tenant could be charged (i.e., 10% increase discussed above.) This restriction applies to the time period during an emergency and for 30 days or any other extended mandated time period thereafter. However, evictions that were legally commenced prior to the state of emergency may be continued as well as evictions of a tenant for any other law purpose.

How does the Los Angeles Municipal Code change price gouging in Los Angeles?

The LAMC has more comprehensive restrictions on price gouging. The LAMC prohibits increases of prices more than 10% of the prevailing price of the item or service (a) charged immediately prior to the emergency, or (b) offered by ‘similarly situated sellers’ in the City of LA during the three months prior to the emergency, or (c) at which the same or similar items or services are available for purchase by consumers in the City of LA during the emergency.

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LAMC defines a ‘seller’ of goods and services as any person who sells or offers for sale in the chain of distribution any consumer food item, emergency supply, medical supply, repair or reconstruction service, gasoline or diesel fuel, including, any sales, resales, retail sales or wholesale sales. It defines ‘similarly situated sellers’ as persons, contractors, businesses or other entities that are similar or alike based on the seller’s geographic location, the similarity of goods or services offered, and the relative size and scale of the seller’s business operation. For an online seller, all other online sellers are deemed to be similarly situated sellers.

Most importantly, the LAMC amendment adds a new prohibition. It bars the ***excessive accumulation of emergency or medical supplies*** beyond the reasonable demands of business, personal, or home consumption, and the resale of these goods at prices higher than those prevailing in the area of the City of LA where the individual or business operates. This prohibition also applies during an emergency and for 30 days thereafter.

What are the criminal and civil penalties for price gouging?

California Penal Code Section 396 makes price gouging punishable as a misdemeanor with imprisonment or a fine of up to $10,000, or both. The LAMC permits the City Attorney to also prosecute a civil action against the offending party and seek imposition of civil penalties as well as restitution to aggrieved consumers.

In addition to the criminal charges, individuals and businesses can file civil lawsuits against the offending party for unlawful business practices or unfair competition under Section 17200 of the Business and Professions Code. Courts can issue injunctions forbidding the price gouging or hoarding practices by the individual or business. Courts can also impose civil penalties for each violation and award financial restitution of the ill-gotten gains to the affected consumers. In one case, the court also imposed personal liability and penalties on the CEO and majority shareholder of a company who was involved in the offending behavior.

Both Section 396 and the LAMC provisions are to liberally construed so they cast a wide net and may include related items and violations not specifically enumerated in the provision.

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Monisha Coelho helps clients – from entrepreneurs and startups to multinational corporations – resolve business disputes and real estate matters in state and federal court litigation, mediations, and arbitrations. She has particular strengths representing individuals and companies in business and commercial litigation, and handling a range of real estate disputes involving landlords, traditional and hard money lenders, and developers

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