

ANALYSIS

This urgency ordinance amends Chapter 8.09 (Overpricing of Goods and Services Following the Proclamation of a State of Emergency or the Declaration of a Local Emergency) of Title 8 - Consumer Protection Business and Wage Regulations of the Los Angeles County Code by: (1) strengthening the prohibition of price gouging during a state of emergency as proclaimed by the President of the United States, the Governor of California, or during a local emergency as declared pursuant to law; (2) expanding prohibited price gouging to include selling goods or services at unconscionably excessive prices; (3) prohibiting price gouging in the rental of short-term and vacation rentals, home and apartment rentals, care facilities, mobilehomes and mobilehome spaces; (4) adding a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation; (5) delegating administrative subpoena power to the Department of Consumer and Business Affairs; and (6) expanding the authority of County Counsel to enforce violations.

This urgency ordinance will take immediate effect upon its approval by at least a four-fifths vote of the Board of Supervisors.

Very truly yours,

MARY C. WICKHAM
County Counsel

By
VANESSA MIRANDA
Deputy County Counsel
Affirmative Litigation & Consumer
Protection Division

VM:mm

Requested: 03/31/2020

Revised: 6/24/2020

ORDINANCE NO. 2020-0035U

An urgency ordinance amending Chapter 8.09 (Overpricing of Goods and Services Following the Proclamation of a State of Emergency or the Declaration of a Local Emergency) of Title 8 - Consumer Protection Business and Wage Regulations of the Los Angeles County Code.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Section 8.09.010 is hereby amended to read as follows:

8.09.010 Findings.

The Board of Supervisors finds that in emergencies and major natural or manmade disasters including, but not limited to, earthquakes, floods, fires, storms, droughts, plant or animal infestation or diseases, pandemic or epidemic disease outbreaks, or civil disturbances, there may be a temporary spike in demand for food, repair or reconstruction services, emergency or medical supplies, hotels, motels, housing, or gasoline. Under such circumstances, there is a heightened risk to consumers that prices for goods and services that are vital and necessary for their health, safety, and welfare may be significantly increased. Therefore, the County of Los Angeles has an interest in ensuring that County residents are protected against overpricing of vital and necessary goods and services during a state of emergency as proclaimed by the President of the United States, ~~or~~ the Governor of California, or locally by the Board of Supervisors during a local emergency as declared pursuant to law.

As a result of COVID-19, both Los Angeles County and the Governor of the State of California declared local and State emergencies on March 4, 2020. The Los Angeles

County Department of Consumer and Business Affairs has received over 1,100 allegations of price gouging following the declarations of emergency. During this time of unprecedented emergency, there is an urgent need to take action to protect the residents of the County as price gouging continues to be reported, even three months after the declared emergency. This urgency ordinance amends the County's price gouging ordinance to strengthen consumer protections and it is essential that the amendments made by this urgency ordinance take effect immediately for the preservation of the public peace, health, and safety of the County.

SECTION 2. Section 8.09.030 is hereby amended to read as follows:

8.09.030 Definitions.

Unless otherwise provided below, the definitions provided by California Penal Code section 396 shall apply:

A. ~~"State of emergency" means a natural or manmade disaster or emergency resulting from an earthquake, flood, fire, riot, or storm for which a state of emergency has been proclaimed by the President of the United States or the Governor of California.~~"Care Facility" means a facility that provides long-term residential care to individuals requiring assistance with personal care or medical needs.

B. ~~"Local emergency" means a natural or manmade disaster or emergency resulting from an earthquake, flood, fire, riot, or storm for which a local emergency has been declared pursuant to California Government Code section 8630 and County Code Section 2.68.110.~~"Medical Supplies" are any items used in the diagnosis, cure, mitigation, treatment, or prevention of disease or other medical condition, including, but

not limited to, prescription and non-prescription drugs and medical devices, bandages, gauzes, isopropyl alcohol, and personal protective equipment, including, but not limited to, masks, gowns, face shields, and gloves.

C. ~~"Vital and necessary" means required to sustain the health, safety, and welfare of a person or animal.~~ "Mobilehome" means the definition set forth in California Civil Code section 798.3, including subsequent amendments.

D. "Mobilehome Space" means the site within a Mobilehome Park intended, designed, or used for the location or accommodation of a Mobilehome and any accessory structures or attached appurtenances whether or not the Mobilehome space is permitted pursuant to State or local law.

E. "Person" means any individual, online retailer, vendor or any form of business organization or association, or any other legal entity.

F. "Rental Price" means the following:

1. 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.

2. 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.

3. 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 and which is subject to any County rent control ordinance,

rule, regulation, or initiative measure, the actual rental price paid by the previous tenant or 160 percent of the fair market rent established by the United States Department of Housing and Urban Development, whichever is greater.

I. "Sell" or "Resell" means to engage in a sales transaction located within the unincorporated area of the County of Los Angeles, or to engage in a sales transaction with any resident of the unincorporated area of the County of Los Angeles whereby the sale of goods or services occurs through the internet, mail order, telephone, or any other means and whereby delivery of such goods or services occurs within the unincorporated area of the County of Los Angeles.

J. "Unconscionably excessive price" means a price that is more than 50 percent above either the person's total cost paid for the good or the person's total cost of producing and selling the good.

K. "Vital and necessary" means required to sustain the health, safety, and welfare of a person or animal.

SECTION 3. Section 8.09.040 is hereby amended to read as follows:

8.09.040 ~~Overpricing-Price Gouging~~ Following the Proclamation or Declaration of an Emergency Prohibited.

Upon the proclamation of a state of emergency by the President of the United States, Governor of California or locally by the Board of Supervisors, resulting from, but not limited to, an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, pandemic or epidemic disease outbreak or other natural or manmade disaster ~~proclaimed by the President of the United States or the Governor of~~

~~California, or upon the declaration of a local emergency resulting from an earthquake, flood, fire, riot, storm, or other natural or manmade disaster declared pursuant to California Government Code section 8630 and Los Angeles County Code Section 2.68.140,~~ the following shall be unlawful:

1. Goods and Services Previously Offered for Sale. For a period of 30 days following that proclamation or declaration, it is unlawful for a person, ~~contractor, business, or other entity~~ to sell or offer to sell any vital and necessary consumer food items or goods, including but not limited to, water, milk, eggs, flour, salt, dried and canned goods, sanitary products, medical supplies, batteries, propane, gasoline or other motor fuels, baby food, diapers, and baby supplies, goods or services used for emergency cleanup, emergency supplies, ~~medical supplies,~~ home heating oil, building materials, housing, transportation, freight, restaurant food delivery services, and storage services, ~~or gasoline or other motor fuels~~ for a price of more than 10 percent above the price charged by that person for those goods or services immediately prior to the proclamation or declaration of emergency, subject to the conditions set forth in subsection (C) of this Section.

2. Goods and Services Not Previously Offered for Sale. If a good or service has not been sold by a person during the 30-day period immediately preceding the day that proclamation or declaration is made, it is unlawful for that person to sell or offer to sell that good or service for an unconscionably excessive price.

3. Hoarding. In addition to the prohibitions set forth in Section 8.09.040.A.1 and A.2, for a period of 30 days following that proclamation or

declaration, it is unlawful for a person to purchase and accumulate, vital and necessary consumer food items or goods, including but not limited to water, milk, eggs, flour, salt, dried and canned goods, sanitary products, medical supplies, batteries, propane, gasoline or other motor fuel, baby food, diapers, and baby supplies, in excess of what would be ordinarily and customarily needed for business, personal or home consumption, for the purpose of reselling or offering to resell such vital and necessary consumer food items or goods.

24. Construction Goods and Services. For a period of 180 days following that proclamation or declaration, it is unlawful for a contractor to sell or offer to sell any vital and necessary repair or reconstruction services or any services used in emergency cleanup for a price of more than 10 percent above the price charged by that person for those services immediately prior to the proclamation or declaration of emergency, subject to the conditions set forth in subsection (C) of this Section.

35. Hotels and Motels. For a period of 30 days following that proclamation or declaration, it is unlawful for an owner or operator of a hotel or motel to increase the hotel's or motel's regular rates, as advertised immediately prior to the proclamation or declaration of emergency, by more than 10 percent, subject to the conditions set forth in subsection (C) of this Section.

6. Short Term or Vacation Rentals. For a period of 30 days following that proclamation or declaration, it is unlawful for a booking service or homeowner to increase the daily rental rate as advertised immediately prior to the proclamation or declaration of emergency, by more than 10 percent, subject to the conditions set forth in

subsection (C) of this section. It is unlawful for booking services and homeowners to cancel reservations in order to advertise the same property for an increased rate higher than 10 percent than the originally advertised rate.

7. Home and Apartment Rentals. For a period of 30 days following that proclamation or declaration, it is unlawful for any person to increase the rental price as 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. For rental housing that was not rented or advertised for rent within one year prior to a declaration of emergency, the price cannot exceed 160 percent of the fair market rent value of the rental housing as established by the U.S. Department of Housing and Urban Development. This Chapter does not authorize any person to charge a price greater than the amount authorized by Title 8 - Division 3 - Chapter 8.52, Rent Stabilization Ordinance.

8. Care Facilities. For a period of 30 days following that proclamation or declaration, it is unlawful for care facilities to increase the cost of care as advertised immediately prior to the proclamation or declaration of emergency, by more than 10 percent subject to the conditions set forth in subsection (C) of this Section.

9. Mobilehomes. For mobilehomes and mobilehome spaces rented to existing tenants at the time of the proclamation or declaration of emergency and subject to the Mobilehome Rent Stabilization Ordinance of the Los Angeles County Code Title 8 - Division 3 - Chapter 8.57 are subject to the limitations set therein. For new tenants who enter into a rental agreement for a mobilehome space that is subject to the Mobilehome Rent Stabilization Ordinance but was not rented at the time of, or became vacant after, the proclamation or declaration of emergency, it is unlawful for any person to charge a rent in excess of the amount of rent last charged for a space in the same mobilehome park. For new tenants who buy a mobilehome located in an existing space in a mobilehome park that is subject to the Mobilehome Rent Stabilization Ordinance, it is unlawful for any person to charge a rent in excess of the amount of rent last charged for that space. This Chapter does not authorize any person to charge a price greater than the amount authorized by Title 8 - Division 3 - Chapter 8.57, Mobilehome Rent Stabilization Ordinance.

B. 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 subsections (A)(1) or (A)(24) of this Section.

C. For the pricing of goods and services, construction goods and services, ~~and hotel and motel rates, short term and vacation rentals and care facilities,~~ described in subsections (A)(1)-(A)(2), ~~and (A)(3)(A)(4)-(A)(6) and (A)(8)~~ of this Section, a greater price increase is not unlawful if the person, ~~contractor, business, owner, operator or~~

~~other entity~~ selling the goods or services 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, goods or materials used to provide the services, provided that in those situations where the increase in price is attributable to the additional costs imposed by the seller's or contractor's supplier or additional costs of providing the goods or services during the state of emergency, the price represents no more than 10 percent above the total of the cost to the seller or contractor plus the markup customarily applied by the seller or contractor for that good or service in the usual course of business immediately prior to the onset of the state of emergency. In addition, a greater price increase is not unlawful if an owner or operator of a hotel or motel, short term or vacation rental, or care facility can prove that the increase in price is due to seasonal adjustments in rates that are regularly scheduled, or to previously contracted rates, or if the increase in costs is attributable to the declared emergency.

D. The provisions of this Section may be extended pursuant to California Penal Code section 396 (e) for additional 30-day periods by the Board of Supervisors, ~~or the California Legislature~~ if deemed necessary to protect the lives, property, or welfare of the citizens.

SECTION 4. Section 8.09.050 is hereby amended to read as follows:

8.09.050 Reporting.

Any person believing that a violation of this Chapter has been committed may file a complaint with the Department of Consumer and Business Affairs, ~~whewhich~~ shall have the authority to investigate the complaint consistent with Section 8.09.055 and if

determined that there is evidence of a potential violation of this Chapter, may forward the complaint to the County Counsel or District Attorney for prosecution or other appropriate handling.

SECTION 5. Section 8.09.055 is hereby added to read as follows:

8.09.055 Administration, Document Retention, Investigation and Subpoena Power.

A. The Department of Consumer and Business Affairs shall be responsible for the administration of this Chapter, including, but not limited to, investigation of complaints that a person has violated any provision of this Chapter and public education and outreach. Additionally, the Department of Consumer and Business Affairs shall be designated as the enforcement officer, as defined in subsection (B) of Section 1.25.020 of the County Code, responsible for final determination and imposition of administrative fines to be issued and for appearances before the administrative hearing officer as provided for in Chapter 1.25 of the County Code.

B. The Department of Consumer and Business Affairs may develop rules for the administration and implementation of this Chapter. A copy of such rules shall be filed with the Executive Officer of the Board of Supervisors and shall be in effect immediately thereafter.

C. Upon the proclamation of a state emergency by the President of the United States, the Governor of California, or the declaration of a local emergency, all persons as identified in Section 8.09.030 (E) are required to retain business records, including, but not limited to, data regarding pricing of vital and necessary goods, for

three months prior to the declaration through three months after the declaration of the state and local emergency has been lifted.

D. Upon the proclamation of a state emergency by the President of the United States, the Governor of California, or the declaration of a local emergency, the Director of the Department of Consumer and Business Affairs shall have the authority to issue subpoenas for documents and to conduct examinations of persons as witnesses under Government Code section 25170 for the purpose of enforcing this Chapter and other consumer protection laws. This also includes the power to administer oaths pursuant to Government Code section 25057 and to take all actions necessary to enforce subpoenas, including but limited to reporting noncompliance thereof to the Superior Court.

SECTION 6. Section 8.09.060 is hereby amended to read as follows:

8.09.060 Penalties and Enforcement.

A. ~~Any person who shall be convicted of violating the provisions of this Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000 or by imprisonment in the County jail for not more than six months, or by both such fine and imprisonment.~~ The County Counsel or District Attorney may bring a civil action to seek imposition of civil penalties, obtain restitution and for any other appropriate legal or equitable relief in any court of competent jurisdiction to enjoin violations of this Chapter.

B. ~~A violation of this Chapter is a violation of California Penal Code section 396, and shall constitute an unlawful business practice and an act of unfair competition.~~

~~within the meaning of section 17200 of the California Business and Professions Code. The remedies and penalties provided by this Section are cumulative with the remedies and penalties under section 396 of the California Penal Code, section 17200 of the California Business and Professions Code, and the remedies and penalties available under all other laws of this State. Any person who violates provisions of this Chapter shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) per each violation.~~

C. ~~The Department of Consumer and Business Affairs shall be responsible for the administration of this Chapter, including, but not limited to, public education and outreach, and investigation of complaints that a person has violated any provision of this Chapter. Additionally, the Department of Consumer and Business Affairs shall be designated as the enforcement officer, as defined in subsection (B) of Section 1.25.020 of the County Code., responsible for final determination and imposition of administrative fines to be issued and for appearances before the administrative hearing officer as provided for in Chapter 1.25 of the County Code. The Department of Consumer and Business Affairs shall also recommend rules governing this Chapter. Such rules shall be presented to the Board of Supervisors and shall become effective when approved by a majority vote of the Board. Any person who shall be convicted of violating the provisions of this Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000 or by imprisonment in the County jail for not more than six months, or by both.~~

D. ~~The District Attorney shall be the enforcement officer responsible for prosecution of criminal charges pursuant to the California Penal Code Section 396.~~In addition to the penalties set forth in subsections A, B, and C, of this Section, any person who violates any provision of this Chapter shall be subject to an administrative fine issued pursuant to Chapter 1.25 of this code.

E. ~~—The District Attorney, or the County Counsel with agreement of the District Attorney, may bring a civil action pursuant to California Business and Professions Code section 17206 to enforce this Chapter.~~

[CH809SKCC]

SECTION 7 This ordinance shall be published in The Daily Commerce a newspaper printed and published in the County of Los Angeles.



Chair

ATTEST:

Celia Zavala
Executive Officer -
Clerk of the Board of Supervisors
County of Los Angeles

I hereby certify that at its meeting of July 7, 2020 the foregoing ordinance was adopted by the Board of Supervisors of said County of Los Angeles by the following vote, to wit:

Ayes

Supervisors Hilda Solis
Mark Ridley-Thomas
Sheila Kuehl
Janice Hahn
Kathryn Barger

Noes

Supervisors None

Effective Date: July 7, 2020

Operative Date: _____

Celia Zavala
Executive Officer -
Clerk of the Board of Supervisors
County of Los Angeles



APPROVED AS TO FORM:
MARY C. WICKHAM
County Counsel

By _____
Lawrence L. Hafetz
Chief Deputy County Counsel