

CHIEF OF DETECTIVES

May 20, 2020

NOTICE 8.7

TO: All Commanding Officers

FROM: Chief of Detectives

SUBJECT: PROCEDURES FOR INVESTIGATING PRICE GOUGING DURING A STATE OR LOCAL EMERGENCY

This Notice provides enforcement procedures for investigating price gouging. Price gouging is the unlawful increase in price of consumer goods and services following the declaration of a state or local emergency. Penal Code § 396, California Governor Newsom's Executive Order N-44-20, and Los Angeles Municipal Code (LAMC) § 47.12 all prohibit price gouging. Each of the laws apply different standards of what constitutes an unlawful increase in the price of goods and services. All three laws provide officers with a legal basis to take enforcement action. This Notice, however, is limited to the procedures for the investigation of price gouging pursuant to LAMC § 47.12 because it provides the most feasible framework for enforcement and it addresses those sellers who set a price before the onset of the emergency as well as those sellers who set their prices after the declaration of a state or local emergency.

LOS ANGELES MUNICIPAL CODE § 47.12:

The LAMC § 47.12 was recently amended to revise the provisions against price gouging and a prohibition against hoarding supplies. The LAMC § 47.12(d) makes it unlawful for any person, business or other entity, during a proclaimed or declared emergency, and 30 days following termination of the emergency, to sell or offer to sell certain consumer goods and services for:

- (1) A price more than ten (10) percent of the prevailing price for that good or service offered by similarly situated sellers in the City during the three (3) months immediately prior to the proclamation or declaration of emergency; or
- (2) A price more than ten (10) percent of the price charged by that person, business or other entity for that good or service immediately prior to the proclamation or declaration of emergency; or
- (3) A price more than ten (10) percent of the price at which the same or similar goods or services are available for purchase by consumers in the City during the time of the emergency.

Goods and services are any consumer food item, emergency supply, medical supply, repair or reconstructive service, and gasoline or diesel fuel.

The following definitions shall apply to this Section:

1. "Consumer Food Item" is any item used or intended for use for food or drink by a person or animal.
2. "Emergency Supplies" are items used in a typical emergency, including, but not limited to, water, flashlights, radios, batteries, candles, blankets, soaps, cleaning supplies, disinfectants, sanitizers, toiletries, household paper goods, and diapers.
3. "Medical Supplies" are 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 medical devices, bandages, gauzes, isopropyl alcohol, and personal protective equipment, including, but not limited to, masks, gowns, face shields and gloves.
4. "Repair or Reconstruction Services" are those contractor services for repairs to residential and commercial property of any type, which are damaged as a result of a disaster. Contractor services include services as defined in the California Business and Professions Code.
5. "Seller" means 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, but not limited to, any sales, resales, retail sales or wholesale sales.
6. "Similarly Situated Sellers" are persons, businesses or other entities (including online sellers), who operate in a similar geographic location, are similar in size or scale, and offer similar goods or services.

An increase in price of goods or services is not unlawful if the increase in price was directly attributable to additional costs imposed on the seller by the supplier of the goods or for labor and materials used to provide the service.

Additionally, LAMC § 47.12(f) makes it unlawful for any person, business or other entity, during a proclaimed or declared emergency, and 30 days following termination of the emergency, to accumulate emergency supplies or medical supplies in excess of the reasonable demands of business, personal or home consumption, for the purpose of resale at prices in excess of prevailing prices in the area in the City where the person, business or other entity is operating.

PROCEDURES:

When a victim or witness reports a crime involving price gouging, officers should obtain the following information when conducting a preliminary investigation and establish the following:

- Identify the person who sets prices at the location (business owner, manager, or employee designated as the person who can set prices);
- Confirm that the good or service is covered by LAMC § 47.12;
- If the seller sold or offered for sale the good or service prior to the declaration or proclamation of emergency, confirm that the price at issue is ten (10) percent higher than the original price:
 - (a) For the same good or service offered by that seller at the same location immediately prior to the proclaimed or declared emergency; or
 - (b) For the same good or service offered by similarly situated sellers in the City during the three (3) months immediately prior to the proclaimed or declared emergency;
- If the seller did not sell or offer to sell the good or service prior to the declaration or proclamation of emergency, confirm that the price at issue is:
 - (a) Ten (10) percent higher than the price for the same or similar goods or services that are available for purchase by consumers in the City during the emergency period;
- Inquire as to the reason for the price increase and note whether the increased price is directly attributed to additional costs imposed on the seller by the supplier of the goods or for labor and materials used to provide the service;

NOTE: Evidence of price gouging may include:

Price tags/stickers that are on the product displayed in the store, warehouse, or business location. Receipt(s) for the same product and from the same location. Witness statements (e.g., regular shopper) willing to testify to the price increase for the product in question from the same location. Lawfully obtained and legally admissible business records detailing the greater than 10 percent price increase for the same product from the same location and statements obtained from the business owner, manager, or employee who has knowledge of the price increase for the product in question from the same location.

Lastly, officers should verify and document the pricing posted on the business website detailing the greater than 10 percent price increase for the product in question from the same location.

OFFICER'S RESPONSIBILITIES:

If officers determine price gouging has occurred, officers shall do the following:

- Notify Commercial Crimes Division (CCD) for booking and related advice;
- Ensure the elements of LAMC § 47.12 are met based on the evidence, when arresting individuals or citing on a Release from Custody (RFC) for the violation; and
- Forward all reports to CCD for filing purposes.

SUPERVISOR'S RESPONSIBILITIES:

A supervisor shall review the circumstances of the report and ensure that officers have established the elements of misdemeanor price gouging. The supervisor shall also ensure the arresting officers contact CCD for booking and related advice.

COMMERCIAL CRIMES DIVISION'S RESPONSIBILITIES:

- Provide advice and assistance to all Department personnel engaged in price gouging investigations and present all price gouging cases to the Los Angeles City Attorney's office for filing consideration;
- Act as the Department's liaison for price gouging investigations with other government agencies and community groups;
- Maintain information on current and proposed price gouging investigations and legislation; and
- Provide price gouging investigations training to all Department personnel as needed.

WATCH COMMANDER'S RESPONSIBILITIES:

When made aware of an arrest for price gouging, the Watch Commander shall verify the elements of the crime have been established and ensure the required notification to CCD was made.

All Commanding Officers

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COMMANDING OFFICER'S RESPONSIBILITIES:

Area Commanding Officers shall be responsible for compliance with this Notice.

Should you have any questions regarding this Notice, please contact CCD, at (213) 486-0928.

APPROVED:



KRIS E. PITCHER, Deputy Chief
Chief of Detectives



DOMINIC H. CHOI, Deputy Chief
Chief of Staff
Office of the Chief of Police

DISTRIBUTION "B"