

# Kimball, Tirey & St. John LLP

## Price Gouging After Natural Disasters: Limitations on California Post-Disaster Price Increases for Residential Landlords

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If a state of emergency is declared, and if the state of emergency results from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, or other natural or manmade disaster, California Penal Code §396 generally prohibits price gouging (i.e. generally price increases of more than 10%). It applies to rental housing and prices for consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, transportation, freight, and storage services, or gasoline or other motor fuels. The price gouging restrictions generally apply for 30 days after the state of emergency is declared, but may be extended by the person or entity declaring the state of emergency. This law affects both rent increases and vendor charges to landlords after a natural disaster.

In September 2018, [AB 1919](#) amended California Penal Code §396, making changes specific to residential landlords. California Penal Code §396 (e) and (h) specifically prohibit residential landlords from increasing rental prices for rental housing (including space in a mobilehome park or campground) with an initial term of a year or less, beyond specified amounts.

The prohibition applies to amounts actually charged, advertised or offered to tenants. It applies to existing tenants, new tenants and prospective tenants.

Landlords may not defend against price gouging allegations by claiming that the rental price increase was based on:

- the length of the rental term;
- the inclusion of additional goods or services (other than a 5% increase if the rental housing was previously rented or offered for rent unfurnished, and is now being offered for rent fully furnished); or
- the fact that the rent was offered by, or paid by, an insurance company or another third party, on behalf of the tenant.

It is unlawful for a landlord to evict a tenant while a state of emergency is in effect, to rent or offer to rent to another person at a rental price greater than the evicted tenant could be charged. It is not unlawful to continue an eviction process that was lawfully started before the state of emergency was declared, and it does not prohibit a landlord from evicting a tenant for any lawful reason.

### EXCEPTIONS

There are exceptions to the 10% cap if the landlord 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 cause the rent to be increased greater than 10 percent”; or

- the increase was contractually agreed to by the tenant before the state of emergency was declared.

### WHAT BASELINE RENT IS USED TO CALCULATE THE 10% CAP?

[AB 1919](#) added Penal Code §396(j)(11) to clarify how the rental cap would be calculated.

- For existing tenants: the actual rent paid by the tenant at the time the state of emergency was declared;
- When a unit is vacant because previous tenant was evicted: Amount that could be charged to old tenant
- If the rental housing was not rented at the time the state of emergency was declared, but was rented or offered for rent during the one year period before the state of emergency was declared, the baseline rent is the most recent rental price offered before the state of emergency was declared;
- If the rental housing was not rented and was not offered for rent within one year before the state of emergency was declared, rent can be set at 160% of the fair market rent established by HUD.
- If the rental housing becomes vacant while the state of emergency is in effect, and if a local governmental entity has an ordinance, rule, regulation or initiative measure that establishes a maximum rent, then the landlord may charge the greater of (1) 160% of the fair market rent established by HUD, or (2) the rent paid by the previous tenant.

The amounts above can be increased by 5% if the rental housing was previously rented or offered for rent unfurnished, and is now being offered for rent fully furnished. This amount cannot be increased for any other good or service, including (but not limited to) gardening or utilities currently or formerly provided in connection with the rental.

### DAILY RENTALS

Housing advertised, offered, or charged at a daily rental rate at the time a state of emergency is declared, and if the landlord continues to advertise, offer or charge a daily rental rate after the state of emergency is declared will be limited to:

- The actual rent previously paid by the tenant, if the housing was occupied by a tenant at the time the state of emergency was declared;
- The most recent rental price offered before the state of emergency, if the housing was offered for rent within a year before the state of emergency, but was vacant at the time the state of emergency was declared.

Housing advertised, offered, or charged at a daily rental rate at the time a state of emergency is declared, and if the landlord chooses to then advertise, offer or charge on a periodic lease agreement after the state of emergency, will be limited to 160% (+10%) of the fair market rent established by HUD.

The 5% increase for previously unfurnished units, now offered furnished, applies to the daily

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rental units.

## MOBILEHOME SPACE RENT

Mobilehome space rent increases are limited after a state of emergency is declared.

- For existing tenants protected by rent control, the amount authorized by any local rent control ordinance;
- For new tenants in a space protected by rent control, the amount of rent last charged for a space in the same mobilehome park +10%;
- For new tenants in a space not protected by rent control, the amount of rent last charged for the space +10%.

### SUMMARY

The chart below summarizes the most relevant portions of the price gouging law for most residential landlords:

Type of Tenancy	Increase Allowed
Existing Tenant Remains in Possession	Rent at the time the state of emergency was declared + 10%*
Existing Tenant Vacates	New tenant @ old tenant's rate at the time the state of emergency was declared + 10%*
Existing Tenant Evicted	New tenant can't be charged more than amount that could be charged to old tenant + 10%*
No Tenant, and unit advertised, offered or rented in previous year	Price offered at the time the state of emergency was declared + 10%*
No Tenant, and not advertised, offered or rented in previous year	160% of HUD FMV + 10%*
Furnished (when previously unfurnished)	+5% (plus increase allowed above)
<b>Mobilehome Space Rent</b>	
Current tenants with rent control	Amount set out by rent control
New tenants with rent control	Amount of rent charged for a space in the mobilehome park at the time the state of emergency was declared +10%
New tenants without rent control	Amount of rent last charged for that space before the state of emergency was declared +10%
Furnished (when previously unfurnished)	+5% (plus increase allowed above)

*\*Additional rules apply for units advertised, offered or rented at a daily rate; units previously provided unfurnished and will now be offered furnished; units which become vacant after a state of emergency is declared, and are subject to a local ordinance, rule, regulation or initiative measure.*

AB 1919 also added Government Code §8588.8 directing the Office of Emergency Services to create a website with information about Penal Code § 396 of the Penal Code, including information for property owners about the effect of states of emergency on rental prices.

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Landlords who use a revenue management system that automatically adjust rents (such as YieldStar or Rainmaker LRO) should monitor it closely, or not utilize that feature, after a state of emergency is declared, to avoid unintentionally violating California Penal Code §396. Local laws may provide additional protections against price gouging.

Additional Resources:

- A State of California Department of Justice FAQ regarding price gouging is available at <https://oag.ca.gov/consumers/pricegougingduringdisasters>. Note that questions on the FAQ indicate that the price gouging restrictions may apply anywhere in the state where there is increased demand as a result of the declared emergency, even outside of the city of county where the emergency or disaster occurred.
- California Attorney General often issues press releases regarding new states of emergency and price gouging. New press releases can be searched at <https://oag.ca.gov/media/news>.
- You can search for declarations of emergency by Governor Newsom at: <https://www.gov.ca.gov/newsroom>.
- Declarations of emergency by Governor Brown are archived at: <https://www.ca.gov/archive/gov39/index.html#>.
- Information about states of emergency can also be searched at <http://www.oesnews.com/tag/state-of-emergency/>.
- KTS maintains a spreadsheet of the states of emergency, applicable dates, expiration dates, extension dates and websites with information about those states of emergency. It is available for \$250. To request the spreadsheet, contact Jamie Sternberg at (619) 744-0863 or [jamie.sternberg@kts-law.com](mailto:jamie.sternberg@kts-law.com).
- KTS offers a Price Gouging Summary Sheet with many frequently asked questions and it is available for \$100. To request the summary sheet, contact Jamie Sternberg at (619) 744-0863 or [jamie.sternberg@kts-law.com](mailto:jamie.sternberg@kts-law.com).
- A copy of current California Penal Code §396 is attached. It shows the changes made by [AB 1919](#). A copy of Government Code §8588.8 is also attached.

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*The italicized text below is new.*

## California Penal Code §396

(a) The Legislature hereby finds that during a state of emergency or local emergency, including, but not limited to, an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, or other natural or manmade disaster, some merchants have taken unfair advantage of consumers by greatly increasing prices for essential consumer goods and services. While the pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, when a declared state of emergency or local emergency results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of essential consumer goods and services be prohibited. It is the intent of the Legislature in enacting this act to protect citizens from excessive and unjustified increases in the prices charged during or shortly after a declared state of emergency or local emergency for goods and services that are vital and necessary for the health, safety, and welfare of consumers. Further, it is the intent of the Legislature that this section be liberally construed so that its beneficial purposes may be served.

(b) Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make ~~such a~~ *that* declaration in any county, city, or city and county, and 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 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 for a price of more than 10 percent ~~above~~ *greater than* the price charged by that person for those goods or services immediately prior to the proclamation or declaration of emergency. However, a greater price increase is not unlawful if that person 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 or materials used to provide the services, ~~provided that in those situations where the increase in price is attributable to additional costs imposed by the seller's supplier or additional costs of providing the good or service~~ during the state of emergency or local emergency, *and* the price ~~represents~~ *is* no more than 10 percent ~~above~~ *greater than* the total of the cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business immediately prior to the onset of the state of emergency or local emergency.

(c) Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make ~~such a~~ *that* declaration in any county, city, or city and county, and for a period of 180 days following that proclamation or declaration, it is unlawful for a contractor to sell or offer to sell any 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. However, a greater price increase is not unlawful if that person 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 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 contractor's supplier or additional costs of providing the service~~ during the state of emergency or local emergency, *and* the price represents no more than 10 percent ~~above~~ *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 onset of the state of emergency or local emergency.

(d) Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make ~~such a~~ *that* declaration in any county, city, or city and county, and 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 or motel's regular rates, as advertised immediately prior to the proclamation or declaration of emergency, by more than 10 percent. However, a greater price increase is not unlawful if the owner or operator can prove that the increase in price is directly attributable to additional costs imposed on it for goods or labor used in its business, to seasonal adjustments in rates that are regularly scheduled, or to previously contracted rates.

*(e) Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any city, county, or city and county, and for a period of 30 days following that proclamation or declaration, or any period the proclamation or declaration is extended by the applicable authority, it is unlawful for any person, business, or other entity, to increase the rental price, as defined in paragraph (11) of subdivision (j), 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. It shall not be a defense to a prosecution under this subdivision that an increase in rental price was based on the length of the rental term, the inclusion of additional goods or services, except as provided in paragraph (11) of subdivision (j) with respect to furniture, or that the rent was offered by, or paid by, an insurance company, or other third party, on behalf of a tenant. This subdivision does not authorize a landlord to charge a price greater than the amount authorized by a local rent control ordinance.*

*(f) It is unlawful for a person, business, or other entity to evict any residential tenant of residential housing after the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any city,*

*county, or city and county, and for a period of 30 days following that proclamation or declaration, or any period that the proclamation or declaration is extended by the applicable authority and rent or offer to rent to another person at a rental price greater than the evicted tenant could be charged under this section. It shall not be a violation of this subdivision for a person, business, or other entity to continue an eviction process that was lawfully begun prior to the proclamation or declaration of emergency.*

(g) The ~~provisions~~ *prohibitions* of this section may be extended for additional 30-day periods, as needed, by a local legislative body, local official, the Governor, or the ~~California~~ Legislature, if deemed necessary to protect the lives, property, or welfare of the citizens.

(h) A violation of this section is a misdemeanor punishable by imprisonment in a county jail for a period not exceeding one year, or by a fine of not more than ten thousand dollars (\$10,000), or by both that fine and imprisonment.

(i) A violation of this section shall constitute an unlawful business practice and an act of unfair competition within the meaning of Section 17200 of the Business and Professions Code. The remedies and penalties provided by this section are cumulative to each other, the remedies under Section 17200 of the Business and Professions Code, and the remedies or penalties available under all other laws of this state.

(j) For the purposes of this section, the following terms have the following meanings:

(1) “State of emergency” means a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, or other natural or manmade disaster for which a state of emergency has been declared by the President of the United States or the ~~Governor of California~~ *Governor*.

(2) “Local emergency” means a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, or other natural or manmade disaster for which a local emergency has been declared by an official, board, or other governing body vested with authority to make ~~such a~~ *that* declaration in any county, city, or city and county in California.

(3) “Consumer food item” means any article that is used or intended for use for food, drink, confection, or condiment by a person or animal.

(4) “Repair or reconstruction services” means services performed by any person who is required to be licensed under the Contractors’ State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), for repairs to residential or commercial property of any type that is damaged as a result of a disaster.

(5) “Emergency supplies” includes, but is not limited to, water, flashlights, radios, batteries, candles, blankets, soaps, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers.

(6) “Medical supplies” includes, but is not limited to, prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products.

(7) “Building materials” means lumber, construction tools, windows, and anything else used in the building or rebuilding of property.

(8) “Gasoline” means any fuel used to power any motor vehicle or power tool.

(9) “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.

(10) “Housing” means any rental housing with an initial lease term of no longer than one ~~year~~ *year, including, but not limited to, a space rented in a mobilehome park or campground.*

(11) “Rental price” for housing means any of the following:

*(A) 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. 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. 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 ordinance, rule, regulation, or initiative measure adopted by any local governmental entity that establishes a maximum amount that a landlord may charge a tenant for rent, the actual rental price paid by the previous tenant or the amount specified in subparagraph (B), whichever is greater. This amount may be increased by 5 percent if the housing was previously rented or offered for rent unfurnished, and it is now being offered for rent fully furnished. This amount shall not be adjusted for any other good or service, including, but not limited to, gardening or utilities currently or formerly provided in connection with the lease.*

*(B) For housing not rented and not offered for rent within one year prior to the proclamation or declaration of emergency, 160 percent of the fair market rent established by the United States Department of Housing and Urban Development. This amount may be increased by 5 percent if the housing is offered for rent fully furnished. This amount shall not be adjusted for any other good or service, including, but not limited to, gardening or utilities currently or formerly provided in connection with the lease.*

*(C) Housing advertised, offered, or charged, at a daily rate at the time of the declaration or proclamation of emergency, shall be subject to the rental price described in subparagraph (A), if the housing continues to be advertised, offered, or charged, at a daily rate. Housing advertised, offered, or charged, on a daily basis at the time of the declaration or proclamation of emergency, shall be subject to the rental price in subparagraph (B), if the housing is advertised, offered, or charged, on a periodic lease agreement after the declaration or proclamation of emergency.*

*(D) For mobilehome spaces rented to existing tenants at the time of the proclamation or declaration of emergency and subject to a local rent control ordinance, the amount authorized under the local rent control ordinance. For new tenants who enter into a rental agreement for a mobilehome space that is subject to rent control but not rented at the time of the proclamation or declaration of emergency, the amount of rent last charged for a space in the same mobilehome park. For mobilehome spaces not subject to a local rent control ordinance and not rented at the time of the proclamation or declaration of emergency, the amount of rent last charged for the space.*

~~(11)~~ (12) “Goods” has the same meaning as defined in subdivision (c) of Section 1689.5 of the Civil Code.

~~(k)~~ (k) ~~Nothing in this section shall~~ *This section does not* preempt any local ordinance prohibiting the same or similar conduct or imposing a more severe penalty for the same conduct prohibited by this section.

~~(l)~~ (l) 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 subdivision (b) or (c).

*(m) This section does not prohibit an owner from evicting a tenant for any lawful reason, including pursuant to Section 1161 of the Code of Civil Procedure.*

#### ***Government Code §8588.8***

*Upon the proclamation of a state of emergency declared by the Governor, the Office of Emergency Services shall include, on an appropriate Internet Web site, information about Section 396 of the Penal Code, including information for property owners about the effect of the proclamation on rental price as defined in paragraph (11) of subdivision (j) of Section 396 of the Penal Code.*