

New York City Department of Consumer Affairs

NOTICE OF ADOPTION OF EMERGENCY RULE PROHIBITING PRICE GOUGING OF CERTAIN PERSONAL AND HOUSEHOLD GOODS AND SERVICES

The Commissioner of the New York City Department of Consumer Affairs hereby gives notice, pursuant to the authority granted by sections 1043(i) and 2203 of the New York City Charter and sections 20-701 and 20-702 of the New York City Administrative Code, of the adoption of the following emergency rule, effective immediately, declaring as unconscionable the practice of price gouging with regard to personal and household goods and services that either: (a) consumers reasonably believe aid in diagnosing or monitoring disease symptoms, prevent the spread of disease, or treat disease, under certain circumstances; or (b) merchants market as aiding in diagnosing or monitoring disease symptoms, preventing the spread of disease, or treating disease, under certain circumstances.

Statement of Basis and Purpose of Emergency Rule

The Department of Consumer Affairs (“DCA”) is adopting an emergency rule declaring as unconscionable the practice of price gouging with regard to personal and household goods and services that either: (a) consumers reasonably believe aid in diagnosing or monitoring disease symptoms, prevent the spread of disease, or treat disease; or (b) merchants market as aiding in diagnosing or monitoring disease symptoms, preventing the spread of disease, or treating disease. This prohibition is limited to diseases that are found to be an imminent threat to public health or safety by the City of New York or are the subject of a State of Emergency within the City of New York.

New York City Administrative Code § 20-701(b) permits DCA to declare as unconscionable:

Any act or practice in connection with the sale, lease, rental or loan or in connection with the offering for sale, lease, rental or loan of any consumer goods or services, or in the extension of consumer credit, or in the collection of consumer debts which unfairly takes advantage of the lack of knowledge, ability, experience or capacity of a consumer; or results in a gross disparity between the value received by a consumer and the price paid, to the consumer's detriment[.]

Price gouging occurs when a merchant takes advantage of an abnormal disruption in the marketplace and charges excessive prices, taking advantage of the consumer's inability to bargain or seek a better price, resulting in a “gross disparity between the value received by a consumer and the price paid.” The spread of the COVID-19 virus and the disruptions associated with it have created disruptions in the marketplace for personal and household goods and services. This rule assists DCA in its work of protecting consumers, especially when they are at their most vulnerable.

DCA has received hundreds of complaints over the past two weeks of price gouging for personal and household goods that consumers are seeking to purchase to limit the spread of COVID-19. Currently, DCA is receiving over 100 complaints per day. DCA investigators have also conducted dozens of inspections demonstrating that price gouging is occurring with regard to goods purchased by consumers for the purpose of limiting the spread of COVID-19. Examples of the types of goods that have been the subject of price gouging include, but are not limited to, face masks, hand sanitizer, and disinfectant wipes.

This emergency rule declares such conduct unconscionable and aligns New York City with many jurisdictions across the country that prohibit price gouging in emergency circumstances, including New York State. The rule establishes a threshold for prohibited pricing of ten percent above the price at which consumers in New York City could obtain such goods or services 30 to 60 days prior to the issuance of this rule. This is the standard used by several other jurisdictions, including the states of New Jersey and California, in laws that prohibit price gouging.

To ensure that no merchant is penalized unfairly, the rule provides a defense if the merchant can show that the price increase 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.

This emergency rule also adds an entry for the new price gouging prohibition to the penalty schedule for consumer protection law violations found in section 6-47 of subchapter B of chapter 6 of title 6 of the Rules of the City of New York.

This rule is necessary so that DCA can immediately begin limiting this unconscionable trade practice, thereby taking immediate action to protect the residents of New York City.

Sections 1043(a) and 1043(i) and 2203(f) of the New York City Charter and Sections 20-701 and 20-702 of the New York City Administrative Code authorize the Department of Consumer Affairs to issue this emergency rule.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Part 4 of subchapter A of chapter 5 of Title 6 of the Rules of the City of New York is amended by adding a new section 5-42, to read as follows:

§ 5-42 Unlawful Price Gouging.

(a) Definitions.

“Covered goods or services.” The term “covered goods or service” means any good or service that:

(i) is reasonably believed by a consumer to aid in diagnosing or monitoring disease symptoms, preventing the spread of disease, or treating disease; or

(ii) is marketed by a merchant as aiding in diagnosing or monitoring disease symptoms, preventing the spread of disease, or treating disease.

“Imminent threat to public health.” The term “imminent threat to public health” means an outbreak of disease, found to be an imminent threat to public health or safety by the City of New York or the subject of a State of Emergency within the City of New York.

“Excessive price increase.” The term “excessive price increase” means an increase of 10 percent or more above the price at which the same or similar good or service could have been obtained by consumers in the City of New York 30-60 days prior to the adoption of this rule.

“Merchant.” The term “merchant” means a seller, lessor, or creditor or any other person who makes available either directly or indirectly, goods, services or credit, to consumers. “Merchant” includes manufacturers, wholesalers and others who are responsible for any act or practice prohibited by this subchapter.

(b)(1) It shall be an unconscionable trade practice for a merchant to sell or offer for sale covered goods or services with an excessive price increase during an imminent threat to public health.

(2) An increase in price shall be considered lawful if the merchant establishes that the increase 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 the increase charged to the consumer is comparable to the increase incurred by the merchant.

(3) Each sale or offer for sale in violation of this rule constitutes a separate violation.

Section 2. Section 6-47 of subchapter B of chapter 6 of Title 6 of the Rules of the City of New York is amended, to read as follows:

§ 6-47 Consumer Protection Law Penalty Schedule.

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

For the fine amounts marked by a single asterisk, if the respondent timely submits the appropriate proof of having cured a first-time violation, the respondent will not be subject to a civil penalty pursuant to Local Law 153 of 2013.

Pursuant to Section 20-703(b) of the Administrative Code of the City of New York, the knowing violation of any provision of subchapter 1 of chapter 5 of title 20 of the Administrative Code of the City of New York or of any rule promulgated thereunder is subject to a maximum penalty of \$500.

Unless otherwise specified by law, a second or third or subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, [or] entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
Admin Code § 20-700	Engaged in an unlawful deceptive or unconscionable trade practice	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-23	Failure to meet the requirement(s) for layaway plans	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-24	Failure to meet requirement(s) for credit card limitations	\$260*	\$350*	\$315	\$350	\$350	\$350
6 RCNY § 5-32	Failure to meet the requirement(s) for documentation of transactions	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-36	Failure to meet the requirement(s) for sale of used items	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-37	Failure to comply with disclosure of refund policy requirements	\$260*	\$350*	\$315	\$350	\$350	\$350
6 RCNY § 5-39	Failure to meet the requirements for cancellation of home appointment	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-40	Improper limit or disclaimer of liability for negligence	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-40(e)	Improper posting of sign that business is not liable for negligence	\$260*	\$350*	\$315	\$350	\$350	\$350
6 RCNY § 5-41	Collected sales tax on sale of good or service not subject to such tax under Article 28 of the NYS Tax Law or rule and regulations promulgated thereunder	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-42	Violation of the prohibition on price gouging	\$350	\$350	\$350	\$350	\$350	\$350

6 RCNY § 5-46	Failure to meet the requirement(s) for a car rental business	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-46(d)	Failure to post notice of consumer protection law	\$260*	\$350*	\$315	\$350	\$350	\$350
6 RCNY § 5-47	Failure to meet the requirement(s) for jewelry sellers and appraisers	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-51	Failure to meet the requirement(s) for retail sale of gasoline	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-54	Failure to meet the requirement(s) for repairs of consumer goods	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-55	Failure to meet the requirement(s) for meat and poultry advertising	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-56	Failure to meet the requirement(s) for window gates	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-57	Failure to meet the requirement(s) for utility bill payments	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-58	Improper offer of sale of food in damaged containers	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-59	Improper imposition of restaurant surcharges	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-60	Failure to meet the requirement(s) for franchises	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-61	Failure to meet the requirement(s) for public performance seats	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-63	Failure to meet the requirement(s) for catering contracts	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-68	Failure to meet the requirements for dealers at flea markets	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-69	Failure to meet the requirements of blood pressure reading services	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-70	Failure to meet the requirements for retail service establishments	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-73	Failure to meet the requirement(s) for the sale of box cutters	\$350	\$350	\$350	\$350	\$350	\$350
6 RCNY § 5-75	Failure to post the Buyer's Guide when selling or offering to sell any used automobile	\$260	\$350	\$315	\$350	\$350	\$350
6 RCNY § 5-87 through 6 RCNY § 5-103	Prohibited conduct in offering sales or discounts and related recordkeeping requirements	\$260	\$350	\$315	\$350	\$350	\$350

Required Finding Pursuant to New York City Charter Section 1043(i)(1)

IT IS HEREBY CERTIFIED that the immediate effectiveness of this emergency rule, which declares that price gouging in the personal and household goods and services market in response to the coronavirus (COVID-19) outbreak is unconscionable, is necessary to address a public health emergency and to aid the City of New York in responding to COVID-19. Investigations by the Department of Consumer Affairs (DCA) have demonstrated that retailers across New York City have been charging excessive prices on personal and household goods consumers are seeking to purchase to limit the spread of COVID-19. Without the immediate implementation of this rule, merchants selling personal and household goods and services that consumers are seeking to purchase to limit the spread of COVID-19 could charge excessive prices and therefore jeopardize public health. It is therefore necessary to act by emergency rulemaking so that the City of New York and its agencies can immediately begin limiting this dangerous practice, thereby taking immediate action to protect the health of New York City residents and to protect consumers from predatory practices, pending the adoption of a rule by normal rulemaking processes.

On January 30, 2020, the World Health Organization designated the outbreak of the novel coronavirus, COVID-19, as a Public Health Emergency of International Concern. On January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the entire United States to aid the nation's healthcare community in responding to COVID-19. On March 7, 2020, Governor Andrew Cuomo declared by Executive Order a disaster emergency for the entire State of New York. On March 12, 2020, Mayor Bill de Blasio declared a State of Emergency within the City of New York. New York State and New York City continue to take measures to address the threat that COVID-19 poses to the health and welfare of its residents and visitors.

Price gouging occurs when a merchant takes advantage of an abnormal disruption in the marketplace and charges excessive prices. DCA has received hundreds of complaints of price gouging for personal and household goods purchased in response to COVID-19 over the past two weeks. Currently, DCA is receiving over 100 complaints per day. DCA investigators have also conducted dozens of inspections demonstrating that price gouging is occurring with regard to such goods, which include face masks, hand sanitizer, and disinfectant wipes. Immediate implementation of this rule is necessary to ensure that these and other goods and services widely used as a means of controlling the spread of COVID-19 remain available and accessible to the public and medical professionals.

Delaying implementation of this rule pending non-emergency rulemaking would result in the residents of New York City having limited access to goods and services that are in great demand as a means of preventing the spread of COVID-19, with the likely consequence of increased and avoidable exposure to this communicable disease.

Pursuant to section 1043(i)(2) of the Charter, the emergency rule will remain in effect for not more than 120 days while DCA prepares a permanent rule.

IT IS HEREBY CERTIFIED that the immediate effectiveness of a rule authorizing DCA to declare unconscionable price gouging in the personal and household goods and services market in response to COVID-19 is necessary to address an imminent threat to the health of residents of New York City.

Dated: March 15, 2020

LORELEI SALAS
COMMISSIONER, DEPARTMENT OF CONSUMER AFFAIRS

APPROVED:

BILL DE BLASIO, MAYOR