

Memo

TO: Mayor and Council
FROM: Dave Lohman, City Attorney
DATE: September 15, 2020
RE: Potential City Prohibition of Rent Gouging

To address the possibility of landlords in Ashland dramatically increasing residential rents following the loss of so much housing in between Ashland and Medford in the last few days, a Councilmember is advocating for Council discussion of an ordinance prohibiting “rent gouging” at the September 15, 2020 business meeting. In discussing the need for and potential effectiveness of a City ordinance prohibiting “rent gouging” following the wildfire emergency, Councilmembers may find the following points helpful.

1. The governor of California has issued an executive order prohibiting various forms of rent gouging in California in light of the extensive wildfires there. Oregon statutes dictate that the City of Ashland cannot administratively or legislatively replicate the action by California’s governor.
2. Oregon Revised Statute 401.965(5) currently prohibits a provider of consumer goods or services from raising prices by more than 15% during the declaration of abnormal disruption of the market. Oregon Governor Brown’s 9/10/2020 Executive Order 20-42 declared that an abnormal disruption of the market (including the market for lodging facilities) commenced at 12 AM on September 9, 2020, in all Oregon counties. This executive order directed persons who believe they have been subjected to unconscionably excessive prices due to this disruption to contact the Oregon Department of Justice Consumer Protection Division, which is responsible for investigating such complaints and prosecuting offenders. See attached Exhibit A.
3. Oregon Revised Statute 91.225(2) prohibits cities from enacting any ordinance or resolution which controls the amount that may be charged for rental of any dwelling unit. Subsection 5 of ORS 91.225 establishes an exception to this prohibition when disaster “materially eliminates a significant portion of the rental housing supply.” Whether “disaster-related loss of rental housing supply” outside the borders of a city can justify that city’s enactment of temporary rent controls within its borders has not been addressed in Oregon case law; probably no Oregon city has so far risked trying to justify its partial suspension of settled Contract Law on the basis of circumstances in geographic areas over which it has no legal authority.
 - a) The Alameda Fire did not reduce the housing supply in Ashland.

4. In its recent special session, the Oregon Legislature enacted HB 4213, which extended the moratorium on evictions previously included in Governor's executive orders through September 30, 2020. The wildfire emergency occurred after that session concluded; so the Governor is very likely to use a new executive order to extend the moratorium beyond September 30.

5. In 2019, the Oregon Legislature enacted Senate Bill 608, which prohibited landlords from increasing the rent during residential tenants' first year of occupancy and prohibited rent increases for existing tenants to no more than 7% per year, plus inflation.

a) The facts that the residential rental vacancy rate in Ashland is currently so low and that a moratorium on evictions is currently in place means that few opportunities exist for residential landlords to rent to new tenants outside the rent controls in SB 608.

EXECUTIVE ORDER NO. 20-42

DECLARATION OF ABNORMAL DISRUPTION OF THE MARKET DUE TO WILDFIRES

On August 20, 2020, I issued Executive Order No. 20-35 declaring a state of emergency due to the imminent threat of wildfires. This declaration recognized the extreme fire danger presented by hot, dry, windy conditions, as well as a significant risk that wildfires would result in evacuations, threats to critical infrastructure, and the destruction of homes and other structures. In recent days, that extreme danger has materialized, as several fires have burned across Oregon, destroying homes, displacing individuals, and causing injury and loss of life.

ORS 401.965(5) empowers the Governor to declare an abnormal disruption of the market when any emergency prevents ready availability of essential consumer goods and services. My office has received reports that some persons evacuated from fire areas to lodging facilities may be experiencing unusual increases in lodging rates. I am also concerned that the wildfire emergency may prevent ready availability of other essential consumer goods and services.

NOW, THEREFORE, IT IS DIRECTED AND ORDERED:

1. Having found that the ongoing wildfires present an emergency that prevents ready availability of essential consumer goods and services, I hereby declare that an abnormal disruption of the market commenced at 12:00 a.m. on September 9, 2020, in all Oregon counties.
2. Persons who believe that they have been subjected to unconscionably excessive prices for essential consumer goods and services due to this disruption should report that conduct to the Oregon Department of Justice Consumer Protection hotline, at 877-877-9392. (Consumers can also visit www.OregonConsumer.gov.) The Oregon Department of Justice has the authority to investigate unlawful trade practices.

EXHIBIT

tabbles

A



EXECUTIVE ORDER NO. 20-42
PAGE TWO

3. This order shall remain in effect for thirty days unless extended or terminated sooner.

Done at Salem, Oregon this 10th day of September, 2020.

Kate Brown
GOVERNOR

ATTEST:

Bev Clarno
SECRETARY OF STATE