

LOCAL LAW NO. 2-92
CHAUTAUQUA COUNTY

A LOCAL LAW TO AMEND LOCAL LAW 23-91
RE: ITEM PRICING

BE IT ENACTED, by the County Legislature of the County of Chautauqua, THAT Local Law 23-91 is hereby amended as follows (with deletions signified by [brackets] and additions underlined):

Section One: LEGISLATIVE INTENT

This law recognizes that clear, accurate item pricing is a basic consumer right that is not protected under current state law. It is the intent of this legislation to ensure that consumer goods offered for sale in Chautauqua County are clearly, accurately and adequately marked as to their selling prices.

Section Two: DEFINITIONS

A. "Stock Keeping Unit" shall mean each group of items offered for sale of the same brand name, quantity of contents, retail price, and variety within the following categories:

- i. Food, including all material, solid, liquid or mixed, whether simple or compound, used or intended for consumption by human beings or domestic animals normally kept as household pets are all substances or ingredients to be added thereto for any purpose; and
- ii. Napkins, facial tissues, toilet tissues, and any disposable wrapping container for the storage, handling or serving of food; and
- iii. Detergents, soaps, other cleansing agents, and cleaning implements; and
- iv. Non-prescription drugs, feminine hygiene products and health and beauty aids.

B. "Stock Keeping Item" shall mean each item of a stock keeping unit offered for sale.

C. "Universal Product Coding" shall mean any system of coding which entails electronic pricing.

D. "Item Pricing" shall mean the tag, stamp or mark affixed to a stock keeping item by an authorized person which sets forth, in Arabic numerals, the retail price.

E. "Computer-Assisted Checkout System" shall mean any electronic device, computer system or machine which determines the selling price of a stock keeping item by interpreting its universal product code, or by use of its price look-up function.

F. "Price Look-up Function" shall mean the capability of any checkout system to determine the retail price of a stock keeping item by way of the manual entry into the system of a code number assigned to that particular unit by the retail store or by way of a checkout operator's consultation of a file maintained at the point of sale.

G. "Inspector" shall mean an authorized government official having jurisdiction to enforce the provisions of this section.

H. "Retail Store" shall mean a store selling stock keeping units at retail. A store which is not open to the general public but is reserved for use by its members shall come within the provisions of this definition unless the members must pay a direct fee to the store to qualify for membership and the store is not required to collect sales tax on transactions with members.

Pursuant to this section, a retail store shall not include any store which:

- i. Has as its only full-time employee the owner thereof, or the parent, or the spouse or child of the owner, or in addition thereto, not more than two full-time employees; or
- ii. Had annual gross sales in a pervious calendar year of less than three million dollars, unless the retail store is part of network of subsidiaries, affiliates or other member stores, under director or indirect common control, which, as a group, had annual gross ales in the previous calendar year of three million dollars or more; or
- iii. Engage primarily in the sale of food for consumption on the premises or in a specialty trade which the Director of the Weights and Measures determines, by regulation, would be inappropriate for item pricing.

Section Three: ITEM PRICING REQUIRED

A. Every person, firm, partnership, corporation, or association which sells, offers for sale or exposes for sale in a retail store in stock keeping unit that bears a Universal Product Code shall disclose to the consumer the item price of each stock keeping item by causing such to be conspicuously, clearly and plainly marked, stamped, tagged, or affixed thereto in Arabic numerals.

B. Certain items exempted. The following stock keeping items need not to be item priced as provided in subdivision A of this section provided that a shelf price and a price look-up function are maintained for such stock keeping items:

- i. Snack foods such as cakes, gum, candies, chips, and nuts offered for sale in single packages and weighting five ounces or less.
- ii. Stock keeping items which are under three cubic inches in size and weight less than three ounces, and are priced under fifty cents.
- iii. Items sold through a vending machine.
- iv. Items that are on store special/sale. "Sale Price" shall mean the price of stock keeping units offered on sale in good faith at a price below the price for which such stock keeping items are usually sold in the store, for a stated period of time not to exceed [seven days] fourteen days.
- v. Fresh milk, cream half-and-half, and other similar packaged liquid dairy products, and fresh eggs.
- vi. Fresh produce displayed for sale in bulk and not packaged prior to sale and is either packaged for or by the consumer at the time of sale.
- vii. Consumer goods displayed for sale in bulk and not packaged prior to sale and is ether packaged for or by the consumer at the time of sale.
- viii. Foods sold for consumption on premises.
- ix. Cigarettes and cigars sold by the pack or carton.
- x. Frozen foods.
- xi. Baby foods in jars.

- xii. Gelatin and pudding.
- xiii. Pet food weighting six ounces or less.
- xiv. Envelope – type packaged products weighting five ounces or less.

Section Four: PRICING ACCURACY

A. No retail store shall charge a retail price for any exempt or non-exempt stock keeping item which exceeds the lower of any item, shelf, sale, or advertised price of such stock keeping item. In the event that the programmed computer price exceeds the lowest price a store is permitted to charge for a stock keeping unit, the store will be subject to a penalty as described in Section Five, Subsection E.

B. In a store with a laser scanning or other computer assisted check-out system, the enforcing agent shall be permitted to compare the time, shelf, sale or advertised price of any one stock keeping item sold in the store with the programmed computer price.

Section Five: ENFORCEMENT

A. Item pricing inspection procedures. For the purposes of determining a store's compliance with the requirements of section three, an inspection shall be conducted of a sample of no less than fifty and no more than two hundred stock keeping units.

B. Laser scanner accuracy inspection procedures. For any inspection under Section Four, the store representatives shall afford the inspector access to the test mode of the checkout system in use at that store or to a comparable function of said system and to the retail price information contained in a price look-up function.

C. Stop removal order. An inspector shall have the authority to issue a stop removal order with respect to any device, system, or stock keeping unit being used, handled, or offered for sale in violation of Section Three or Four. Any such order shall be in writing and direct that the device, system or stock keeping item, as the case may be shall be removed from use or sale pending correction.

D. Penalties for item pricing violations. Any person who fails to mark any stock keeping item in violation of Section Three shall be subject to the [penalties of not less than twenty dollars and not more than] penalty of fifty dollars per violation per stock keeping unit. For additional violations during a subsequent inspection in a twelve month period, the above penalties shall be doubled. No penalties shall be imposed for a violation of Section Three if more than ninety-five percent of all the stock keeping items inspected in each stock keeping unit as an individual point of sale contained clearly readable item prices.

E. Penalties for scanner accuracy violations. For a violation of the provisions of Section Four, a penalty in the amount of fifty dollars per violation shall be imposed for the first two percent of the stock keeping [items] units compared rounded to the nearest whole number; one hundred dollars per violation for the next two percent; two hundred dollars per violation for the next two percent; and three hundred dollars for each additional violation. For additional violations during a subsequent inspection in a twelve month period, the above penalties shall be doubled.

F. Jurisdiction. The provisions of this Section and the regulation promulgated hereunder shall be enforced by the Director of Weights and Measures. Each day a violation is continued shall constitute a separate violation.

G. Applicability. This Local Law shall apply throughout Chautauqua County except in any city, village, or area of any town outside the village or villages therein during such time as such city, village or town has in effect a local law regulating item pricing.

Section Six: RULES AND REGULATIONS

The Director of Weights and Measures may promulgate such rules and regulations necessary to effectuate the purpose of this Local Law.

Section Seven: LOCAL LAW REVIEW

At any time during the fourth year this local law is in effect, review of this local law shall be conducted by the Legislature. The Chairman of the Legislature shall name an ad hoc Item Pricing Review Committee which shall include representatives of consumer interest and of the food industry, and at least two members of the Legislature. Such review shall consider the effectiveness of this Local Law and the need for changes to its provisions. A report of the finding of the ad hoc Item Pricing Review Committee shall be made to the full Legislature within ninety days of the appointment of the committee. The results of the review shall be acted upon as is appropriate under the Rules of the Legislature.

If the Local Law continues in effect following this initial review procedure, subsequent reviews using the same procedural may occur during every third year thereafter.

Nothing in this provision, however, shall restrict the Legislature from amending or repealing this Local Law at any time it so chooses.

Section Eight: EFFECTIVE DATE

This Local Law amendment shall become effective March 15, 1992.

Approved by Legislature – February 26, 1992
(R/C Vote: 23 Yes; 1 No; 1 Absent) No: Caflisch
Public Hearing – March 10, 1992
Adopted as Local Law 2-92