

Introductory Local Law Number 11 Of 2007

County Of Ulster

A Local Law To Amend Local Law Number 5 Of 2000 Requiring Checkout Accuracy And The Clear, Accurate And Adequate Display Of Selling Price

BE IT ENACTED, by the County Legislature of the County of Ulster as follows:

Section One: LEGISLATIVE INTENT. This amendment updates Local Law Number 5 of 2000. The Ulster County Legislature recognizes that the clear accurate pricing and checkout accuracy are basic consumer rights. It is the intent of this legislation to ensure that consumer goods offered for sale in Ulster County are clearly, accurately and adequately marked as to their selling prices.

Section Two: RULES GOVERNING USE OF CERTAIN WORDS. In this Local Law, unless the context otherwise requires:

1. Words in the singular number include the plural and in the plural include the singular.
2. Words of the masculine, feminine or neuter gender include the feminine, neuter and/or masculine genders.

Section Three: APPLICATION.

1. This Local Law applies to every person engaged in the business of the selling consumer commodities in Ulster County, as the term “consumer commodities” is defined in Section 214-h of the New York State Agriculture and Markets Law.
2. Nothing in this Local Law shall be construed to limit or restrict any right or remedy to which a person may be subject, under common law, or any other federal, state or local statute.
3. Pursuant to this Section, and provided that the selling prices are clearly displayed in Arabic numerals on signs clearly designating the consumer goods to which they refer, this Local Law shall not apply to any retail store which:
 - a. Has as its only full time employee the owner thereof, and the parent, or the spouse or the child of the owner and (in the addition thereto), not more than two other full-time employees: or

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- b. Had annual gross sales in a previous calendar year of less than five-hundred-thousand dollars (\$500,000.00), unless the retail store is part of a network of subsidiaries, affiliates or other member stores under direct or indirect common control, which, as a group had annual gross sales in a previous calendar year of five hundred thousand dollars (\$500,000.00) or more; or
- c. Engages primarily in the sale of food for the consumption on the premises or in a specialty trade that the legislature decides, by resolution, would be inappropriate for item pricing.

Section Four: DEFINITIONS.

1. “Consumer Goods” means consumer commodities sold by any person, firm, partnership, corporation or association which sells, offers for sale or exposes for sale at retail in a food store or grocery department of a general merchandise store, a consumer commodity as defined in Section 214-h of the New York State Agriculture and Markets Law.
2. “Consumer Commodities” shall mean the following, however packaged or contained:
 - (a) *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 and all substances or ingredients to be added thereto for any purpose; and*
 - (b) *napkins, facial towels, toilet tissue, foil wrapping, plastic wrapping, paper toweling, disposable plates; and*
 - (c) *detergents, soaps and other cleansing agents; and*
 - (d) *non-prescription drugs, female hygiene products and toiletries*

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3. *“Food Store” shall mean a store selling primarily food at retail, which store is not primarily engaged in the sale of food for consumption on the premises, or which is not primarily engaged in a specialty trade which the commissioner determines, by regulation, would be inappropriate for unit pricing.*
4. “Person” shall include without limitation any individual, firm, joint venture, association, co-partnership, group, corporation or any other legal entity or combination of entities whatsoever.
5. “Computer-assisted checkout system” means any electronic device, computer system or machine, including but not limited to laser scanners, which determines the selling price of consumer goods by interpreting coded information.
6. ”Price look-up function” shall mean the capability of any checkout system to determine the retail price for an item of consumer goods by way of either automatic or manual entry into the system of a code assigned to that particular item.
7. “Stock-keeping unit” (SKU) shall mean each group of items offered for sale of the same brand name, quantity of contents, variety and retail price.
8. “Stock-keeping-item” (SKI) shall mean each individual item within a stock-keeping-unit.
9. *“Large food store” shall mean a food store containing retail space of more than 15,000 square feet.*
10. *“Small food store” shall mean a food store containing retail space of up to 15,000 square feet.*
11. *“Large Overcharge” shall mean an error of twenty-five cents or more on any individual item.*

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Section Five: ITEM PRICING REQUIRED.

1. The selling price shall be clearly stamped, tagged, labeled or otherwise marked in Arabic numerals on each item of consumer goods offered for sale in Ulster County.
2. The provisions of this Subsection 1 of this Section shall not apply to the following consumer goods provided the selling price and the unit of measure is clearly displayed in Arabic numerals on a sign, clearly designating the particular consumer goods to which it refers, located as close as practical, and closer than other sign to the location at which the goods are displayed:
 - a. Fresh milk
 - b. Fresh eggs
 - c. Consumer goods which are displayed loose in bulk, not packaged prior to sale, and which are packaged for or by the consumer at the time of sale, such as but not limited to fresh produce, fresh baked goods, coffee beans.
 - d. Frozen food
 - e. Foods sold for consumption on premises as well as foods prepared for immediate consumption but sold as take-out or sold from vending machines operated by the consumer.
 - f. Snack food, such as but not limited to gum, candy, cakes, chips and nuts, offered for sale in single packages, weighing five (5) ounces or less and costing less than (1) dollar.
 - g. Cigarettes and cigars sold by the pack or by the carton.
 - h. Single containers of nonalcoholic beverages where the selling prices for different flavors packaged in identical sizes or quantities are the same.

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- i. Non-food stock keeping units which are under three cubic inches in size, and weigh less than three ounces, and are priced under a dollar.
 - j. Baby foods in containers with a net weight of 6 ounces or less.
 - k. Yogurt packaged and sold in single containers.
 - l. Packaged non-refrigerated gelatin, pudding and gelatin or pudding products.
3. The provisions of Subsection 2 of this Section may be subsequently modified either by adding or deleting consumer goods from the list of exemptions, provided that a resolution supporting such modification is passed by the Ulster County Legislature.
4. The County Sealer of Weights and Measures may further direct the manner in which the selling price of the exempted consumer goods shall be posted.
5. It shall be a violation of this Local Law:
 - a. To stamp, tag, label or otherwise mark more than one selling price upon an item of consumer goods offered for sale in Ulster County unless the prior selling price is unmistakably deleted or obliterated or is otherwise marked so as to indicate clearly that the prior selling price is not the current selling price.
 - b. To stamp, tag, label or otherwise mark any item of consumer goods at a selling price greater than the selling price advertised or displayed for that item.
 - c. To sell or offer for sale any consumer goods or services at a greater price than the price displayed or advertised therefor.

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- d. To sell or offer for sale any consumer goods that do not have a selling price displayed in conformity with Subsections 1 or 2 of this Section.
- e. To use a computer-assisted checkout system or price look-up function that determines a retail selling price that exceeds the lower of any shelf, sale or advertised price for any item of consumer goods offered for sale.

Section Six: WAIVER FROM ITEM PRICING BASED ON CHECKOUT ACCURACY.

1. Every person, store firm, partnership, corporation, or association which uses a computer-assisted checkout system and which would otherwise be required to item price as provided in Section Five of this Local Law may make application in writing to the County Sealer of Weights and Measures (County Sealer) for a waiver of said item pricing requirement. A separate application shall be required for each store. Each application shall be subject to a non-refundable processing fee to cover the cost of conducting scanner accuracy inspections as provided in Subsection 2 of this Section. The County Sealer shall determine the processing fee and may revise it from time to time, *but in no event shall said fee exceed one thousand-five hundred dollars per application for a large food store or one thousand dollars per application for a small food store.*
2. Upon receipt of an application and fee as provided in Subsection 1 of this Section, the County Sealer shall cause to be conducted two scanner accuracy inspections of the store for which the application has been submitted. These inspections shall be conducted on two separate days and shall consist of comparing the shelf, sale or advertised price of any stock keeping unit (SKU) with the computer-assisted checkout system price. Such inspection shall consist of at least 100 SKUs, but no more than 500, selected at the discretion of the County Sealer. In the event that any violations are detected, penalties shall be assessed as provided in Section Seven, Subsections 6, 7 and 8 of this Local Law. If, considering both inspections together, the number of SKUs found in violation does not exceed two percent of all SKUs inspected, the County Sealer shall grant to the applicant a one-year

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- revocable waiver from the item-pricing requirement. Any store with a current waiver shall be exempt from the requirements of Section five of this Local Law.
3. A waiver from item pricing shall be valid for a period of one year from the date of issuance. Stores may reapply annually for renewal of a waiver. A processing fee and two inspections shall be required for each annual renewal application, as required for an original waiver application.
 4. In the event that the total violations in excess of two percent are discovered in the inspections provided for in Subsection 2 or 3 of this Section, the County Sealer shall deny a waiver to the applicant. If the owner of the store still wishes a waiver, such store must promptly reapply for a waiver and pay the required fee to the County Sealer within five business days after being notified of the failure. Stores that do not reapply must promptly come into compliance with all requirements of Section Five, and, may not again reapply for a waiver until at least one year after denial by the County Sealer.
 5. In the event that the County Sealer is unable to conduct inspection pursuant to Subsection 2 of this Section within ninety days receipt of a complete waiver application and proper processing fee, the County Sealer may grant a temporary waiver pending completion of inspections. The County Sealer shall cause said inspections to be completed as soon as practicable. If, upon completion, the inspections detect a violation rate in excess of two percent or less, the County Sealer shall issue a regular waiver with an expiration date one year from the commencement date of the temporary waiver. If the inspections detect violation rate in excess of two percent, the temporary waiver shall be immediately revoked and compliance with Section Five shall be required and the provisions of Subsection 4 of this Section shall apply.
 6. As a condition of the waiver from item pricing pursuant to this Section, each store that accepts a waiver must agree to meet the following requirements, and no regular or temporary waiver shall be granted to a store that has not agreed to these requirements in writing:

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- a. The store shall designate and make available price check scanners to enable consumers to confirm the prices of stock-keeping items (SKIs). These price check scanners shall be in locations convenient to consumers with the signs of sufficient sized lettering identifying these units to consumers. Stores will submit their proposals for signs, numbers of devices and device locations to the County Sealer for approval.
- b. The store shall not charge any customer a price for any SKI that exceeds the item, shelf, sale or advertising price of the SKI, whichever is least.
- c. The store shall cause to be posted in a conspicuous location, accessible by all consumers and approved by the County Sealer a sign explaining the rights of consumers consistent with Section Seven of this Local Law. The County Sealer will specify the content and size of the sign by regulation. The store is also required to post the temporary or annual waiver in the area designated for handling price discrepancies.
- d. The store shall make payment to consumers who have been overcharged as provided in Section Seven of this Local Law. Each store is required to designate at least one individual who is authorized to issue these payments during all of the store's operating hours.
- e. The store shall correct all pricing errors identified by consumers at store level within one hour and, if applicable, at their firm, partnership, corporation, or association within twenty-four hours.
- f. The store shall clearly display selling price at the point of SKU display, by either placing signs or shelf tags as close as practical to the location at which the SKUs are displayed; and/or by stamping, tagging, labeling or otherwise marking each stock keeping item. Failure to display the selling price for a SKU, consistent with this subsection, constitutes a scanner error.
- g. At any time, the Sealer of Weights and Measures may direct compliance inspections of any store accepting a waiver. These inspections shall consist

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of comparing the item, shelf, sale or advertised price of any stock-keeping unit (SKU) with computer-assisted checkout system price. Such inspection shall consist of not less than 100 nor more than 500 SKUs selected at the discretion of the County Sealer. In the event that any violations are detected, penalties shall be assessed as provided in Section Seven, Subsection 6, 7 and 8 of this Local Law. In the event that the number of SKUs found in violation equals or exceeds two percent of all SKUs inspected, the County Sealer may revoke the store's waiver from item-pricing requirement. A store may promptly reapply for a waiver and pay the required fee to the County Sealer within five business days after being notified of the failure. Stores that do not reapply must promptly come into compliance with all the requirements of Section Five, and may not again reapply for a waiver until at least one year after revocation.

Section Seven: VIOLATIONS, CIVIL PENALTIES AND ENFORCEMENT.

1. Any person who violates any provision of this Local Law, or who fails to comply with any order made by an enforcement officer pursuant to this Local Law shall be guilty of a violation and subject to a civil penalty. Noncompliance within a stock keeping unit shall constitute a single violation, unless otherwise indicated by this Local Law.
2. For failure to clearly, accurately or adequately mark consumer goods as to their selling prices as required by this Local Law, civil penalties shall be imposed and fixed by the County Sealer of Weights and Measures.
3. For failure to clearly, accurately or adequately mark consumer goods as to their selling prices as required by this Local Law, penalties shall not exceed five hundred dollars (\$500.00) for each violation, nor exceed a total penalty of \$15,000.00 per day.
4. The primary responsibility for administration and enforcement of this Local Law shall be with the County Sealer of Weights and Measures, except where otherwise noted herein. The County Sealer of Weights and Measures and his designees shall

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act as enforcement officers for this Local Law, and the County Sealer may bring an action in any court of competent jurisdiction to recover any penalties, and shall also recover in such action as an additional penalty reasonable attorney fees to be fixed and assessed by the Court, irrespective of whether or not the County Sealer is represented by the County Attorney in such action.

5. The stores with computer-assisted checkouts, enforcement officers shall be permitted to compare the item, shelf, sale or advertised price of any consumer goods with the programmed computer price. A store representing shall afford the enforcement officer access to the test mode of the checkout system in use or to a comparable function of the checkout system and to the retail price information contained in price look-up function.
6. For violations resulting from a computer-assisted checkout system or price lookup function that determines a retail selling price exceeding the lower of any item, shelf, sale or advertised price for any item of consumer goods offered for sale, penalties shall not exceed five hundred dollars (\$500.00) for each violation, nor exceed a total penalty of \$15,000.00 per day.
7. An enforcement officer shall have the authority to issue a stop-removal order with respect to any device, system or consumer goods being used, handled, offered for sale or exposed for sale in violation of Section Five of this Local Law.
 - a. Any stop-removal order issued with respect to any stock keeping item shall be in writing, shall list the violations and shall direct that any stock keeping unit in violation shall not be sold, offered for sale or exposed for sale until the violations are corrected.
 - b. Any stop-removal order issued with respect to any device or system shall be in writing and shall list the violations. Such stop-removal order shall be stayed for up to two hours after the inspector provides the written stop removal order to the retail store provided that, until the violations are corrected, either: the stock keeping units which are affected by the violations are not sold, offered for sale or exposed for sale; or signs are

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posted conspicuously at or near each checkout which clearly disclose to store employees and consumers which stock keeping units are affected by the violations and their correct price, and the retail store ensures that consumers are charged the correct prices.

8. The County Attorney, in the name of the County, may upon request of the County Sealer of Weights and Measures, in addition to any other action authorized hereunder, maintain an action or proceeding in court of competent jurisdiction on behalf of the County Sealer of Weights and Measures to compel compliance with or restrain by injunction any violation of this Local Law, notwithstanding any other provision hereof providing for a penalty or other punishment.

Section Eight: CONSUMER RIGHTS WHEN OVERCHARGED BY A STORE.

1. Any consumer who suffers a loss because the price charged for a SKI is greater than the item, shelf, sale, or advertised price may seek a super-refund. A super-refund entitles the consumer to receive the overcharged SKI free, the difference between the price charged and the lower of the item, sale, shelf or advertised price, plus an amount equal to ten times that difference but not less than one dollar nor more than ten dollars. Within the same transaction, each subsequent overcharge for same SKU entitles a consumer to an additional refund equal to the difference between the price charged with the lower of the item, sale, shelf or advertised price, plus one dollar.
2. To collect a super-refund, a consumer must notify the store in person or in writing that the price charged is more than the item, sale, shelf, or advertised price. The consumer shall provide evidence of the overcharge. As soon as practical, and in any case, within one hour after receipt of such notification and verification of the overcharge, the store shall compensate the consumer as specified in Subsection 1 of this Section.
3. If the store fails to tender a super-refund or within the time set forth in this Local Law, the consumer may request a review by the County Sealer. Within ten working days of the receipt of such a request, the County Sealer shall determine

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what payment, if any, is due under this Section. A store that fails to comply with the County Sealer's determination or any other provision of this Section is considered in violation and subject to penalties under Section Seven of this Local Law.

4. A store may set an overcharge refund policy more generous than required by this Local Law, provided that policy is approved by the Sealer of Weights and Measures and a copy of the Sealer's approval is kept on file in the store.

Section Nine: DISPOSITION OF FINES AND PENALTIES. All fines and penalties imposed and collected by reason of civil enforcement of this Local Law shall be paid to the County of Ulster and credited to the general fund.

Section Ten: CONSENT DECREES AND AGREEMENTS. On consent of the County Sealer of Weights and Measures and a person accused of violating this Local Law, a consent decree or agreement may be entered into. No such consent decree or agreement shall restrict any legal right or remedy to which any consumer, complaining of the matter, which is the subject of such consent decree or agreement, might otherwise be entitled, unless such consumer is a party thereto.

Section Eleven: SEVERABILITY. If any provision of this Local Law or application thereof to any person or circumstance be adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this Local Law and the application of any part thereto to any person or circumstance shall not be affected thereby. To this end, the provisions of each section of this Local Law are hereby declared severable.

Section Twelve: This Local Law shall take effect 120 days after adoption.

PLEASE NOTE*ALL CHANGES APPEAR IN BOLD ITALICS FOR THE PURPOSE OF IDENTIFICATION. FOR LEGAL PURPOSES, THEY WILL NOT BE IN BOLD ITALICS.**