

LOCAL LAW NO.

A LOCAL LAW to amend Chapter 863 of the Laws of Westchester County with respect to Item Pricing in Order to Provide for a Waiver to Certain Qualified Retailers.

BE IT ENACTED by the County Board of Legislators of the County of Westchester as follows:

Section 1. Section 863.11 of the Laws of Westchester County is hereby amended to add new subdivisions 10, 11, 12 and 13 to read as follows:

10. Computer-assisted checkout system means any electronic device, computer system or machine which determines the selling price of a stock-keeping item by interpreting its universal produce code, or by use of its price look-up function.

11. Department means the Westchester County Department of Weights and Measures- Consumer Protection.

12. Retail store means a store which sells consumer commodities at retail, which store is not primarily engaged in the sale of food for consumption on the premises. An establishment which sells consumer commodities only to its members shall be deemed to be included within this definition unless the members pay a direct fee to qualify for membership and the establishment is not required to collect sales tax on transactions with members, pursuant to article twenty-eight of the tax law.

13. Shelf price means the tag or sign placed by an authorized person at each point of display of a stock keeping unit, which clearly sets forth the true and actual price of the stock keeping item.

14. Retail area means the area designated in a retail store to display and sell products, provide customer service and checkout. The retail area does not include the storage area, back rooms, stock area, maintenance areas or other locations which are not intended to be accessible to consumers.

Section 2. Subdivision 1 of section 863.71 of the Laws of Westchester County is hereby amended to read as follows:

Sec. 863.71. Item Price marking-advertised prices.

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 within Westchester County unless a waiver is granted pursuant to terms and conditions set forth in §863.72 below.

Section 3. A new Section 863.72 of the Laws of Westchester County is hereby added to read as follows:

Sec. 863.72. Waiver from Item Price Marking

1. Every retail store which uses a computer-assisted checkout system and which would otherwise be required to price mark each item as provided in §863.71 above may make an application, in writing, to the Department of Weights and Measures – Consumer Protection for a waiver of the item pricing requirement. Retail stores that are required by the law of their local jurisdiction to price mark each item are not qualified to apply for a waiver. A separate application shall be required for each qualified retail store. Each application shall be subject to a non-refundable waiver fee based upon the square footage of the retail area of each store as set according to the following schedule:

<u>Store's Square Footage of Retail Area</u>	<u>Waiver Fee</u>
<u>Under 3,000 sq. ft.</u>	<u>\$500.00</u>
<u>Between 3,001 and 10,000 sq. ft.</u>	<u>\$1,000.00</u>
<u>Between 10,001 and 30,000 sq. ft.</u>	<u>\$3,000.00</u>
<u>Between 30,001 and 90,000 sq. ft.</u>	<u>\$5,000.00</u>
<u>Over 90,000 sq. ft.</u>	<u>\$15,000.00</u>

2. Upon receipt of an application and fee as provided in subsection 1 above, the Department shall cause to be conducted a scanner count, location and accuracy inspection of the store for which the application has been submitted. At stores with a retail area in excess of 10,000 square feet, a minimum of 100 stock keeping units shall be checked at inspection. At stores with a retail area of 10,000 square feet or less, a minimum of fifty stock keeping units shall be checked. If the number of stock keeping units found to be in violation does not exceed two percent of those stock keeping units inspected, the Department shall grant to the applicant a one year revocable waiver from the item pricing requirement set forth in §863.71 above.

3. In the event that total violations in excess of two percent are discovered in the inspection process, the Department shall not grant a waiver to the applicant. Such a store may, within five business days of being notified of

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the failure, request a second inspection. If the number of stock keeping units found to be in violation during this second inspection does not exceed two percent of those stock keeping units inspected, the Department shall grant to the applicant a one year revocable waiver for the item pricing requirement.

4. Stores whose waivers are revoked pursuant to subsection 8 or stores which, upon renewal for a waiver, fail the scanner accuracy inspection(s) twice must comply with item pricing as set forth in §863.71 within thirty days from the final date of failure. Such a store will be prohibited from applying for a new waiver for one year from the date of revocation or second inspection failure.

5. Waivers shall be valid for a period of one year from the date of issuance, at which time the waiver shall expire. Stores must reapply annually for renewal. The waiver fee and inspection shall be required for each annual renewal application, as required for an original waiver application.

6. In the event that the Department is unable to conduct an inspection within 45 days of receipt of a completed application with the appropriate fee, then the Department will issue a temporary waiver pending the completion of the inspection process. The Department shall cause an inspection to be completed as soon as practicable. If, upon completion of an inspection, there is a violation rate not to exceed two percent, then the Department shall issue a permanent waiver with an expiration date of one year from the date of the issuance of the temporary waiver. If, upon completion of an inspection, there is a violation rate in excess of two percent, the temporary waiver shall be immediately revoked. Nevertheless, the store may, within five business days of being notified of the failure, request a second inspection. If the number of stock keeping units found to be in violation during this second inspection does not exceed two percent of those stock keeping units inspected, the Department shall grant to the applicant a one year revocable waiver for the item pricing requirement from the date of the issuance of the temporary waiver. If the store does not request a second inspection or if the store fails the second inspection, then the store must comply with the item pricing requirements set forth in §863.71 above.

7. As a condition of the waiver from item pricing, each store must agree to meet all of the following requirements, and no regular or temporary waiver shall be granted to a store which has not agreed to these requirements in writing:

(a) The store shall make available price check scanners to enable consumers to confirm the price of stock keeping items. These

price check scanners shall be in locations convenient to consumers with signs of sufficient sized lettering to identify the units to the consumers. Stores will submit their proposed sign and device locations to the Sealer for approval. In stores with multiple floors, there shall be at least one scanner conveniently located on each floor of the store. The number of conveniently located scanners shall also be dependent on the store's retail area:

<u>Store's Retail Area</u>	<u>Scanner</u>
<u>Under 1,500 sq. ft.</u>	<u>No scanners necessary but only if an item will be scanned for the price, upon the request of a consumer.</u>
<u>Under 3,000 sq. ft.</u>	<u>1</u>
<u>Between 3,001 and 10,000 sq. ft.</u>	<u>2</u>
<u>Between 10,001 and 30,000 sq. ft.</u>	<u>3</u>
<u>Over 30,001 sq. ft.</u>	<u>Minimum of 3 and such additional scanners as the Sealer may deem appropriate;</u>

and

(b) Stores must also have a shelf price for each stock keeping item which are visible to the consumer and which are located directly under the item on the shelf on which the item is displayed; or if the item is not conspicuously visible to the consumer, by a sign or list conspicuously placed near the point of procurement. Failure to display the shelf price for a stock keeping item shall constitute a violation. The Sealer may specify standard shape, typeface, placement and format of shelf prices and may set other requirements to ensure the readability of shelf prices and the ability of consumers to identify which shelf price applies to each stock keeping item. This subdivision shall not be construed to diminish the requirements of section 214-h of the New York State Agriculture and Markets Law, but shall be in addition thereto. In the event of a conflict, the provisions of the New York State Agriculture and Markets Law shall control.

(c) The store shall not charge any customer a price for any stock keeping items which exceeds the item, shelf, sale or advertised price, whichever is less; and

(d) The store shall make prompt payment to consumers who have been overcharged and shall correct all pricing errors identified by consumers.

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8. The Director may revoke a waiver from item pricing for any of the following reasons:

- (a) Failure to comply with any provisions of this Chapter;
- (b) Deliberate overcharging of any consumer;
- (c) Material misrepresentation in the application for a waiver.

Section 4. This local law shall take effect on the ninetieth (90th) day after its enactment.

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