

**LOCAL LAW NO. "J" FOR 2009**

**A LOCAL LAW OF THE COUNTY OF ALBANY AMENDING AND UPDATING LOCAL LAW NO. 3 FOR 1992 REQUIRING ITEM PRICING BY RETAIL STORES IN THE COUNTY OF ALBANY**

Introduced: 11/9/09

By Mr. Nichols:

BE IT ENACTED by the County Legislature of the County of Albany as follows:

Local Law No. 3 for 1992 is amended to read as follows:

**SECTION 1. Title.**

This Law shall be known as the "Albany County Item Pricing Law."

**SECTION 2. Legislative Intent.**

This Law recognizes that clear, accurate item pricing is a basic consumer right which is no longer protected under State Law. It is the purpose of this Law to ensure that consumer goods offered for sale in the County of Albany are clearly, accurately and adequately marked as to their selling price. It is also the purpose of this law to ensure that computer-assisted check systems or scanners are accurate. The County Legislature does, at the same time, recognize the numerous efficiencies and economies available to the retail food industry through use of computer-assisted checkout systems (together with shelf tag labeling) as the primary method of pricing consumer goods. It is the intention of this Legislature to require all retail stores to comply with scanner accuracy standards. Further, it is the intention of this Legislature to provide for a waiver of the item pricing requirement for certain retail food stores that demonstrate and maintain a very high degree of computer-assisted pricing accuracy and that provide certain consumer protections and services that enhance the ability of consumers to record and verify individual item prices.

**SECTION 3. Definitions.**

A. "Stock keeping unit" shall mean each group of items, including but not limited to grocery stock keeping units, offered for sale of the same brand name, quality of contents, retail price, and variety.

B. "Grocery 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:

1. 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
2. napkins, facial tissues, toilet tissues, and any disposable wrapping or container for the storage, handling or serving of food; and
3. detergents, soaps, other cleansing agents, and cleaning implements; and
4. non-prescription drugs, feminine hygiene products and health and beauty aids.

C. "Stock keeping item" shall mean each individual item of a stock keeping unit offered for sale.

D. "Grocery stock keeping item" shall mean each individual item of a grocery stock keeping unit offered for sale.

E. "Universal product coding" shall mean any system of coding which entails electronic pricing.

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

G. "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.

H. "Price look-up function" shall mean the capability of any checkout system to determine the selling 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 the checkout operator's consultation of a file maintained at the point of sale.

I. "Inspector" shall mean the authorized government official or his agents or employees having jurisdiction to enforce the provisions of this Local Law.

J. "Retail store" shall mean a store selling stock keeping units at retail including, but not limited to, grocery retailers, pharmacies, department stores, hardware stores, automobile parts stores, and home improvement stores. 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:

1. 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
2. had annual gross sales in a previous calendar year of less than three million dollars, 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 the previous calendar year of three million dollars or more; or
3. engages primarily in the sale of food for consumption on the premises or in a specialty trade which the Director of Weights and Measures determines, by regulation, would be inappropriate for item pricing.

#### SECTION 4. Item Pricing Required.

A. Subject to Section 8, every person, firm, partnership, corporation or association which sells, offers for sale or exposes for sale in a retail store a grocery stock keeping unit that bears a Universal Product Code shall disclose to the consumer the price of each grocery stock keeping item by individually marking each such item with the item price.

B. Certain items exempted. The following grocery stock keeping items need not 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 grocery stock keeping items:

1. Snack foods such as cakes, gum, candies, chips and nuts offered for sale in single packages and weighing five ounces or less;
2. Stock keeping items which are under three cubic inches in size, and weigh less than three ounces, and are priced under one dollar;
3. Items sold through a vending machine;
4. Fresh milk, cream, half and half and other similarly packaged liquid dairy products and orange juice;
5. Fresh eggs;
6. Unpackaged fresh produce;
7. Food offered for sales in bulk;
8. Items offered for sale which are packaged in poly-plastic frozen food bags;
9. All sale items merchandised in segregated off-shelf displays for a period of up to 21 days provided the name of the product and the advertised or sale price is clearly and conspicuously posted on a sign at the point of display;
10. Individual jars of strained and junior size baby food;

11. Individual boxes of dry gelatin and pudding;
12. Ice cream and frozen yogurt; and
13. Stock keeping items within a multi-package that is properly item priced.

**SECTION 5. Registration; Retail Stores Using A Computer-Assisted Checkout System.**

A. Any retail store that has not obtained a waiver under Section 8 of this Local Law shall register annually with the Director of Weights and Measures if such retail store uses a laser scanning or other computer-assisted checkout system. Such registration shall be in the form of a written notification to the Director of Weights and Measures. Such written notification shall be provided within sixty days of the effective date of this Local Law and shall include such information as determined by the Director of Weights and Measures. Such written notification shall include an annual registration fee made payable to the County in the amount specified in the following schedule:

Number of Scanners Available for Use	Registration Fee
3 or less	No fee
4 – 10	\$150.00
11 – 15	\$300.00
16 – 20	\$500.00
Over 20	\$750.00

B. The Inspector shall have the authority to conduct scanner accuracy inspections. The scanner accuracy inspection shall be based on a random sample of not less than 100, nor more than 300 stock keeping units, or 25 stock keeping units in retail stores that offer for sale less than 100 stock keeping units. The inspection shall represent a cross section of all stock keeping units for sale to ascertain that the retail price is the same as the computer assisted checkout price. A violation exists when the programmed price exceeds the retail price. Penalties shall be imposed in accordance with Section 7 Paragraph E.

**SECTION 6. Pricing Accuracy; Retail Stores Selling Grocery Stock Keeping Units.**

A. No retail store that sells, offers for sale or exposes for sale a grocery stock keeping unit that bears a Universal Product Code shall charge a price for any exempt or non-exempt grocery stock keeping item which exceeds the lower of any item price, shelf price, sale price or advertised price of such grocery 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 7.

B. In a retail store that sells, offers for sale or exposes for sale a grocery stock keeping unit that bears a Universal Product Code and uses a laser scanning or other computer assisted checkout system, the Inspector shall be permitted to compare the item, shelf, sale or advertised price of any stock keeping item sold in the store with the programmed computer price.

## SECTION 7. Enforcement.

A. Item Pricing Inspection Procedures. For the purpose of determining a store's compliance with the requirements of Section 4, an inspection shall be conducted of a sample of no less than ten grocery stock keeping units. However, in the event the Inspector has received a specific written complaint, no such minimum sample shall be required in the investigation of same.

B. Laser Scanner Accuracy Inspection Procedures. For any inspection under Section 5 or Section 6, the store representative 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 the retail price information contained in a price look-up function. In the event the Inspector has received a specific written complaint, (i) the Inspector, may, in his discretion, conduct an inspection of only those items, and (ii) actual violations, if any, identified in such an inspection shall be corrected or removed from sale by the store but shall not be considered in determining that store's scanner accuracy level for purposes of Section 8.

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 4 or 6. Any such order shall be in writing and directed that the device, system or stock keeping unit, as the case may be, shall be removed from use or sale pending correction.

D. Penalties for Item Pricing Violations for Retail Stores Without a Section 8 Waiver. Any retail store which fails to mark any grocery stock keeping item in violation of Section 4 shall be subject to the penalties of not less than five dollars and not more than fifty dollars per violation. For additional violations during a subsequent inspection in a twelve month period, the above penalties shall be doubled. In doubling penalties, an Inspector shall not be limited to the doubling of any specific fine previously issued. No penalties shall be imposed for a violation of Section 4 if more than ninety-five percent of all the grocery stock keeping items inspected in each grocery stock keeping unit at an individual point of sale contain clearly readable and correct item prices.

E. Penalties for Scanner Accuracy Violations. Upon a violation of the provisions of Section 6, a penalty in the amount of one hundred dollars per violation shall be imposed for the first two violations of the stock keeping items compared; two hundred dollars per violation for the next two violations; two hundred fifty

dollars per violation for the next two violations; and three hundred fifty dollars for each additional violation. For additional violations during a subsequent inspection in a twelve month period, the above penalties shall be tripled and suspension of a Section 8 waiver for one year if such a waiver has been granted. No penalties shall be imposed for a violation of Section 6 if ninety-eight percent or more of all stock keeping units are priced accurately.

**SECTION 8. Waiver of Item Pricing Requirements Based Upon Pricing Accuracy; Consumer Protections.**

A. Every retail store subject to Section 4 of this Local Law may make application in writing for a waiver of the item pricing requirements as contained herein. The application shall be submitted to the Director of Weights and Measures for the County of Albany. A separate application shall be required for each store.

B. All written requests for an item pricing waiver shall include an annual waiver application fee made payable to the County in an amount to be determined by the County. Such fee shall be based upon the gross square footage of each store as set forth in the following schedule:

Gross store size (in sq.ft.)	Application fee
Under 3,000	\$500.00
3,000 – 10,000	\$1,000.00
10,001 – 40,000	\$1,500.00
40,001 – 100,000	\$3,000.00
100,001 – 150,000	\$5,000.00
Over 150,000	\$7,500.00

C. Upon receipt of an application and fee as provided in subsections A and B of this section, the Director of Weights and Measures shall cause to be conducted two scanner accuracy inspections, pursuant to Section 5 Paragraph B, 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 grocery stock keeping unit with the computer-assisted checkout system price. In the event that any violations are detected, penalties shall be assessed as provided in Section 7, subsection E. If, considering both inspections together, the number of grocery stock keeping units found to be in violation does not exceed two percent of all grocery stock keeping units inspected, the Director of Weights and Measures shall grant to the applicant a revocable waiver from item pricing requirements provided that the applicant has paid all outstanding penalties imposed in connection with this Local Law. Any store with a current waiver shall not be subject to the item pricing provisions set forth in Section 4 herein.

D. In the event that total violations in excess of two percent are discovered in the inspections provided for in subsection C herein, the Director of Weights and Measures shall not grant a waiver to the applicant. Such a store may reapply for a waiver by submitting another application with the required fee.

E. Any retail store that obtains an annual waiver from item pricing shall be required to:

1. Display easy-to-read and properly located shelf tags or signs on every grocery stock keeping unit or group of grocery stock keeping units of the same brand, size and price. Shelf tags shall contain all pricing information required by section 214-h of the New York State agriculture and markets law, as such law is amended from time to time.

2. Post a notice for the consumer, in a conspicuous location, of the granting of the item pricing waiver which shall indicate consumer rights with respect to the accurate pricing of items and price discrepancies.

3. Designate and make available a reasonable number of price check scanners to enable consumers to confirm the price of a grocery stock keeping item. One such price check scanner shall be capable of printing an adhesive label containing the price of the grocery stock keeping item. Price check scanners shall be placed in a location convenient to consumers with a sign of sufficient sized lettering identifying this unit to consumers. Price check scanners may be used by the retail store to meet unanticipated customer checkout needs.

4. Assist county inspectors with store inspections. The retail store may make store personnel or hand-held price scanners available to a county inspector to assist with price accuracy inspections. Inspections of retail stores may be unannounced, provided however, that the inspector shall notify the store upon arrival.

A retail store that obtains an annual waiver but fails to comply with any of the requirements of this subsection E shall be subject to a penalty in the amount of no more than three hundred dollars per violation.

F. An annual waiver from item pricing shall be valid until such time as a store falls below 98% accuracy on two consecutive pricing accuracy inspections. Failure to meet the scanning accuracy requirement or failure to pay the annual application fee shall subject the retail store to the item pricing requirements of this Local Law within ten days of the last inspection. Failure to pay penalties imposed under Section 7 Paragraph E within a reasonable period of time shall result in revocation of the annual waiver.

G. In the event that the Director of Weights and Measures is unable to conduct inspections pursuant to subsection C of this section within thirty days of receipt of a completed written waiver application or renewal, the Director of Weights and Measures shall grant a temporary waiver pending completion of the inspections. If, upon completion, the item pricing inspections detect a violation rate of two percent or less, the Director of Weights and Measures shall issue an annual waiver. If the inspections detect a violation rate in excess of two percent, the temporary waiver shall be immediately revoked and the item pricing provisions of this Local Law shall apply.

#### SECTION 9. Jurisdiction.

The provisions of this Local Law and any Regulations promulgated hereunder shall be enforced by the Director of Weights and Measures for the County of Albany. The Director of Weights and Measures shall refer cases of unpaid penalties to the Albany County Attorney for appropriate legal action.

#### SECTION 10. Appointment of Review Committee.

Upon the expiration of the first six months of operation, the Chairman of the County Legislature shall appoint a three-member Review Committee to study this Law's strengths and weaknesses and make appropriate recommendations for amendments to the Finance Committee.

#### SECTION 11. Severability.

If any section of this Local Law, or the application thereof to any person or circumstance shall be adjudged invalid by a Court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any provision of any section or the application of any part thereof to any other person or circumstance and to this end the provisions of each section of this Law are hereby declared to be severable.

#### SECTION 12. Effective Date.

This local law shall take effect immediately.

*Referred to Audit and Finance Committee. 11/9/09*

*Favorable Recommendation - Audit and Finance Committee. 1/26/11*

*Referred to Audit and Finance Committee. 2/14/11*