



**Dutchess County Department of
Behavioral & Community Health**

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**Sandra L. Winder, Director
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BE IT ENACTED by the County Legislature of the County of Dutchess as follows:

LOCAL LAW NO. 2 of 2017

A LOCAL LAW REQUIRING THE PRICING OF GOODS OFFERED FOR SALE AT RETAIL IN DUTCHESS COUNTY AND REPEALING DUTCHESS COUNTY LOCAL LAW NO. 9 OF 1991 AS AMENDED BY LOCAL LAW NO. 5 OF 1994, LOCAL LAW NO 3. OF 1998, LOCAL LAW NO. 6 OF 2004, AND LOCAL LAW NO. 2 OF 2011

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

SECTION 1. LEGISLATIVE INTENT

This Legislature hereby finds and determines that the Consumers in Dutchess County are entitled to clear information, setting forth the prices of consumer commodities which they purchase from retail stores. A clear, easily-enforceable item-pricing statute will promote the Dutchess County consumers' right to all reasonable information in order that these consumers are able to make informed choices about their purchases.

The Legislature also finds and declares that price marking technology utilizing a laser scanning device offers numerous efficiencies and economies to the operation of the retail food industry. The Legislature further finds that price marking constitutes an indispensable ingredient to a consumer's right to all reasonable information in order to make an informed purchase choice.

The Legislature further finds and determines that Computer Assisted Checkout Systems (CACOS) are an accurate means of pricing consumer commodities and have become an indispensable technology for retail stores. Employment of such technology obviates and provides a reasonable alternative to the requirement that individual items be price marked in Arabic numerals, so long as the accuracy of the CACOS system is established and the price of individual items is clearly marked on shelves and displays as provided herein. Other than New York City, Dutchess County is the last jurisdiction in the State to have a mandatory item pricing law without a scanner accuracy waiver provision. This Legislature further finds and determines that there are some retailers which will not operate in counties that mandate manual pricing thus having the effect of limiting competition and economic expansion in Dutchess County. As such, the Legislature finds that other pricing systems should be permitted as an alternative to price marking, subject to proper safeguards.

This Local Law shall not be construed to diminish the requirements of section 214-h of the New York State Agriculture and Markets Law, Section 197-b of the New York State Agriculture and Markets Law, or the New York State Regulations at 1 NYCRR 345.1 et seq. but shall be in addition thereto.

SECTION 2. PRIOR ITEM PRICING LOCAL LAW REPEALED

LOCAL LAW NO. 9 OF 1991 AS AMENDED BY LOCAL LAW NO. 5 OF 1994, LOCAL LAW NO 3. OF 1998, LOCAL LAW NO. 6 OF 2004, AND LOCAL LAW NO. 2 OF 2011 OF THE County of Dutchess, and known as the Dutchess County Item Pricing Law is repealed upon the effective date of this Local Law; provided, however, that nothing, including this Section shall prohibit the enforcement of said Local Law No. 9 of 1991, as amended, of the County of Dutchess, for actions or inactions done or not done as the case may be, by those subject to such Local Law No. 9 of 1991, as amended, of the County of Dutchess, prior to the effective date of this Local Law. All fines, penalties, criminal, and civil liability as the case may be shall remain in full force and effect and available for enforcement under such repealed Local Law No. 9 of 1991, as amended, of the County of Dutchess, for any applicable actions or inaction of those subject to such law as if such law remained in full force and effect for actions taken or inaction prior to the effective date of this Local Law.

SECTION 3. ITEM PRICING REQUIRED

Every retail space in Dutchess County which sells, offers for sale or exposes for sale a consumer commodity shall clearly disclose on each item, the selling price of said consumer commodity. The selling price may be shown by stamp, tag, label, or otherwise, marked in Arabic numeral on each item.

SECTION 4. EMPLOYMENT OF COMPUTER ASSISTED CHECKOUT SYSTEMS AS SATISFYING THE PROVISIONS OF DUTCHESS COUNTY ITEM PRICING REQUIREMENTS

Every retail store which uses a computer-assisted checkout system and which would otherwise be required to price mark each item as provided in Section 3 above may make an application, in writing, to the Dutchess County Commissioner of Behavioral and

Community Health for a waiver of the item pricing requirement. A separate application shall be required for each qualified retail store.

SECTION 5. DEPARTMENT OF BEHAVIORAL AND COMMUNITY HEALTH, DIVISION OF WEIGHTS AND MEASURES

The responsibility of the administration and enforcement of this Local Law shall be with the Dutchess County Department of Behavioral and Community Health, Division of Weights and Measures. The Commissioner of Behavioral and Community Health shall be vested with the power to promulgate rules and regulations consistent with this Local Law. Item Pricing Rules and Regulations are submitted herewith for adoption by local law.

SECTION 6. SEVERABILITY

If any clause, sentence, paragraph, subdivision, section or part of this law or application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the cause, sentence, paragraph, subdivision, section or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

SECTION 7. EFFECTIVE DATE

This Local Law shall take effect upon filing with the Secretary of State: January 27, 2017.

DUTCHESS COUNTY DEPARTMENT OF BEHAVIORAL AND COMMUNITY HEALTH DIVISION OF WEIGHTS AND MEASURES ITEM PRICING RULES AND REGULATIONS

SECTION 1. DEFINITIONS

1. "Retail Space" shall mean a store within a general retail merchandise store selling primarily food at retail for off-premises consumption, provided that such store had annual gross sales in the previous calendar year of at least two million dollars, unless such 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 at least two million dollars.
2. "Consumer Commodity" shall mean the following:
 - a. Food, including all material solid, liquid or mixed, whether simple or compounded, used or intended for consumption by human beings, or animals normally kept as household pets, and all substances or ingredients added thereto for any purposes; and
 - b. Napkins, facial tissues, toilet tissues, foil wrapping, plastic wrapping, paper toweling, disposable plates and cups; and
 - c. Detergents, soaps and other cleansing agents; and
 - d. Non-prescription drugs, female hygiene products and toiletries.
3. "Computer Assisted Check-Out System" shall mean any electronic device, computer system or a machine which determines the selling price of a consumer commodity by interpreting its universal product code, or an in-house product code, or by use of its prices look-up function.
4. "Inspector" shall mean an employee of the Dutchess County Division of Weights and Measures, Department of Behavioral and Community Health.
5. "Stock-keeping Unit" means each group of items offered for sale of the same brand.
6. "Stock-keeping Item" means each individual item within a stock-keeping unit offered for sale.

SECTION 2. ITEM PRICING REQUIRED

- a. Every retail space in Dutchess County which sells, offers for sale or exposes for sale a consumer commodity shall clearly disclose on each item, the selling price of said consumer commodity. The selling price may be shown by stamp, tag, label, or otherwise, marked in Arabic numeral on each item.
- b. The provisions of Section 2(a) hereof shall not apply to the following consumer commodities however packaged or contained, provided the selling price is conspicuously, plainly and clearly stated in Arabic numerals by a sign contiguous to the point of display of the commodity:
 1. Milk
 2. Eggs
 3. Loose fresh produce
 4. Consumer commodities which are offered for sale in single packages and weighing three ounces or less and are priced under one dollar.

5. Snack food such as cakes, gum, candies, chips and nuts offered for sale in single packages and weighing five ounces or less.
 6. Food sold for consumption on premises.
 7. Identical items within a multi-item package that is properly price marked.
 8. Products sold through a vending machine.
 9. Cigarettes, cigars, tobacco and tobacco products
 10. Food offered for sale in bulk
- c. Every retail space in Dutchess County which accepts manufacturers' coupons is required to post clearly and concisely the establishment's policy with respect to the doubling and/or tripling of coupons in areas easily visible to customers at no less than one entrance to the establishment.

SECTION 3. EMPLOYMENT OF COMPUTER ASSISTED CHECKOUT SYSTEMS AS SATISFYING THE PROVISIONS OF DUTCHESS COUNTY ITEM PRICING REQUIREMENTS

- A. Every retail store which uses a computer-assisted checkout system and which would otherwise be required to price mark each item as provided in Section 4 above may make an application, in writing, to the Dutchess County Commissioner of Behavioral and Community Health for a waiver of the item pricing requirement. A separate application shall be required for each qualified retail store. Each applicant 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:

1. Store's Square Footage of Retail Area	Waiver Fee
a. 0 to 9,999 sq. ft.	\$ 500.00
b. 10,000 to 29,999 sq. ft.	\$ 1,000.00
c. 30,000 to 49,999 sq. ft.	\$ 3,500.00
d. 50,000 to 89,999 sq. ft.	\$ 5,000.00
e. 90,000 or more sq. ft.	\$ 10,000.00

2. Waiver of fees pursuant to this section may hereafter be revised and amended from time to time by resolution of the Dutchess County Legislature.

- B. Upon receipt of an application and fee as provided in subsection 1 above of this Section, the Commissioner of Behavioral and Community Health shall conduct a scanner count, location and accuracy inspection of the retail location 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 Commissioner of Behavioral and Community Health shall grant to the applicant a one year revocable waiver for the item pricing requirement.
- C. In the event that total violations in excess of two percent are discovered in the inspection process, the Commissioner of Behavioral and Community Health shall not grant a waiver to the applicant. Such a store may, within fifteen 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 Commissioner of Behavioral and Community Health shall grant to the applicant a one year revocable waiver for the item pricing requirement.
- D. Stores whose waivers are revoked pursuant to subsection H or stores which, upon renewal for waiver, fail the scanner accuracy inspection(s) twice must comply with the item pricing as set forth in Section 2 above 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.
- E. 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.
- F. In the event that the Commissioner of Behavioral and Community Health is unable to conduct an inspection within 60 days of receipt of a complete application with the appropriate fee, then the Commissioner of Behavioral and Community Health will issue a temporary waiver pending the completion of the inspection process. The commissioner of Behavioral and Community Health shall cause an inspection to be completed as soon as practicable. If, upon completion, there is a violation rate of less than two percent, then the Commissioner of Behavioral and Community Health 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 15 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 unit inspected, the Commissioner of Behavioral and Community Health 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 Section 2 above.

- G. 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:
1. 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 Commissioner of Behavioral and Community Health 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># of Scanners</u>
Under 3,000 sq. ft	1
Between 3,001 and 10,000 sq. ft	2
Between 10,001 and 20,000 sq. ft	3
Between 20,001 and 30,000 sq. ft	4
Over 30,001 sq. ft.	Minimum of 5 and such additional scanners as the Commissioner may deem appropriate
 2. Store must also have a shelf price for each stock keeping item which is visible to the consumers 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 at the point of procurement. Failure to display the shelf price for a stock keeping item shall constitute a violation. The Commissioner of Behavioral and Community Health 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 prices apply to each stock keeping item.
 3. The store shall not charge any consumer a price for any stock keeping item (SKI) that exceeds the item, shelf, sale or advertised price of the SKI.
 4. The store shall make prompt payment to consumers who have been overcharged and shall correct all pricing errors identified by consumers.
 5. The store shall post, in a conspicuous place, the refund policy of such retail store in the event of an overcharge.
- H. The Commissioner of Behavioral and Community health may revoke a waiver from item pricing for any of the following reasons:
1. Failure to comply with any provisions of this Local law;
 2. Deliberate overcharging of any consumer;
 3. Material misrepresentation in the application for a waiver.

SECTION 4. PENALTIES, INJUNCTIVE RELIEF, SETTLEMENTS

- a. A violation of any provision of this Local law or of any rule or regulation promulgated hereunder shall be punishable by the payment of a Civil Penalty in the sum of not more than one hundred dollars for each such violation, with a maximum fine of \$10,000.00 (TEN THOUSAND DOLLARS) per inspection.
- b. Failure to display the selling price of any stock-keeping unit (SKU) consistent with this act shall be punishable upon proof thereof by payment of a Civil Penalty in the sum of \$100.00 per violation per SKU with a maximum fine of \$10,000.00 (TEN THOUSAND DOLLARS) per inspection.
- c. Whenever any person has engaged in any acts or practices which constitutes repeated or persisted violations of any provision of this Local Law or any rule or regulation promulgated hereunder, the County Attorney, upon the request of the Department of Behavioral and Community Health, Division of Weights and Measures, may commence an action in the name of the County for a restraining order, temporary or permanent injunction or equitable relief.
- d. On finding a violation of the provisions of this Local law or the rules and regulations promulgated hereunder, the Dutchess County Department of Behavioral and Community Health, Division of Weights and Measures, shall expeditiously cause the same to be corrected to where there is evidence of intent to defraud refer evidence of such violation to the District Attorney of the County for prosecution or in the absence of intent to defraud refer to the attorney for the municipality for commencement of a civil action, in the name of the municipality, to recover a civil penalty in the amounts prescribed. A cause of action for recovery of such penalty may be released, settled or compromised by the municipality attorney, or, thereafter, by such attorney.

**ADMINISTERED & ENFORCED BY
 THE DUTCHESS COUNTY DEPARTMENT OF BEHAVIORAL & COMMUNITY HEALTH
 DIVISION OF WEIGHTS & MEASURES
 98 PEACH ROAD
 POUGHKEEPSIE, NEW YORK 12601**