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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County

~~City~~

of Erie

~~Town~~

~~Village~~

Local Law No. 8 of the year 19 93

A local law in relation to pricing in retail food establishments.

(Insert Title)

Be it enacted by the Erie County Legislature of the
(Name of Legislative Body)

County

~~City~~

of Erie

~~Town~~

~~Village~~

as follows:

Section 1. Legislative findings and intent. The Erie County legislature finds that there is a technology using a laser scanning device offering numerous efficiencies and economies to the operation of the retail food industry, the use of which may make it economically advantageous for retail stores to remove price markings on individual items of food and food products. This legislature further finds that the absence of individual price markings may make it difficult for consumers to make a fully informed purchase choice or to detect overcharges when they occur at the checkout scanner. It is the intention of this legislature to require grocery stores to place individual item prices on products which they sell, and to require scanner accuracy. Further, it is the intention of this legislature to provide for a waiver of the item pricing requirement for certain

(If additional space is needed, attach pages the same size as this sheet, and number each.)

stores which maintain a very high degree of scanner accuracy and which provide certain other services to permit consumers to record and verify individual item prices.

Finally, it is the intention of this legislature to require clear and legible shelf labels.

Section 2. Definitions. For the purposes of this local law the following terms shall have the following meanings:

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 and all substances and ingredients to be added thereto for any purpose; and

ii. napkins, facial tissues, toilet tissues and any disposable wrapping or container for the storage, handling or serving of food; and

iii. detergents, soaps, and other cleansing agents; and

iv. non-prescription drugs, personal hygiene products, and health and beauty aids.

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

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

d. "Advertised price" shall mean the price of a stock keeping unit which a Store has caused to be disseminated by means of promotional methods such as an in-store sign, newspaper, circular, television, or radio advertising.

e. "Shelf price" shall mean the tag or sign placed by an authorized person at each point of display of a stock keeping unit, which clearly sets forth the retail price of the stock keeping items within that unit.

f. "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.

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 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 store or by way of the checkout operator's consultation of a file maintained at the point of sale.

i. "Sealer" shall mean the Erie County sealer of weights and measures.

j. "Store" shall mean any establishment which offers stock keeping units for sale at retail. Each separate building within which such stock keeping units are offered for sale at retail shall constitute a separate store.

Section 3. Item pricing required. Every person, firm, partnership, corporation, or association which sells, offers for sale or exposes for sale at retail, stock keeping units, shall disclose to the consumer the item price of such stock keeping units, except as provided in section four or section ten of this local law, by causing to be conspicuously, clearly, and plainly marked, stamped, typed, or affixed thereto the retail price in Arabic numerals; except, however, that the provisions of this section shall

not apply to a store that:

a. has as its only full time employees the owner or franchisee thereof, or the parent, spouse, or child of the owner or franchisee, or in addition thereto not more than two full-time employees; or

b. had annual gross sales in the previous calendar year of less than three million dollars, unless the 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 the previous year of three million dollars or more; or

c. engages primarily in the sale of food for consumption on the premises.

d. holds a current waiver as provided in section ten of this local law.

Section 4. Certain items exempted. The following stock keeping items need not be item priced as provided in section three of this local law provided that a shelf price is posted at the point of display, consistent with section thirteen of this local law, and a price look-up function is maintained for such stock keeping items:

- a. Stock keeping items within a multi-item package that is properly price marked;
- b. Milk, cream, half-and-half, and other similarly packaged liquid dairy products, and orange juice;
- c. Eggs;
- d. Unpackaged bulk or fresh produce;
- e. Items sold through a vending machine;
- f. Food sold for consumption on the premises;
- g. Snack foods, such as cakes, gum, candies, chips, and nuts offered for sale in single packages and weighing five ounces or less;
- h. Cigarettes, cigars, tobacco, and tobacco products;
- i. Frozen foods, gelatin, pudding and yogurt;
- j. Baby food;
- k. Stock keeping items which weigh three ounces or less and are priced under fifty cents.

Section 5. Item pricing inspections. For the purpose of determining a store's compliance with section three of this local law, an inspection shall be conducted of a sample of no fewer than fifty and no more than three hundred stock keeping units. The sample shall be selected by the inspector from a cross section of all stock keeping units offered for sale at the location inspected, exclusive of

exempt stock keeping units. No store shall be inspected for compliance with section three of this local law more often than once every seven days.

Section 6. Item pricing violations and penalties.

a. The failure to item price three or more stock keeping items of a particular stock keeping unit shall constitute a single violation. The failure to item price additional stock keeping items over three within the same stock keeping unit shall not constitute an additional violation. Each day a violation is continued shall constitute a separate violation.

b. Any store found in violation of section three of this local law shall be subject to the following penalties: for violations discovered upon the first inspection following any twelve month period in which no violation of section three of this local law has been found, the store shall pay a penalty of fifty dollars for each of the first four violations, one hundred dollars for each of the next twelve violations, and one hundred fifty dollars for each subsequent violation, but in no case shall the total penalty therefor exceed five thousand dollars. For violations discovered upon a second or subsequent inspection following a previous violation within a twelve month period, the above penalties shall be doubled, with a maximum penalty

of twenty thousand dollars.

Section 7. Scanner accuracy required.

No store shall charge a retail price for any exempt or non-exempt stock keeping item which exceeds the lowest of any item, shelf, sale, or advertised price of such stock keeping item.

Section 8. Scanner accuracy inspections.

a. For any scanner accuracy inspection under this local law, the store representative shall afford the inspector access to the test mode of the checkout system in use at the store or to a comparable function of said system and to the retail price information contained in a price look-up system.

b. In a store with 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 items offered in the store, not to exceed five hundred stock keeping items selected from a cross section of all stock keeping units offered for sale at the location at any one inspection, with the programmed computer price. The store shall provide such access to the computer as necessary for the inspector to make the determination.

Section 9. Scanner violations and penalties.

a. In the event that the programmed computer price exceeds the item, shelf, sale, or advertised price of any stock keeping item, the store will be subject to the following penalties: for violations of the provisions of section seven of this local law identified in the first inspection following any twelve month period in which no such violations have been found, a penalty in the amount of fifty dollars per violation shall be imposed for the first two percent of the stock keeping items 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 per additional violation, but in no event shall the total penalty for all violations of section seven of this local law identified at such first inspection exceed two thousand dollars. For violations identified in a second or subsequent inspection in a twelve month period following a previous violation of section seven of this local law, the penalties shall be doubled, with a maximum penalty of twenty thousand dollars.

b. For any violation of section eight of this local law, there shall be a penalty of five hundred dollars. Each day on which a violation is continued shall constitute a separate violation.

Section 10. Waiver of item pricing.

a. Any person, 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 three of this local law may make application in writing to the 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 nonrefundable processing fee to cover the actual cost of conducting scanner accuracy inspections as provided in subsection b of this section. The Sealer shall determine the processing fee and may revise it from time to time to reflect said actual costs, but in no case shall said fee exceed two thousand dollars per application.

b. Upon receipt of an application and fee as provided in subsection a of this section, the Sealer shall, within sixty days, 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 in the manner prescribed in section eight of this local law, excepting, however, that a minimum of three hundred stock keeping units shall be checked at each inspection. In the event that any violations are detected, penalties shall be assessed exactly as provided in section eight of this local law. If, considering both inspections together, the number of stock keeping units found to be in

violation does not exceed two percent of all stock keeping units inspected, the Sealer shall grant to the applicant a one year revocable waiver of the requirement of item pricing. Any store with a current waiver shall be exempt from the requirements of section three of this local law.

c. A waiver of item pricing shall be valid for a period of one year from the date of issue. Stores may reapply annually for renewal of a waiver. A processing fee and two inspections shall be required for each annual renewal application, just as for an original waiver application.

d. In the event that total violations in excess of two percent are discovered in the inspections provided for in subsections b or c of this section, the Sealer shall not grant a waiver, and the store shall be fully subject to the requirements of section three of this local law. Such a store may not reapply for a waiver for a period of six months following the second of the two inspections.

e. In the event that the Sealer is unable to conduct inspections pursuant to subsection b of this section within thirty days of receipt of a complete waiver application and proper fee, the Sealer shall grant a temporary waiver, pending completion of the inspections. The Sealer shall cause said inspections to be completed as soon as practicable, and in all cases within sixty days from the date of receipt of a complete waiver application and proper fee. If, upon completion, the inspections detect a violation

rate of two percent or less, the Sealer shall issue a regular waiver with an expiration date one year from the commencement date of the temporary waiver. If the inspections detect a violation rate in excess of two percent, the temporary waiver shall be revoked immediately and the provisions of subsection d of this section shall apply.

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

i. The store shall make available to customers grease pencils, crayons, markers, or other marking devices suitable for writing prices onto individual stock keeping items.

ii. The store shall designate and make available a price check scanner to enable consumers to confirm the price of a stock keeping item. This scanner shall be in a location convenient to consumers and separate from the checkout area, and shall be identified by a sign containing the words "customer price check scanner" in letters not less than nine inches high.

iii. The store shall not charge any customer a

price for any stock keeping item which exceeds the item, shelf, sale, or advertised price of that stock keeping item, whichever is least.

iv. The store shall cause to be posted in a conspicuous place within the store a sign stating that the store has been granted a waiver from item pricing, stating the expiration date of that waiver, explaining the obligations of the store consistent with the waiver, and explaining the rights of consumers consistent with the waiver as set forth in section eleven of this local law. The Sealer may specify the form and language of this sign by regulation.

v. The store shall make payment to consumers who have been overcharged as provided in section eleven of this local law.

Section 11. Consumer's right to

special payment if overcharged by a store granted a waiver from item pricing.

Any person who suffers loss because the price charged for a stock keeping item by a store which has been granted a waiver from item pricing pursuant to section ten of this local law is greater than the least of the item, shelf, sale, or advertised price may seek special payment by notifying the seller in person or in writing that the price charged is more than the item, sale, shelf, or advertised price. The notice shall include evidence of the loss suffered by the buyer. As soon as practical, and in any case within two days after receipt of such notification, the seller shall tender to the buyer an amount equal to the difference between the price charged and the least 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. If the loss is suffered by one buyer within one transaction on two or more identical stock keeping items, the amount to be tendered by the seller shall be the difference on each item, plus an amount equal to ten times the difference on a single item but not less than one dollar nor more than ten dollars. If the seller does not tender this amount,

the buyer may request a hearing before the Sealer. Within sixty days of receipt of such a request for a hearing, the Sealer shall cause a hearing to be held, and shall rule as to what payment, if any, is due under this section.

b. Every store which has been granted a waiver of item pricing pursuant to section ten of this local law shall make a good faith effort to resolve all legitimate complaints of overcharges by tendering payment consistent with the provisions of subsection a of this section.

c. Every store which has been granted a waiver of item pricing pursuant to section ten of this local law shall maintain records of the number, dates, and amounts of claims made by consumers pursuant to subsection a of this section, and the disposition of each claim, and shall provide copies of such records to the Sealer upon request. The Sealer may specify by regulation forms for use by consumers in presenting claims for such payment and by the

store in responding to such claims.

Section 12. Revocation of waiver.

a. The Sealer may revoke a waiver of item pricing for any of the following reasons:

i. Failure to comply with any provision of section ten, section thirteen, or section eleven of this local law.

ii. Deliberate overcharging of any customer.

iii. Material misrepresentation in the application for waiver.

b. A store which has had its waiver revoked pursuant to this section may not reapply for a new waiver for a period of twelve months following the date of revocation.

Section 13. Readable shelf labels required.

a. Any store subject to the provisions of section three of this local law, or which has been granted a waiver from item pricing pursuant to section ten of this local law, shall provide a clear and readable shelf label for every stock keeping unit. Each shelf price shall be printed on a shelf price label in characters no less than one inch in height, except, however, that the shelf price for each stock keeping unit displayed on a bottom shelf shall be printed in characters not less than one and one half inches in height.

Shelf price labels on bottom shelves shall be tilted upward at an angle of between thirty and sixty degrees from the floor. The sealer may, by regulation, specify standard shape, typeface, placement, and format of shelf labels, and may set other requirements to ensure the readability of shelf labels and the ability of consumers to identify which shelf label applies to each stock keeping unit.

b. No provision of this section shall be construed to diminish the requirements of section 214 h of the Agriculture and Markets Law. If any provision of this section of this local law conflicts with section 214 h of the Agriculture and Markets Law, the state law shall control.

Section 14. Penalties for failure to provide proper shelf labeling. In the event that shelf labels do not conform with the provisions of section thirteen of this local law, the store will be subject to the following penalties: for violations of the provisions of section thirteen of this local law identified in the first inspection following any twelve month period within which no such violations have been found, a penalty in the amount of ten dollars per violation shall be imposed, but in no event shall the total penalty for all violations identified at such first inspection exceed five hundred dollars. For violations identified in a second or subsequent inspection in a twelve month period following a previous violation of section

thirteen of this local law, the penalties shall be doubled, up to a maximum of two thousand dollars per inspection. Each stock keeping unit for which proper shelf labeling is not provided shall constitute a separate violation. Every day a violation is continued shall constitute a separate violation.

Section 15. Enforcement by Sealer.

a. The Sealer shall have the authority to promulgate such regulations as necessary to carry out the purposes of this local law. This local law and regulations promulgated by the Sealer under this local law shall be enforced by the Sealer.

b. The Sealer shall, within available appropriations, cause retail stores to be inspected to assure compliance with this local law.

c. Upon finding a violation of the provisions of this local law, or of the rules and regulations promulgated hereunder, the Sealer shall cause the same to be corrected and cause a hearing to be held to determine whether a violation of this local law has occurred. At least ten days written notice of a hearing shall be served either personally upon the person in charge of the place of business where the alleged violation occurred, or by certified or registered mail addressed to such place of business. Such notice shall contain a concise statement of the facts constituting the alleged violation and shall set forth the date, time, and

place that a hearing shall be held. Upon a finding of a violation of the provisions of this local law, the Sealer shall be authorized to recover any civil penalty provided for in this local law.

Section 16. Appeals.

Any decision of the Sealer under this local law, including the assessment of penalties, denial of an application for a waiver, or revocation of a waiver, may be appealed in writing to the Erie County Commissioner of Public Works. Within thirty days of receipt of such an appeal the Commissioner of Public Works shall cause a hearing to be held to review the contested decision of the Sealer. At least ten days written notice of a hearing shall be served either personally upon the person in charge of the place of business filing the appeal, or by certified or registered mail addressed to such place of business. Such notice shall set forth the date, time, and place that a hearing shall be held. Within thirty days following such a hearing, the Commissioner of Public Works shall issue a written ruling regarding the appeal.

Section 17. Separability. If any clause, sentence, paragraph or section of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such adjudication shall not affect, impair, or

invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or section thereof directly involved in the proceeding or action in which such adjudication has been rendered, except, however, that if section eleven of this local law is adjudged to be invalid then the entirety of section ten shall also be invalid, and all waivers granted under section ten shall be null and void.

Section 18. Construction, repeal of prior legislation. Local Law number five of 1991 is hereby repealed. This local law shall be deemed to supersede any and all prior enactments of the county of Erie with respect to the subject matter contained herein. Wherever any prior local law of the county of Erie is found to be inconsistent or in conflict with the provisions contained herein, such prior law shall be deemed amended hereby. This local law shall be construed liberally so as to provide maximum protection to the consumers of Erie County.

Section 19. Effective date. This local law shall be effective immediately, except for section three, which shall be effective sixty days after enactment of this local law.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. ~~(Final adoption by local legislative body only.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____, in accordance with the applicable provisions of law. (Name of Legislative Body)~~

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. 8 of 1993 of the (County)(~~City~~)(~~Town~~)(~~Village~~) of Erie was duly passed by the Erie County Legislature on October 7, 1993, and was (approved)(~~not disapproved~~)(~~repassed after disapproval~~) by the Erie County Executive and was deemed duly adopted on October 8, 1993, in accordance with the applicable provisions of law. (Elective Chief Executive Officer*)

3. ~~(Final adoption by referendum.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved)(not disapproved)(repassed after disapproval) by the _____ on _____ 19____. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 19____, in accordance with the applicable provisions of law.~~

4. ~~(Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved)(not disapproved)(repassed after disapproval) by the _____ on _____ 19____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 19____, in accordance with the applicable provisions of law.~~

*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. ~~(City local law concerning Charter revision proposed by petition.)~~

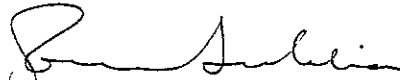
~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19 _____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home-Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 19 _____, became operative.~~

6. ~~(County local law concerning adoption of Charter.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19 _____ of the County of _____, State of New York, having been submitted to the electors at the General Election of November _____ 19 _____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.~~

~~(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)~~

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 2, above.



Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body

Date: 11/9/93

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK
COUNTY OF Erie

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.



Signature

Erie County Attorney

Title

County
~~City~~ of Erie
~~Town~~
~~Village~~

Date: 11/9/93