

**LOCAL LAWS**  
**OF**  
**THE CITY OF NEW YORK**  
**FOR THE YEAR 1991**

**No. 84**

Introduced by Council Member Greitzer; also Council Members Spigner, Eisland, Dear, Wooten, Rivera, Koslowitz, Cerullo III, Michels, Alter, Fisher, Leffler, Maloney, O'Donovan, Horwitz and Povman.

**A LOCAL LAW**

To amend the administrative code of the city of New York, in relation to item pricing in retail stores.

*Be it enacted by the Council as follows:*

Section 1. Legislative findings and intent. The Council finds that the failure of the state legislature to extend the state item pricing law has left consumers without assurance that they will be able to easily ascertain prices of basic consumer necessities such as groceries, paper goods, detergents, and health and beauty aids. Item pricing is uniquely useful in comparison shopping within a store, in keeping track of the total cost of items being purchased, and in discovering erroneous charges at the cash register. The Council finds, therefore, that the city's law concerning truth in pricing must be amended to add a new section on item pricing.

§ 2. Section 20-708 of the administrative code of the city of New York is hereby amended to read as follows:

§ 20-708 Display of total selling price *by tag or sign*. All consumer commodities, *sold, exposed for sale or offered for sale at retail except [food] those items subject to section 20-708.1 of this code*, [sold, exposed for sale or offered for sale at retail] shall have conspicuously displayed, at the point of exposure or offering for sale, the total selling price exclusive of tax by means of (a) a stamp, tag or label attached to the item or (b) by a sign at the point of display which indicates the item to which the price refers, provided that this information is plainly visible at the point of display for sale of the items so indicated. This section shall not apply to consumer commodities displayed in the window of the seller.

§ 3. Subchapter two of chapter five of title twenty of such code is hereby amended by the addition of a new section 20-708.1 to read as follows:

§ 20-708.1 *Item pricing*. a. *Definitions*. *The following terms shall have the following meanings for the purpose of this section:*

1. "Stock keeping unit", known in the industry as "SKU", 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:

(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;

(b) *Napkins, facial tissues, toilet tissues, paper towelling and any disposable wrapping or container for the storage, handling, serving, or disposal of food;*

(c) *Detergents, soaps and other cleansing agents; and*

(d) *Non-prescription drugs, feminine hygiene products and health and beauty aids.*

2. "Stock keeping item" shall mean each individual item of a stock keeping unit offered for sale. This shall include two or more pieces packaged for sale together.

3. "Retail store" shall mean a store engaged in selling stock keeping units at retail. 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. A retail store shall not include any store which:

(a) *Has as its only full-time employee the owner thereof, or the parent, spouse or child of the owner, and in addition thereto not more than two full-time employees; or*

(b) *Had annual gross sales of stock keeping items in the previous calendar year of less than two 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 of stock keeping items in the previous calendar year of two million dollars or more; or*

(c) *Engages primarily in the sale of food for consumption on the premises or in a specialty trade which the commissioner determines, by rule, would be inappropriate for item pricing.*

4. "Item price" shall mean the tag, stamp or mark affixed to a stock keeping item which sets forth, in arabic numerals, the retail price thereof.

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

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

7. "Computer-assisted checkout system" shall mean any electronic device, computer system or machine which indicates the selling price of a stock keeping item by interpreting its universal product code, or an in-house product code, or by use of its price look-up function.

8. "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 stock keeping unit by the retail store or by way of the checkout operator's consultation of a file maintained at the point of sale.

9. "Inspector" shall mean the commissioner or his or her designee.

b. *Item pricing required. Except as provided in subdivision c of this section, every person, firm, partnership, corporation or association which sells, offers for sale or exposes for sale in a retail store, a stock keeping unit, shall disclose to the consumer the item price of each stock keeping item, by causing the item price to be conspicuously, clearly and plainly marked, stamped, tagged or affixed thereto.*

c. *Certain items exempted. The following stock keeping items need not be item priced as provided in subdivision b of this section provided that a shelf price and a price look-up function are maintained for such stock keeping items:*

1. *Milk.*

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. Eggs.
4. Fresh produce not packaged for final retail sale.
5. Products sold through a vending machine.
6. Food sold for consumption on the premises.
7. Snack foods such as cakes, gum, candies, chips and nuts offered for sale in single packages and weighing five ounces or less.
8. Cigarettes, cigars, tobacco and tobacco products.
9. Food offered for sale in bulk.
10. Frozen juice.
11. Ice cream.
12. Frozen foods packaged for final retail sale in plastic bags.
13. Stock keeping items on sale for one week or less, where such stock keeping items are not otherwise item priced, are located in a segregated display at the end of an aisle, and the sale period, the name of the product and the advertised price are clearly and conspicuously posted on a sign at the point of display. Failure to display this information shall be deemed a deceptive practice under section 20-701 of this code.

14. Baby food packaged in jars.

d. Scanner accuracy. In a retail store with a laser scanning or other computer-assisted checkout system, an inspector shall be permitted to compare the disclosed retail price of any one stock keeping item within any stock keeping unit sold in the retail store, whether or not exempt under subdivision c of this section, not to exceed five hundred stock keeping items at any one inspection, with the programmed computer price. The retail store shall provide such access to the computer as is necessary for the inspector to make the determination. The inspector shall also make note of undercharges on the inspection report. In the event that the programmed computer price exceeds the lowest price a retail store is permitted to charge for a stock keeping item under subdivision e of this section, this shall be deemed a deceptive practice under section 20-701 of this code.

e. Price accuracy. No retail store shall charge a retail price for any stock keeping item, whether or not exempt under subdivision c of this section, which exceeds the lower of any item, shelf, sale or advertised price of such stock keeping item.

f. Enforcement, penalties. 1. Upon the request of an inspector, the retail store representative shall afford the inspector access to the test mode of the checkout system in use at that retail store or to a comparable function of such system and to the retail price information contained in a price look-up function. No more than one inspection shall be conducted in any twenty-four hour period.

2. In addition to the enforcement powers prescribed in section 20-703 and 20-704 of this code, the commissioner may, upon due notice, hold hearings to determine whether violations of the provisions of this section have occurred. Such notice shall contain a concise statement of the facts constituting the alleged violation and shall set forth the date, time and place of the hearing. Upon a finding of a violation of the provisions of this section, the commissioner shall be authorized to impose a civil penalty as follows:

(a) upon a first inspection, up to twenty-five dollars for the first twenty violations and up to fifty dollars for the twenty-first and successive violations, total violations not to exceed one thousand dollars.

(b) upon a second or subsequent inspection within a two week period, up to fifty dollars for the first twenty continued violations, and up to one hundred dollars for the twenty-first and successive continued violations, total violations issued not to exceed four thousand dollars.

3. Each failure to comply with subdivision b of this section with respect to any one stock keeping unit shall constitute a separate violation, provided, however, that no violation shall be found where less than five stock keeping items of a particular stock keeping unit lack clearly readable item prices. Following an initial inspection, each inspection that finds a continuing violation with respect to a particular stock keeping unit cited within the previous fourteen days shall constitute a separate continued violation.

g. Rules. The commissioner may promulgate such rules as he or she may deem necessary or appropriate to effectuate the purposes of this section.

§ 4. Section 20-711 of such code is hereby amended to read as follows:

§ 20-711. Penalties. Any person who shall violate the provisions of section 20-708 or 20-709 hereof or [regulations] rules promulgated pursuant to this subchapter, other than the provisions of section 20-708.1 or rules promulgated under such section, shall pay a civil penalty of not less than twenty-five dollars nor more than two hundred fifty dollars for each violation and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than two hundred fifty dollars for each violation. For the purposes of this section, each group of identical consumer commodities for which on any single day the total selling price or price per measure is not displayed in accordance with section 20-708 or section 20-709 or [regulations] rules promulgated pursuant to this subchapter, other than the provisions of section 20-708.1 or rules promulgated under such section, shall be considered a single violation.

§ 5. This local law shall take effect thirty days following its enactment.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, S.S.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on August 15, 1991, disapproved by the Mayor on September 13, 1991 and repassed by the Council members on September 19, 1991 and said law is adopted notwithstanding the objections of the Mayor.

CARLOS CUEVAS, City Clerk, Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW § 27

Pursuant to the provisions of Municipal Home Rule Law § 27, I hereby certify that the enclosed local law (Local Law 84 of 1991, Council Int. No. 756) contains the correct text and:

Received the following vote at the meeting of the New York City Council on August 15, 1991: 33 for, 0 against.

Was disapproved by the Mayor on September 13, 1991.

Was returned to the City Clerk on September 13, 1991.

Was reconsidered by the Council on September 19, 1991 and received the following vote of the Council members at a meeting of the Council on September 19, 1991: 33 for, 0 against.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel