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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

_____ of _____ Montgomery _____

Local Law No. _____ 11 _____ of the year 19 92 _____

A local law _____ Establishing a Merchandise Item Pricing Regulation for the County of _____
Montgomery _____ (Insert title)

Be it enacted by the _____ Board of Supervisors _____ of the
_____ (Name of Legislative Body)

County

_____ of _____ Montgomery _____ as follows:

Section 1. LEGISLATIVE INTENT.

The Montgomery County Board of Supervisors recognizes that clear, accurate item pricing is a basic consumer right that is not protected under current State law. It is the intent of this local law to ensure that consumer goods offered for sale in Montgomery County are clearly, accurately and adequately marked as to their selling prices.

Section 2. DEFINITIONS.

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 or 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, other cleansing agents, and cleaning implements, and
- (iv) non-prescription drugs, feminine hygiene products and health and beauty aids.

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

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

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

(If additional space is needed, please attach sheets of the same size as this and number each)

E. "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.

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

G. "Inspector" shall mean an authorized government official having jurisdiction to enforce the provisions of this section.

H. "Retail store" shall mean a store 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. Pursuant to this section, a retail store shall not include any store which:

- (i) 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 fulltime employees, or
- (ii) had annual gross sales in a previous calendar year of less than three million dollars, unless the retail store is part of network of subsidiaries, affiliates or other member stores, under direct or indirect common control, which, as a group, has annual gross sales in the previous calendar year of three million dollars or more, or
- (iii) engages primarily in the sale of food for consumption on the premises or in a specialty trade which the Director of the Weights and Measures determines, by regulation, would be inappropriate for item pricing.

Section 3. ITEM PRICING REQUIRED.

A. Every person, firm, partnership, corporation or association which sells, offers for sale or exposes for sale in a retail store a stock keeping unit that bears a Universal Product Code shall disclose to the consumer the item price of each stock keeping item, by causing such to be conspicuously, clearly and plainly marked, stamped, tagged or affixed thereto in arabic numerals.

B. Certain items exempted. The following 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 stock keeping items:

- (i) Snack foods such as cakes, gum, candies, chips and nuts offered for sale in single packages and weighing five ounces or less.
- (ii) Stock keeping items which are under three cubic inches in size, and weigh less than three ounces, and are priced under one dollar.
- (iii) Items sold through a vending machine.
- (iv) Items that are on store special/sale. "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, for a stated period of time not to exceed fourteen days.
- (v) Fresh milk, cream, half-and-half, and other similarly packaged liquid dairy products, fresh eggs and orange juice.
- (vi) Fresh produce displayed for sale in bulk and not packaged prior to sale and is either packaged for or by the consumer at the time of sale.
- (vii) Consumer goods displayed for sale in bulk and not packaged prior to sale and is either packaged for or by the consumer at the time of sale.

- (viii) Foods sold for consumption on premises.
- (ix) Cigarettes and cigars sold by the pack or carton.
- (x) Frozen foods.
- (xi) Baby food in jars.
- (xii) Gelatin and pudding.
- (xiii) Pet food weighing six ounces or less.
- (xiv) Envelope-type packaged products weighing five ounces or less.

Section 4. PRICING ACCURACY.

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

B. In a store with a laser scanning or other computer assisted checkout system, the enforcing agent shall be permitted to compare the item, shelf, sale or advertised price of any one stock keeping item sold in the store with the programmed computer price.

Section 5. ENFORCEMENT.

A. Item pricing inspection procedures. For the purposes of determining a store's compliance with the requirements of Section 3, an inspection shall be conducted of a sample of no less than fifty (50), and no more than two hundred (200) stock keeping units.

B. Laser scanner accuracy inspection procedures. For any inspection under Section 4, 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 to the retail price information contained in a price look-up function.

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

D. Penalties for item pricing violations. Any person who fails to mark any stock keeping item in violation of Section 3 shall be subject to the penalty of fifty (\$50.00) dollars per violation, per stock keeping unit. For additional violations during a subsequent inspection in a twelve (12) month period, the above penalties shall be doubled. No penalties shall be imposed for a violation of Section 3 if more than ninety-five percent (95%) of all the stock keeping items inspected in each stock keeping unit at an individual point of sale contain clearly readable item prices.

E. Penalties for scanner accuracy violations. For a violation of the provisions of Section 4. a penalty in the amount of fifty dollars (\$50.00) per violation shall be imposed for the first two percent (2%) of the stock keeping items compared rounded to the nearest whole number; one hundred dollars (\$100.00) per violation for the next two percent (2%); two hundred dollars (\$200.00) per violation for each additional violation. For additional violations during a subsequent inspection in a twelve (12) month period, the above penalties shall be doubled.

F. Jurisdiction. The provisions of this section and the regulation promulgated hereunder shall be enforced by the Montgomery County Director of Weights and Measures.

Section 6. LOCAL LAW REVIEW

At any time during the fourth year this local law is in effect, review of this local law shall be conducted by the Board of Supervisors. The Chairman of the Board of Supervisors shall name an ad hoc Item Pricing Review Committee which shall include representatives of consumer interest and of the food industry, and at least two members of the Board of Supervisors. Such review shall consider the effectiveness of this local law and the need for changes to its provisions. A report of the findings of the ad hoc Item Pricing Review Committee shall be made to the full Board of Supervisors within ninety days of the appointment of the committee. The results of the review shall be acted upon as is appropriate under the Rules of procedure of the Board of Supervisors.

If the local law continues in effect following this initial review procedure, subsequent reviews using the same procedure may occur during every third year thereafter.

Nothing in this provision, however, shall restrict the Board of Supervisors from amending or repealing this local law at any time it so chooses.

Section 7. SAVING CLAUSE.

If any clause, sentence or paragraph 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 of the local law which shall as to such remainder remain in effect.

Section 8. EFFECTIVE DATE.

This local law shall take effect as of January 1, 1993, and when all filing requirements have been met.