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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  
[redacted] of Montgomery  
[redacted]  
Local Law No. 1 of the year 1993

A local law Amending Local Law No. 11 of 1992 Which Established 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  
[redacted] of Montgomery as follows:  
[redacted]

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, not including sales or motor fuel, 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 for a period of twenty-one days or less at a sale price.
- (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 twenty-five (25), 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, sold, offered for sale or exposed for sale in violation of this Local Law.

- (i) Any stop-removal order issued with respect to any stock keeping item shall be in writing, shall list the violations and shall direct that any stock keeping item in violation shall not be sold, offered for sale or exposed for sale until the violations are corrected.
- (ii) Any stop-removal order issued with respect to any device or system shall be in writing and shall list the violations. Such stop-removal order shall be stayed for up to two hours after the inspector provides the written stop-removal order to the retail store provided that, until the violations are corrected, either: the stock keeping items which are affected by the violations are not sold, offered for sale or exposed for sale, or signs are posted conspicuously at or near each cash register which clearly disclose to the store employees and consumers which stock keeping items are affected by the violations and their correct prices, and the retail store ensures that consumers are charged the correct prices.

D. Any retail store found in violation of Section Three of this local law shall be subject to the following penalties; upon a first inspection at which violations occur in any twelve month period the store shall pay a penalty of up to twenty-five dollars for each of the first four violations; up to fifty dollars for each of the next twelve violations; and up to seventy-five dollars for each of the next four violations, but in no event shall the total penalty therefore exceed one thousand dollars. Where violations occur upon a second or subsequent inspection in any twelve month period a penalty of up to fifty dollars shall be imposed for each violation, but in no event shall the total penalty therefor exceed twenty-five hundred dollars per inspection. No store shall be inspected more frequently than every thirty days unless a violation has been found; where a violation has been found then a second inspection may occur after forth-eight hours. For purposes of this local law, failure to have a clearly readable item price

indicated on twelve identical stock keeping items of the same commodity shall be considered a violation of this local law. Each additional group of twelve identical stockkeeping items not item priced or improperly item priced shall constitute a violation. Each group of less than twelve identical stock keeping items not item priced or improperly item priced shall constitute a violation if such a group is displayed alone. Each day a violation is continued shall constitute a separate violation.

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 when all filing requirements have been met.