

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2021**

No. 129

Introduced by Council Members Koo, Powers, Levine, Cornegy, Grodenchik, Reynoso, Chin, Kallos, Cabrera, Gjonaj, Ayala, Holden, Gibson, Koslowitz, Levin, D. Diaz, Rodriguez, Maisel, Ampry-Samuel, Rivera, Feliz and Ulrich.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to creating an exception to the item pricing requirement for retail stores with scanners available for consumer use

Be it enacted by the Council as follows:

Section 1. Subdivision a of section 20-708.1 of the administrative code of the city of New York, subdivision a as added by local law number 84 for the year 1991 and subparagraph (a) of paragraph 3 of subdivision a as amended by local law number 27 for the year 1998, is amended to read as follows:

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, domestic partner 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.

10. *"Price scanner" shall mean a laser scanning or other computer assisted price checking mechanism used in conjunction with scanner codes.*

§ 2. Subdivision c of section 20-708.1 of the administrative code of the city of New York, as added by local law number 84 for the year 1991, is amended to read as follows:

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.

15. Any stock keeping item that is capable of being scanned, and which is sold, offered for sale, or exposed for sale at a retail store that has, as determined by rule of the commissioner, a

sufficient number, in proportion to the retail store size, of clearly marked and functioning price scanners for consumer use, in adequate locations.

§ 3. Subdivision d of section 20-708.1 of the administrative code of the city of New York, as added by local law number 84 for the year 1991, is amended to read as follows:

d. [Scanner] *Checkout 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.

§ 4. This local law takes effect 120 days after it becomes law, except that the commissioner of consumer and worker protection may take such measures as are necessary for its implementation, including the promulgation of rules, before such date.

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 October 21, 2021 and returned unsigned by the Mayor on November 22, 2021.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 129 of 2021, Council Int. No. 1145-A of 2018) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEPHEN LOUIS, Acting Corporation Counsel.