

COUNTY OF SUFFOLK



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NOTICE OF ITEM PRICING WAIVER

Enclosed please find a copy of Suffolk County Local Law 37-2008 authorizing a program to waive item pricing requirements.

In the event that you decide to apply for the item pricing waiver, please be advised that each store must apply individually. I have enclosed a master application. Please make the necessary copies for distribution to each of your stores in Suffolk County. Once your application and payment are received, you will be issued a temporary Item Pricing Waiver.

Additionally, all stores will be required to provide scanners for customer use as follows:

<u>Gross Square Footage</u>	<u>Number of Scanners</u>
10,000 square feet and under	1
10,000 – 30,000 square feet	2
30,000 square feet and over	3

Should you have any questions, please do not hesitate to call Weights & Measures at (631) 853-5730.



Steven Bellone
Suffolk County Executive

Frank Nardelli
Commissioner

SUFFOLK COUNTY DEPARTMENT OF LABOR, LICENSING & CONSUMER AFFAIRS

P.O. Box 6100, Hauppauge, NY 11788-0099 (631) 853-4600 FAX (631) 853-4825

ANNUAL WAIVER OF ITEM PRICING REQUIREMENTS APPLICATION

Store Name & Number _____ Corporate Name _____

Store Address. _____

Gross Square Footage of Store _____

Store Contact Name _____ Phone Number _____

Email Address _____

If an outlet of a Corporation or Network of Affiliated Business:

Corporation Name _____

Corporation Address _____

Corporation Contact Name _____ Phone Number _____

The granting of this waiver is contingent upon this store passing one (1) Pricing Accuracy Inspection of a minimum of fifty (50) stock keeping units per each inspection. The number of stock keeping units found in violation may not exceed two percent (2%) of the total number of stock keeping units inspected during any inspection.

Each Application must be accompanied by a non-refundable waiver fee based upon the gross square footage of this store, as set forth below:

<u>Gross Square Footage</u>	<u>Waiver Fee</u>
Under 3,000 sq. feet	\$ 500.00
Between 3,001 and 10,000 sq. feet	\$ 1,000.00
Between 10,001 and 30,000 sq. feet	\$ 3,000.00
Between 30,001 sq. feet and 90,000 sq. feet	\$ 5,000.00
Over 90,000 sq. feet	\$ 15,000.00

Each store which accepts a waiver must agree to meet the following requirements:

1. The store shall designate and make available price check scanners to enable consumers to confirm the price of the stock keeping items. These price check scanners shall be in locations convenient to customers with signs of sufficient sized lettering identifying the units to consumers. Stores will submit their proposed sign and device locations to the Director for approval; and
2. The store shall not charge any customer a price for any stock keeping item which exceeds the item, shelf, sale, or advertised price, whichever is less; and
3. The store shall make prompt payment to consumers who have been overcharged and shall correct errors identified by customers.

I have read the above requirements and agree to abide by them. Also, I declare that to the best of my knowledge the gross square footage of this store, as listed above, is accurate.

Signature _____ Amount of Waiver Fee Enclosed _____

CHAPTER 542. ITEM PRICING

ARTICLE I. Requirements

§ 542-1. Definitions.

§ 542-2. Item pricing required.

§ 542-3. Exemptions.

§ 542-4. Pricing accuracy.

§ 542-5. Enforcement.

§ 542-6. Inspection procedures.

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§ 542-8. Stop-removal order.

§ 542-9. Waiver of requirements; fees.

§ 542-10. Penalties for offenses.

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ARTICLE II. Display of Item Prices

§ 542-14. Definitions.

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§ 542-19. Rules and regulations.

GENERAL REFERENCES

Banking practices — See Ch. **314**.

Caterers — See Ch. **365**.

Consumer protection — See Ch. **387**.

Dry-cleaning establishments — See Ch. **427**.

Fuel-delivery vehicles — See Ch. **485**.

Gasoline sales — See Ch. **494**.

Restaurants — See Ch. **700**.

Retail sales — See Ch. **704**.

[Adopted 3-3-1992 by L.L. No. 4-1992 (Ch. 328 of the 1985 Code)]

§ 542-1. Definitions.

As used in this article, the following terms shall have the meanings indicated:

COMPUTER-ASSISTED CHECKOUT SYSTEM

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. *Editor's Note: The definition of "Commissioner," which immediately preceded this definition, was repealed 8-5-2008 by L.L. No. 37-2008.*

COUNTY

The County of Suffolk. *Editor's Note: The definition of "Department," which immediately followed this definition, was repealed 8-5-2008 by L.L. No. 37-2008.*

DIRECTOR

The Director of the Office of the Consumer Affairs. *Editor's Note: The definition of "inspector," which immediately followed this definition, was repealed 8-5-2008 by L.L. No. 37-2008.*

[Added 3-9-1993 by L.L. No. 8-1993; amended 8-5-2008 by L.L. No. 37-2008]

ITEM PRICE

The tag, stamp or mark affixed to a stock-keeping item which sets forth, in Arabic numerals, the retail price.

OFFICE

The Suffolk County Office of Consumer Affairs.

[Added 3-9-1993 by L.L. No. 8-1993; amended 8-5-2008 by L.L. No. 37-2008]

PRICE LOOK-UP FUNCTION

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.

RETAIL STORE

Any store, including stores whose primary sales product is merchandise of a general nature, 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:

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

B. Had annual gross sales in a previous calendar year of less than \$3,000,000, 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 in the previous calendar year of \$3,000,000 or more; or

C. Engages primarily in the sale of food for consumption on the premises or in a specialty trade which the Director determines, by regulation, would be inappropriate for item pricing.

[Amended 3-9-1993 by L.L. No. 8-1993]

SALE ITEM or WEEKEND SPECIAL

A stock-keeping item offered for sale for a period of seven days or less in a retail store at a price below the price for which the item is usually sold in such store. The Director may authorize, by regulation, a fourteen-day sale period for holidays such as Thanksgiving, Christmas, Passover and Easter.

[Amended 3-9-1993 by L.L. No. 8-1993]

STOCK-KEEPING ITEM

Each item of a stock-keeping unit offered for sale.

STOCK-KEEPING UNIT

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 tissue, toilet tissues and any disposable wrapping or container for the storage, handling or serving of food.

C. Detergents, soaps, cleaning agents and cleaning implements.

D. Nonprescription drugs, feminine hygiene products and health and beauty aids.

UNIVERSAL PRODUCT CODE

Any system of coding which entails electronic pricing.

§ 542-2. Item pricing required.

Notwithstanding the provision of any local law or regulation to the contrary, every person who sells, offers for sale or exposes for sale in a retail store, located within the County of Suffolk, a stock-keeping unit that bears a universal product code shall disclose to the consumer the item price of each stock-keeping item as defined in § **542-1** of this article.

§ 542-3. Exemptions.

A. The following stock-keeping items need not be item priced as provided in § **542-2** herein, provided that a shelf price adjacent to the display is maintained for such stock-keeping items:

- (1) Stock-keeping items which are under three cubic inches in size and weigh less than three ounces and are priced under \$0.50.
- (2) Items sold through a vending machine.
- (3) Milk.
- (4) Eggs.
- (5) Loose fresh produce.
- (6) Stock-keeping items which are offered for sale in single packages and weigh three ounces or less.
- (7) Stock-keeping items offered as a sale item or weekend special.
- (8) Strained and junior-sized baby foods packaged in jars.
- (9) Single cans or bottles of soda where the selling price for different flavors packaged in identical sizes or quantities is the same.
- (10) Stock-keeping items which are displayed for sale in bulk which are either packaged for or by the consumer.
- (11) Snack foods such as cakes, gums, candies, chips and nuts offered for sale.
- (12) Food sold for consumption on premises.
- (13) Frozen juice and ice cream.
- (14) Frozen food products sold for storage in the freezer in polyethylene bags.

B. The provisions of this section may be subsequently modified or amended by order of the Director either by adding or deleting stock-keeping units from the list of exemptions or by further directing the manner in which the selling price of exempted stock-keeping units shall be posted.

[Amended 3-9-1993 by L.L. No. 8-1993]

§ 542-4. Pricing accuracy.

A. No retail store shall charge a retail price for any exempt or nonexempt 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 price exceeds the lowest price a store is permitted to charge for a stock-keeping unit, the store shall be subject to a penalty as set forth in § **542-5** of this article.

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

[Amended 8-5-2008 by L.L. No. 37-2008]

§ 542-5. Enforcement.

[Amended 3-9-1993 by L.L. No. 8-1993; 8-5-2008 by L.L. No. 37-2008]

A. The provisions of this article shall be enforced by the Office. Upon presentation of appropriate credentials, a representative of the Office shall have the right to enter upon the premises of any retail store to make an inspection and to determine compliance with the provisions of this article.

B. Upon presentation of the appropriate credentials, a representative of the Office may compare the item, shelf or sale advertised price with the programmed computer price of stock-keeping items.

§ 542-6. Inspection procedures.

A. For the purposes of determining a store's compliance with the requirements of § **542-2** of this article, an inspection shall be conducted of a sample of no fewer than 25 stock-keeping units.

B. For the purposes of determining a violation of § **542-2** of this article, no item shall be cited more than once in a forty-eight-hour period.

C. With respect to the item price of any exempt item, the Director, in his or her discretion, may direct a retail store to post a sign in a conspicuous and unobstructed location in the manner and form prescribed by the Director.

[Amended 3-9-1993 by L.L. No. 8-1993]

§ 542-7. Laser scanner accuracy inspection procedure.

[Amended 8-5-2008 by L.L. No. 37-2008]

For any inspection pursuant to § **542-4** of this article, the store representative shall afford a representative of the Office 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.

§ 542-8. Stop-removal order.

A. The Director shall have the authority to issue a stop-removal order with respect to any stock-keeping unit being used, handled or offered for sale in violation of §§ **542-2**, **542-3** and **542-4** of this article.

[Amended 8-5-2008 by L.L. No. 37-2008]

B. Any such order shall be in writing and shall direct that the stock-keeping item be removed from sale pending correction.

C. A violation pursuant to § **542-2** of this article shall be deemed to exist any time three or more items within a stock-keeping unit are found to be not properly item priced.

D. If a stock-keeping unit consists of fewer than three items, failure to item price one or more items shall constitute a violation.

§ 542-9. Waiver of requirements; fees.

[Added 8-5-2008 by L.L. No. 37-2008]

A. Every retail store which uses a computer-assisted checkout system and which would otherwise be required to item price as provided in § **542-2** of this article may make an application, in writing, to the Director 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 waiver fee based upon the gross square footage of each store as set according to the following schedule:

Gross Store Size (square feet)	Waiver Fee
Under 3,000	\$500
Between 3,001 and 10,000	\$1,000
Between 10,001 and 30,000	\$3,000
Between 30,001 and 90,000	\$5,000
Over 90,000	\$15,000

- B. Upon receipt of an application and fee as provided in Subsection A of this section, the Director shall cause to be conducted a scanner accuracy inspection of the store for which the application has been submitted. This inspection shall be in the manner prescribed by the Director. At stores with a gross size in excess of 10,000 square feet, a minimum of 100 stock-keeping units shall be checked at inspection. At stores with a gross size of 10,000 square feet or less, a minimum of 50 stock-keeping units shall be checked. If the number of stock-keeping units found to be in violation does not exceed 2% of all those stock-keeping units inspected, the Director shall grant to the applicant a one-year revocable waiver from the item pricing requirement. Any store with a current waiver shall be exempt from the requirements of § 542-2 of this Code.
- C. In the event that total violations in excess of 2% are discovered in the inspection process, the Director shall not grant a waiver to the applicant. Such a store may, within five business days of being notified of the failure, request a second inspection. If the number of stock-keeping units found to be in violation during this second inspection does not exceed 2% of those stock-keeping units inspected, the Director shall grant to the applicant a one-year revocable waiver for the item pricing requirement.
- D. Stores which fail the scanner accuracy inspection(s) must be in compliance with the requirements of this article within 30 days from the final date of failure. These stores may reapply for a waiver from item pricing requirements in accordance with Subsection A of this section.
- E. Waivers from item pricing shall be valid for a period of one year from the date of issuance, except as set forth in Subsection F of this section, and shall expire on the last day of the 12th month of such issuance. Stores must reapply annually for renewal at the rates established in Subsection A of this section. The waiver fee and inspection shall be required for each annual renewal application, as required for an original waiver application.
- F. In the event that the Director is unable to conduct an inspection pursuant to Subsection B of this section within 90 days of receipt of a complete waiver application and proper waiver fee, the Director shall grant a temporary waiver pending completion of the inspection. The Director shall cause said inspection to be completed as soon as practicable. If, upon completion, the inspection detects a violation rate of less than 2%, the Director shall issue a regular waiver with an expiration date of one year from the date of the temporary waiver. If the inspection detects a violation rate in excess of 2%, the temporary waiver shall be immediately revoked and the provisions of Subsection D shall apply.
- G. As a condition of the waiver from 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:
- (1) The store shall designate and make available price check scanners to enable consumers to confirm the price of stock-keeping items. These price check scanners shall be in locations convenient to consumers with signs of sufficient sized lettering to identify the units to the consumers. Stores will submit their proposed sign and device locations to the Director for approval; and
 - (2) The store shall not charge any customer a price for any stock-keeping items which exceeds the item, shelf, sale, or advertised price, whichever is less; and
 - (3) The store shall make prompt payment to consumers who have been overcharged and shall correct all pricing errors identified by consumers.
- H. The Director may revoke a waiver from item pricing for any of the following reasons:
- (1) Failure to comply with any provisions of this article.
 - (2) Deliberate overcharging of any consumer.
 - (3) Material misrepresentation in the application for a waiver.
- § 542-10. Penalties for offenses.
- A. Any person who fails to comply with the provisions of this article or any regulation or order promulgated hereunder, with the exception of § 542-6C, shall be subject to civil penalties of not more than \$50 per violation, not to exceed \$1,000 per inspection.

B. A person who fails to comply with the provisions of § **542-6C** shall be subject to a civil penalty of not more than \$150 per violation, not to exceed \$1,000 per inspection.

C. Such civil penalties may be recovered after a hearing on written notice.

D. For any additional violations during a subsequent inspection in a twelve-month period, the above civil penalties shall be doubled.

§ 542-11. Settlement or compromise of violations.

A. In lieu of instituting or continuing a hearing to recover a civil penalty or penalties, the Director may release, settle or compromise any alleged violation by accepting written assurance of discontinuance of any act or practice in violation of this article.

[Amended 3-9-1993 by L.L. No. 8-1993]

B. An assurance entered into pursuant to this article shall not be deemed an admission of a violation unless it does so by its terms.

C. Violation of an assurance entered into pursuant to this article shall be treated as a violation and shall be subject to all the penalties provided therefor.

§ 542-12. Hearing.

[Amended 3-9-1993 by L.L. No. 8-1993]

A. A hearing held on any alleged violation or violations of the provisions of this article shall be scheduled on a date not less than five business days after notification of such hearing, in writing, to the person involved. The hearing shall be conducted by an officer or employee designated by the Director for such purpose. The person conducting the hearing shall make a written determination. Such determination may be appealed to the Director who, after due deliberation, shall issue an order accepting, modifying or rejecting such determination.

B. Notice shall be served upon such person, either personally or by certified mail, and shall contain a concise statement of the facts constituting the alleged violation or violations, as well as setting forth the date, time and place the hearing will be held.

C. At the hearing conducted by the officer or employee designated by the Director, the Office shall be authorized to recover any penalty imposed as the result of a finding of a violation of the provisions of this article.

D. The person against whom the charges are pending has the right to be heard in his or her defense and to be represented by counsel or have counsel appear on his or her behalf, and such person or the attorney for such person shall have the right to call witnesses and produce evidence on behalf of such person.

E. For the purpose of this article, the Director, or any officer or employee designated by him or her, may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records and documents pertinent to the subject of the investigation, pursuant to § **C31-2B** and **C** of the Suffolk County Charter.

§ 542-13. Rules and regulations.

A. The Director shall issue, promulgate and adopt such rules and regulations as he or she shall deem necessary and sufficient to carry out and implement the purpose of this article.

[Amended 3-9-1993 by L.L. No. 8-1993]

B. At least seven days' prior notice of such public hearing shall be published in the official newspapers of Suffolk County. A copy of the regulations actually adopted hereunder and any amendments thereto shall be filed in the office of the Clerk of the County Legislature.

Article II. Display of Item Prices

[Adopted 5-21-2002 by L.L. No. 13-2002 (Ch. 329 of the 1985 Code)]

§ 542-14. Definitions.

As used in this article, the following terms shall have the meanings indicated:

COMPUTER-ASSISTED CHECKOUT SYSTEM

Any electronic device, computer system or machine which determines the selling price of merchandise by interpreting its universal product code or by use of its price look-up function.

COUNTY

The County of Suffolk.

DIRECTOR

The Director of the Suffolk County Office of Consumer Affairs.

INSPECTOR

The Director of Weights and Measures or his or her agent, duly authorized to enforce the provisions of this article.

OFFICE

The Suffolk County Office of Consumer Affairs.

PRICE LOOK-UP FUNCTION

The capability of any checkout system to determine the retail price of any 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.

RETAIL STORE

Any store, including stores whose primary sales product is merchandise of a general nature sold 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:

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

B. Had annual gross sales in a previous calendar year of less than \$1,000,000, 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 in the previous calendar year of \$1,000,000 or more; or

C. Engages primarily in the sale of food for consumption on the premises or in a specialty trade which the Director determines, by regulation, would be inappropriate for scanner pricing accuracy.

§ 542-15. Display of prices.

A. In any retail store located within the County of Suffolk with a laser-scanning or other computer-assisted checkout system or device, the price charged for an item shall be displayed on the automated device so that the price may be accurately read by the purchaser of the item from a reasonable customer position.

B. Any register, machine or any other device used by a retail store for the purpose of itemizing or totaling consumer sales shall display, on at least one side of said register, machine or device visible to the consumer, the cost of each item purchased plus the tax and total cost of all items purchased.

§ 542-16. Penalties for offenses.

A. Any person who fails to comply with the provisions of § **542-15** of this article shall be subject to a civil penalty of not more than \$150 per violation, not to exceed \$1,000 per inspection.

B. Such civil penalties may be recovered after a hearing on written notice.

C. For any additional violations during a subsequent inspection in a twelve-month period, the above civil penalties shall be doubled.

§ 542-17. Settlement or compromise of violation.

- A. In lieu of instituting or continuing a hearing to recover a civil penalty or penalties, the Director may release, settle or compromise any alleged violation by accepting written assurance of discontinuance of any act or practice in violation of this article.
- B. An assurance entered into pursuant to this article shall not be deemed an admission of a violation unless it does so by its terms.
- C. Violation of an assurance entered into pursuant to this article shall be treated as a violation and shall be subject to all the penalties provided therefor.

§ 542-18. Hearing.

- A. A hearing held on any alleged violation or violations of the provisions of this article shall be scheduled on a date not less than five business days after notification of such hearing, in writing, to the person involved. The hearing shall be conducted by an officer or employee designated by the Director for such purpose. The person conducting the hearing shall make a written determination. Such determination may be appealed to the Director who, after due deliberation, shall issue an order accepting, modifying or rejecting such determination.
- B. Notice shall be served upon such person, either personally or by certified mail, and shall contain a concise statement of the facts constituting the alleged violation or violations, as well as setting forth the date, time and place the hearing will be held.
- C. At the hearing conducted by the officer or employee designated by the Director, the Office shall be authorized to recover any penalty imposed as the result of a finding of a violation of the provisions of this article.
- D. The person against whom the charges are pending has the right to be heard in his or her defense and to be represented by counsel or have counsel appear on his or her behalf, and such person or the attorney for such person shall have the right to call witnesses and produce evidence on behalf of such person.
- E. For the purpose of this article, the Director, or any officer or employee designated by him or her, may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records and documents pertinent to the subject of the investigation, pursuant to § **C31-2B** of the Suffolk County Charter.

§ 542-19. Rules and regulations.

- A. The Director shall issue, promulgate and adopt such rules and regulations as he or she shall deem necessary and sufficient to carry out and implement the purpose of this article.
- B. At least seven days' prior notice of such public hearing shall be published in the official newspapers of Suffolk County. A copy of the regulations actually adopted hereunder and any amendments thereto shall be filed in the office of the Clerk of the County Legislature.