# ONEIDA COUNTY BOARD OF LEGISLATORS

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## ADDITIONAL COMMUNICATIONS FOR DISTRIBUTION
October 12, 2016

## (LOCAL LAW PACKET)

(Correspondence relating to upcoming legislation, appointments, petitions, etc.)


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# ONEIDA COUNTY
# OFFICE OF THE COUNTY EXECUTIVE

ANTHONY J. PICENTE, JR.
County Executive
ce@ocgov.net

October 11, 2016 FN 2016-341

Gerald J. Fiorini, Chairman
Oneida County Board of Legislators
800 Park Avenue
Utica, New York 13501

WAYS & MEANS

Re: Local Law prohibiting the use of tobacco and e-cigarettes on County property

Dear Chairman Fiorini:

Please find enclosed proposed Local Law prohibiting the use of tobacco products and e-cigarettes on County property.

If you should have any questions with regard to the enclosed or require anything further, please advise.

Very truly yours,

Anthony J. Picente, Jr.

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*INTRODUCTORY NO.* *F.N. 2016-341*

# BOARD OF COUNTY LEGISLATORS
# ONEIDA COUNTY

***RESOLUTION NO.***

***INTRODUCED BY:***
***2ND BY:***
**LOCAL LAW INTRO. ____ OF 2016**
**LOCAL LAW NO. ____ OF 2016**

**A LOCAL LAW PROHIBITING THE USE OF TOBACCO AND E-CIGARETTES UPON REAL PROPERTY OWNED OR LEASED BY THE COUNTY OF ONEIDA, WITHIN COUNTY OF ONEIDA OWNED VEHICLES OR PRIVATELY OWNED VEHICLES USED FOR A COUNTY OF ONEIDA PURPOSE.**

WHEREAS, the United States Surgeon General has concluded that there is no safe level of exposure to secondhand smoke; and

WHEREAS, it is the intent of the County of Oneida to provide a healthy, clean, and safe environment for all employees, clients, residents, and visitors; now therefore

BE IT ENACTED BY THE BOARD OF COUNTY LEGISLATORS OF THE COUNTY OF ONEIDA AS FOLLOWS:

## SECTION I. TITLE

This law shall be known as the "Local Law Prohibiting Use of Tobacco and E-Cigarettes upon Real Property Owned or Leased by the County of Oneida, within County of Oneida Owned Vehicles or Privately Owned Vehicles Used for a County of Oneida Purpose."

## SECTION II. LEGISLATIVE INTENT

This Board of County Legislators of the County of Oneida finds that tobacco and E-cigarette use on real property owned or leased by the County of Oneida, and within County of Oneida owned vehicles and privately owned vehicles used for a County of Oneida purpose, should be prohibited in an effort to provide a healthy, clean, and safe environment for all employees, clients, residents, and visitors.

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## SECTION III. DEFINITIONS

As used in this Local Law:

A. "Use of tobacco" or "tobacco use" shall mean the burning of a lighted cigar, cigarette, pipe, or any other matter or substance which contains tobacco, and shall also include chewing, holding in the mouth and/or expectorating of chewing tobacco, or any other matter or substance which contains tobacco.

B. "Tobacco products" means one or more cigarettes or cigars, chewing tobacco, powdered tobacco or any other tobacco products.

C. "Electronic cigarette" or "e-cigarette" means an electronic device composed of a mouthpiece, heating element, battery, and electronic circuit that delivers vapor of liquid nicotine and/or other substances mixed with propylene glycol which is inhaled by an individual user as he or she simulates smoking. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, or any other product name, and shall include any refill, cartridge and any other component of such a device.

D. "Smoking" shall mean to inhale or exhale the smoke or vapor of burning tobacco or tobacco substitute and also to carry burning tobacco or tobacco substitute in the form of a cigarette, cigar, or any other smoke producing product or devices, including pipes and e-cigarettes.

E. "Enforcement Officer" shall mean any "police officer" as the term is defined by section 1.20(34) of the Criminal Procedure Law when said officer is acting pursuant to his or her official duties.

F. "Real Property" shall mean any property owned or leased by the County of Oneida and shall include real estate, lands and any structures, buildings or facilities located upon said real estate or lands.

## SECTION IV. PROHIBITION

The use of tobacco, tobacco products and electronic cigarettes use shall be prohibited:

A. Upon all real property owned or leased by the County of Oneida; and

B. Within all County of Oneida owned vehicles or within private vehicles when being used for a County of Oneida purpose except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida purpose if the driver is the sole occupant of the vehicle.

## SECTION V. EXCEPTIONS

The provisions of this Local Law shall not apply to:

A. A privately owned moving motor vehicle which is not engaged in County of Oneida service and which is in the process of exiting or entering real property owned or leased by the County of Oneida, and only when said vehicle's doors and windows are completely closed.

B. Roadways and rights-of-way located within the County of Oneida road system established under Section 115 of the New York State Highway Law.

C. County of Oneida Forest Lands.

D. Real property occupied by and for Mohawk Valley Community College and subject to the State University of New York Board of Trustees Resolution 2007-21 and the Mohawk Valley Community College Tobacco-Free Campus Policy, as the same may from time to time be amended.

## SECTION VI. SIGNAGE

Signs indicating the following or substantially similar language: "THESE GROUNDS WILL BE 100% TOBACCO-FREE," "TOBACCO AND E-CIGARETTE USE IS PROHIBITED," or "NO TOBACCO OR E-CIGARETTES;" and/or signs using the international "no smoking" symbol where applicable, shall be clearly, prominently and conspicuously posted at each entrance to every building, structure, facility or other real property where tobacco and nicotine use is prohibited by this Local Law. Said signs shall be at least 10 inches by 14 inches in size.

## SECTION VII. VIOLATIONS AND PENALTIES

A. It shall be unlawful for any person to use tobacco, tobacco products or electronic cigarettes in any area where such use is prohibited by the provisions of this Local Law.

B. Any person who violates any provision of this Local Law shall be guilty of a violation punishable by a civil penalty as follows:

1. Not to exceed $200.00 for the first offense;

2. Not to exceed $1,000.00 for a second offense and each and every subsequent offense.

C. Each violation of this Local Law shall constitute a separate and distinct offense.

## SECTION VIII. NOTICE AND ENFORCEMENT

A. Any citizen may register a complaint under this Local Law to the County of Oneida Department of Public Health, Environmental Health Division or with an Enforcement Officer.

B. If an Enforcement Officer determines that a violation of this chapter occurred, such Enforcement Officer may prepare, file and serve an appearance ticket in conformance with the New York State Criminal Procedure Law. Said appearance ticket shall be returnable in the local City Court or Justice Court in and for the municipality in which the violation is alleged to have occurred.

C. The District Attorney for the County of Oneida shall be responsible for prosecution of alleged violations of this Local Law.

D. If the local City Court or Justice Court determines after a hearing that a violation of this Local Law has occurred, a penalty shall be imposed by the local City Court or Justice Court pursuant to Section VII of this Local Law.

E. The decision of the local City Court or Justice Court shall be reviewable pursuant to applicable law.

F. A defendant charged with a violation of any provision of this Local Law may plead guilty to the charge in open court. He or she may also submit to the Judge or Magistrate having jurisdiction, in person, by duly authorized agent, or by registered mail, a statement (1) that he or she waives arraignment in open court and the aid of counsel, (2) that he or she pleads guilty to the offense charged, (3) that he or she elects or requests that the charge be disposed of and the fine or penalty fixed by the Court, (4) of any explanation that he or she desires to make concerning the offense charged, and (5) that he or she makes all statements under penalty of perjury. Thereupon the Judge or Magistrate may proceed as though the defendant had been convicted upon a plea of guilty in open court. If upon receipt of the aforesaid statement the Judge or Magistrate shall deny the same, he or she shall thereupon notify the defendant of this fact, and that he or she is required to appear before the said Judge or Magistrate at a stated time and place to answer the charge which shall thereafter be disposed of pursuant to the applicable provisions of law.

## SECTION IX. EFFECT ON OTHER LAWS

This Local Law shall not be interpreted nor construed to permit tobacco or e-cigarette use where it is otherwise restricted by other applicable laws, including but not limited to the New York State Clean Indoor Air Act.

**SECTION X. SEVERABILITY**

If any section, subsection, sentence, clause, phrase or other portion of this Local Law is for any reason declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidation shall not affect the validity of the remaining portions of this law which can be given effect without the invalid provision or application, which shall remain in full force and effect.

**SECTION XI. REVERSE PREEMPTION**

This Local Law shall be null and void on the day that Statewide or Federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this Local Law, or in the event that a pertinent State or Federal Administrative Agency issues or promulgates regulations preempting such action by the County of Oneida. The Board of County Legislators for the County of Oneida may determine via Resolution whether or not identical or substantially similar Federal or State legislation has been enacted for the purposes of triggering the provisions of this section.

**SECTION XII. EFFECTIVE DATE**

This Local Law shall take effect on January 1, 2018 in accordance with Section 27 of the Municipal Home Rule Law.

APPROVED: Ways & Means Committee ( )

DATED:

Adopted by the following vote:
AYES NAYS ABSENT

7.

# ONEIDA COUNTY
# OFFICE OF THE COUNTY EXECUTIVE

ANTHONY J. PICENTE, JR.
County Executive
ce@ocgov.net

October 11, 2016 FN 20 16 - 342

to

FN 20 16 - 343

WAYS & MEANS

Gerald J. Fiorini, Chairman
Oneida County Board of Legislators
800 Park Avenue
Utica, New York 13501

Re: Local Law setting salaries for elected officials and Local Law amending Local Law 5 of 1999

Dear Chairman Fiorini:

Please find enclosed two proposed Local Laws for 2016; the first setting the salaries for certain elected officials and the second Law amending Local Law 5 of 1999 which established a Cost of Living Incremental Formula for Certain Oneida County Elected Officials for your consideration.

If you should have any questions with regard to the enclosed or require anything further, please advise.

Very truly yours,

Anthony J. Picente, Jr.

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*INTRODUCTORY NO.*

*F.N. 2016-342*

# BOARD OF COUNTY LEGISLATORS
# ONEIDA COUNTY

*RESOLUTION NO.*

*INTRODUCED BY: Messrs. Joseph, Sacco, Mandryck, Convertino, Paparella, Clancy, Porter*
*2ND BY:*

**LOCAL LAW INTRODUCTORY "D" OF 2016**
**LOCAL LAW NO. ____ OF 2016**

**A LOCAL LAW ESTABLISHING THE 2017 SALARY OF CERTAIN ELECTED OFFICIALS SERVING FOR FIXED TERMS.**

BE IT ENACTED BY THE BOARD OF COUNTY LEGISLATORS OF THE COUNTY OF ONEIDA AS FOLLOWS:

**SECTION I. TITLE**

This law shall be known as the "Local Law Establishing the 2017 Salary of Certain Elected Officials Serving For Fixed Terms."

**SECTION II. LEGISLATIVE INTENT AND FINDINGS**

Pursuant to Section 201 of the County Law, Section 614 of the Oneida County Charter, Section 615 of the Oneida County Administrative Code and Section 24(h) of the Municipal Home Rule Law, salary increases of fixed term elected officials must be established by Local Law, subject to permissive referendum.

**SECTION III.**

The annual salary of the hereinafter designated Oneida County Offices elected for a fixed term is hereby set in the following amounts effective January 1, 2017:

| | | |
|---|---|---|
| A. | County Executive: | $135,000.00 |
| B. | Comptroller: | $ 85,000.00 |
| C. | Sheriff: | $107,000.00 |
| D. | County Clerk: | $ 73,636.00 |

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**SECTION IV. SEVERABILITY**

If any section, subsection, sentence, clause, phrase or other portion of this Local Law is for any reason declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidation shall not affect the validity of the remaining portions of this law which can be given effect without the invalid provision or application, which shall remain in full force and effect.

**SECTION V. EFFECTIVE DATE**

This Local Law shall take effect forty-five days after its passage and is subject to permissive referendum.

APPROVED: Ways & Means Committee ( )

DATED:

Adopted by the following vote:
AYES NAYS ABSENT

*INTRODUCTORY NO.*

*F.N. 2016-343*

# BOARD OF COUNTY LEGISLATORS
# ONEIDA COUNTY

*RESOLUTION NO.*

*INTRODUCED BY: Messrs. Joseph, Sacco, Mandryck, Convertino, Paparella, Clancy, Porter*
*2ND BY:*

**LOCAL LAW INTRODUCTORY "E"____ OF 2016**
**LOCAL LAW NO. ____ OF 2016**

**A LOCAL LAW AMENDING LOCAL LAW 5 OF 1999 ESTABLISHING A COST OF LIVING INCREMENTAL FORMULA FOR CERTAIN ONEIDA COUNTY ELECTED OFFICIALS AS PROVIDED FOR IN SECTION 614 OF THE ONEIDA COUNTY CHARTER AND SECTION 615 OF THE ONEIDA COUNTY ADMINISTRATIVE CODE.**

BE IT ENACTED BY THE BOARD OF COUNTY LEGISLATORS OF THE COUNTY OF ONEIDA AS FOLLOWS:

**SECTION A. TITLE**

This law shall be known as the "Local Law Amending Local Law 5 of 1999 Establishing a Cost of Living Incremental Formula for Certain Oneida County Elected Officials as Provided for in Section 614 of the Oneida County Charter and Section 615 of the Oneida County Administrative Code."

**SECTION B. LEGISLATIVE INTENT AND FINDINGS**

To amend Local Law 5 of 1999 to establish a new rate of annual cost of living incremental compensation formula for certain elected officials of the Count of Oneida for and during their respective terms of office commencing in the year 2018, pursuant to Section 614 of the Oneida County Charter and Section 615 of the Oneida County Administrative Code.

**SECTION C.**

Local Law No. 5 of 1999 shall be amended by the deletion of all matters that are in italics and ~~*stricken*~~ and the addition of all matters in bold and **underlined** as set forth below:

1. The annual incremental compensation for the offices of the County Executive, County Comptroller, the County Clerk and the County Sheriff shall be increased ~~*or decreased*~~ annually

in accordance with the following index: For the purposes of this formula, "Index" shall mean the Consumer Price Index for urban wage earners and clerical workers, CPIW, U.S. City average all items (1982-84 = 100) by the U.S. Department of Labor or any replacement thereof comprising the same component factors and applicable to the City of Utica, New York or, if none is specifically applicable thereto, most closely applicable to the City of Utica, New York by reason of location, size and other relevant factors.

2. Any calculation of increase ~~*or decrease*~~ in such incremental compensation shall be made annually ~~*no later than November 30th in 1999 and*~~ no later than September 30th in each year ~~*thereafter*~~ and shall be based on the percentage of increase or decrease in said index for the preceding calendar year. As an example, any increase ~~*or decrease*~~ in the year 2000 incremental compensation of the elected officials named herein, shall be calculated using the 12 month calendar year of 1998.

3. **In the event that the rate of increase as calculated herein for any given year commencing in 2018 is less than one and one-half percent (1.5%), the increase for that year shall be one and one-half percent (1.5%). In the event that the rate of increase as calculated herein for any given year commencing in 2018 is greater than two and one-half percent (2.5%), the increase for that year shall be two and one-half percent (2.5%).** ~~*The rate of increase based on this formula shall at no time exceed (three percent (3%).*~~

4. If any provision of this Local Law, or the application thereof to any person or circumstances, is held invalid, the remainder of this Local Law, and the application of such provisions to other persons or circumstances shall not be affected thereby.

5. This Local Law shall take effect immediately in accordance with Sections 20, 22 and 27 of the Municipal Home Rule Law.

APPROVED: Ways & Means Committee ( )

DATED:

Adopted by the following vote:
AYES NAYS ABSENT

12.

# ONEIDA COUNTY BOARD OF LEGISLATORS

*James M. D'Onofrio ♦ PO Box 29 ♦ Utica, NY 13503*

October 10, 2016

Honorable Gerald J. Fiorini, Chairman
Oneida County Board of Legislators
800 Park Avenue
Utica, New York 13501

FN 20 16 - 344

RECEIVED
OCT 10 2016

WAYS & MEANS

Re: Local Law #4 of 2002

Dear Mr. Chairman,

In 1976, the New York State Legislature enacted an Item Pricing Law to provide consumers with accurate pricing information. Item pricing is defined as affixing or marking the price, by an authorized person, to a consumer item.

During the 1970s technological advances outpaced manual item pricing with the introduction of laser scanning of Universal Product Code (UPC) codes, removing the need for cashiers to enter a price marked on the product. The State Legislature feared that without laser scanner legislation, retailers would discontinue use of item pricing altogether once laser scanning was in place. Various extensions of the Item Pricing Law occurred, but in 1991, the State Item Pricing Law expired.

Following the expiration of the State Item Pricing Law in 1991, various municipalities, including Oneida County, sought to enact a *local* item pricing law. The State Consumer Protection Board assisted in drafting model legislation for municipalities.

In 1999, Oneida County passed a local law to require item pricing on individual items of food and food products offered for sale at retail food stores in Oneida County and to permit continued testing and development of the UPC checkout system. A few years later, Oneida County passed another local law adding a non-refundable processing fee to cover the cost of conducting a scanner accuracy certification inspection of **$500** for those stores using a computer assisted checkout system which would otherwise be required to item price. Subsequent amendments have been made to the county's item pricing law, the most recent being 2002 (Local Law 4 of 2002).

In the meantime, the State introduced a Scanner Accuracy law that has since been enacted as New York State Agriculture and Markets, Section 197-b. Counties have the option to follow this law or their local law, so long as the local law was passed prior to the creation of the new State law.

Research and analysis was conducted here at the county, followed by a series of meetings with the County Attorney's Office, the County Executive's staff and members of the County Department of Weights and Measures to review our local law. We used this analysis to make an informed decision whether to maintain our local law, amend our local law, or to dissolve our local law and instead, adhere to the State Law. It is important that our local law meets the needs of the county, protects consumers, and is

13.

comprehensible and fair for applicable businesses, i.e. retail stores. We did not want to simply adopt the State Law as this would usurp our local control and prevent us from making any edits in the future.

Our analysis found that our law is selective in enforcing item pricing/scanner accuracy, as it only regularly inspects just 11 retail stores (at approximately 20 locations as some stores under the local law have multiple locations in our county). Given the evolution of big convenience stores, far more businesses now fit the definition of retail store. As a result, we felt that implementing random checks on a wider range of retail stores, versus mandatory biannual checks on just 11, was more effective. Furthermore, modern scanners are overwhelmingly accurate. In fact, a recent industry study reported that scanners are overwhelmingly accurate with error rates less than 4%. By expanding the law to include additional businesses, we do not anticipate a significant increase in the error rate.

Lastly, we felt that the current practice of imposing a $500 scanner accuracy certification annual fee on certain retail locations had no bearing on our true intent of aiding consumer awareness on pricing. Eliminating the fee takes away the notion of selective enforcement as a wider range of businesses will be inspected, without the necessity of paying a fee.

I am proposing the following amendments to the local law:

- Removing the $500 annual fee
- Removing biannual checks, and allowing for random checks by expanding the definition of retail store
- Expanding the pool of businesses

For these reasons, I request for you to consider the amendments to Local Law 4 of 2002.

Sincerely,

Jim D'Onofrio

Cc: Oneida County Executive Anthony J. Picente, Jr.

14.

*INTRODUCTORY NO.*

*F.N. 2016-344*

# BOARD OF COUNTY LEGISLATORS
# ONEIDA COUNTY

*RESOLUTION NO.*

*INTRODUCED BY: Messrs. D'Onofrio, Porter*
*2ND BY:*
**LOCAL LAW INTRODUCTORY "F" OF 2016**
**LOCAL LAW NO. ____ OF 2016**

## A LOCAL LAW AMENDING LOCAL LAW 4 OF 2002, PROVIDING FOR ACCURATE PRICING OF GOODS OFFERED FOR SALE AT RETAIL IN ONEIDA COUNTY

**Legislative Intent:** To require accurate shelf or item price marking on individual items of food and food products offered for retail sale in Oneida County and to permit continued testing and development of the universal product code checkout system without removal of item or shelf prices for consumer protection. In addition, to further encourage pricing accuracy and retail price competition while providing additional potential savings for consumers.

**DECLARATION OF LEGISLATIVE FINDINGS**

The Oneida County Board of Legislators hereby finds and declares that there is technology utilizing a laser scanning device offering numerous efficiencies and economies to the operation of the retail food industry, the use of which may make it economically advantageous for retail stores to remove price markings on individual grocery items. The Oneida County Board of Legislators further finds that price marking constitutes an indispensable ingredient to a consumer's right to all reasonable information in order to make an informed purchase choice.

Therefore, the Oneida County Board of Legislators declares that requiring accurate shelf or item price marking is necessary to protect the interest of the consuming public, and further declares that it is in the public interest to promote useful technology by permitting continued testing and development of the universal product code check out system without the removal of item or shelf prices.

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Furthermore, recognizing the consumer's rights to exercise freedom of choice in the marketplace, and wishing to provide consumers with the economies created when the latest technologies are employed in a competitive marketplace, regular and rigorous testing shall be undertaken to ensure stores are demonstrating the highest degree of accuracy in their computerized equipment; and therefore also in this alternate manner guaranteeing that consumers will be dealt with fairly in the marketplace and not be overcharged.

**BE IT ENACTED** by the Board of Legislators, County of Oneida, State of New York, as follows:

**Section 1. DEFINITIONS**

a. "Stock keeping unit" (SKU) shall mean each group of items offered for sale of the same brand, quantity of contents, retail price, and having different colors, flavors, or varieties 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 and other cleansing agents; and

   iv. non-prescription drugs, feminine hygiene products and health and beauty aids.

b. "Stock keeping item" (SKI) shall mean each item of a stock keeping unit offered for sale.

c. "Retail store" shall mean shall mean a store that sells stock-keeping units directly to consumers and charges or is liable for the collection of sales tax. For the purposes of this section the term "retail store" shall include those stores that use universal product code (UPC) scanners or price-look-up (PLU) codes in checkout systems or use manual pricing of items. 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.

d. 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, spouse or child of the owner, or in addition thereto, not more than two full-time employees; or

   ii. engages primarily in the sale of food for consumption on the premises or in a specialty trade which the Commissioner of Agriculture and Markets determines by regulation, would be inappropriate for item pricing.

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

f. "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 in-store signs, newspapers, circulars, television or radio advertising.

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

h. "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 period of time not to exceed fourteen days.

i. "Computer-assisted checkout system" shall mean any electronic device, UPC (Uniform Product Code) scanner, QR code scanner, computer system or machine which determines 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 functions.

j. "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 by way of the checkout operator's consultation of a file maintained at the point of sale.

k. "Inspector" and "Enforcing Agent" shall mean an authorized government official having the jurisdiction to enforce the provisions of this local law. For the purpose of this local law, the "inspector" or "enforcing agent" shall be the Oneida County Director of Weights and Measures.

l. "Overcharge" means a price charged that is higher than the retail price.

**Section 2. ITEM OR SHELF PRICING REQUIRED**

Except as provided in Sections Three or Four of this local law, 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:

a. Display the item price of each stock-keeping unit offered for sale, either on each unit or on easy to read shelf tags, or signs, located directly above or below or immediately adjacent to every stock-keeping unit or group of stock-keeping units of the same brand, size and price.

b. Assure that the price charged after the final total has been determined is equivalent to the item price.

c. If a UPC or QR Code scanner system is used to determine the price charged, provide the appropriate inspection official access to the checkout system in use at such retail store to verify the price charged for items included in a pricing accuracy inspection. Access shall be provided to the system either in normal operating mode, in training mode, or through a hand-held or other device tied to the store's database.

d. Post, in a conspicuous place, the refund policy of such retail store in the event of an overcharge.

e. Post, in a conspicuous place, a notice to be provided by the Commissioner containing the contact information for the Oneida County Department of Weights and Measures, including the phone number, and an outline of the procedures to be followed for making a consumer complaint.

**Section 3. CERTAIN ITEMS EXEMPTED**

The following stock keeping items need not be item priced as provided in Section Two of this local law provided that a shelf label and a price look-up function are maintained for such stock keeping items:

a. Identical items within a multi-item package that is properly priced marked;

b. Milk, cream, half-and-half, yogurt, and other similarly packaged dairy products, and orange juice;

c. Stock keeping items which weigh less than three ounces, and are priced under one dollar;

d. Eggs;

e. Unpackaged bulk or fresh produce;

f. Items sold through a vending machine;

g. Food sold for consumption on the premises;

h. Stock keeping items offered for a period of fourteen days or less at a sale price, provided that the sale price and the beginning and ending dates of the sale are clearly indicated to the consumer by conspicuous sign otherwise located at or near the display of such stock keeping items. On special regional month-long promotions offered by manufacturers or distributors the period may be extended to 30 days, provided the store has available for inspection written documentation of the promotion;

i. Snack foods such as cakes, gum, candies, chips and nuts;

j. Cigarettes, cigars, tobacco and tobacco products;

k. Unpackaged food offered for sale in bulk;

l. Frozen foods; and

m. Baby food, dry gelatin and dry pudding.

**Section 4. CERTAIN STORES EXEMPTED**

The provisions of Section Two of this local law shall not apply to a store that has less than one thousand different stock keeping units and has 15% or less of its total merchandise offered for sale which are multiple brands of the same stock keeping unit. Such a store must utilize scanners and must maintain at least Ninety-Eight Percent (98%) scanner accuracy.

**Section 5. INSPECTION PROCEDURES**

a. The commissioner shall, by regulation, adopt test procedures utilizing randomized sampling techniques. Such procedures shall be consistent with the examination procedure for price verification developed by the national conference on weights and measures and published in the National Institute of Standards and Technology Handbook one hundred thirty. For purposes of this section, pricing accuracy inspections shall, to the extent possible, be conducted at a time and in a manner that does not interrupt the normal flow of retail business at the retail store.

b. A retail store inspected under this section shall be deemed in compliance if ninety-eight percent of the items in the sample selected are accurately priced.

c. In addition to establishing a standard frequency of inspection consistent with the provisions of paragraph a of this subdivision, the commissioner or a weights and measures official may conduct inspections of individual items in response to consumer complaints or as a follow-up on items ordered to be corrected in a previous inspection.

**Section 6. VIOLATIONS, PENALTIES & ENFORCEMENT PROCEDURES**

a. The commissioner or a weights and measures official shall advise the operator of the retail store of any pricing error encountered in an inspection. If the correction cannot be made immediately, then, the commissioner or a weights and measures official shall issue a stop removal order for items subject to overcharges and such stock-keeping units shall be removed from sale until correction is made.

b. Upon finding a violation of this section, the commissioner or a weights and measures official, may impose civil penalties as prescribed in this local law. Such penalty shall not exceed two hundred dollars per violation for violations assessed during an initial inspection in a calendar year and shall not exceed four hundred dollars per violation for violations assessed in a second or subsequent inspection during a calendar year. In determining the amount of any civil penalty imposed, the magnitude of the errors, corrective action taken by the retail store, history of such prior conduct, or other relevant information shall be considered. Penalties may only be imposed for:

    i. Overcharges found in a sample selected using the procedures adopted pursuant to Section Five of this local law, when overcharges number more than two percent of the sample. Each such overcharge may be considered a separate violation provided, however, that any overcharge for a single stock-keeping unit that includes more than one item in such unit shall count as a single violation and not as separate violations for each item in the stock keeping unit; or

ii. An overcharge verified in response to a consumer complaint; or

iii. Overcharges found on follow-up inspections of items ordered corrected; or

iv. Failure to disclose the item price of a stock-keeping unit pursuant to paragraph a of Section Two of this local law; or

v. Failure to conspicuously post a refund policy pursuant to paragraph d of Section Two of this local law; or

vi. Failure to conspicuously post the notice provided by the Commissioner pursuant to paragraph e of Section Two of this local law.

c. Stop-removal order. An inspector shall have the authority to issue a stop-removal order with respect to any stock keeping item, device or system 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 store employees and consumers which stock keeping items are affected by the violations and their corrective prices, and the retail store ensures that consumers are charged the correct prices.

d. For serious, repeated or persistent violations of the provisions of this Section, the Commissioner may, upon consultation with the County Executive, publish notice of the violations in the newspaper of record.

e. Violations of this local law shall not be subject to the penalties specified in Sections 39, 40 or 41 of the New York State Agriculture and Markets Law.

## Section 7. ENFORCEMENT BY INSPECTOR

a. The Inspector shall have the authority to promulgate such regulations as necessary to carry out the purposes of this local law. This local law and regulations promulgated by the Inspector under this local law shall be enforced by the Inspector.

b. The Inspector shall, within available appropriations, cause retail stores to be inspected to ensure compliance with this local law.

c. Upon finding a violation of the provisions of this local law, or of the rules and regulations promulgated hereunder, the Inspector shall cause the same to be corrected and, if requested, cause a hearing to be held to determine whether a violation of this local law has occurred. At least ten days written notice of a hearing shall be served either personally upon the person in charge of the store where the alleged violation occurred, or by certified or registered mail addressed to such store. Such notice shall contain a concise statement of the facts constituting the alleged violation and shall set forth the date, time and place that a hearing shall be held. Upon a finding of a violation of the provisions of this local law, the Inspector shall be authorized to recover any civil penalty provided for in this local law.

## Section 8. JURISDICTION

a. The provisions of this local law and any regulations promulgated hereunder may be enforced by the Oneida County Director of Weights and Measures. All moneys collected hereunder by the County of Oneida shall be retained by the County.

b. The Oneida County Director of Weights and Measures personally, or through his or her authorized agents, shall, upon finding a violation of the provisions of this local law or any rules and regulations promulgated pursuant to this local law, expeditiously cause the same to be corrected or shall refer the matter to the County Attorney for the County of Oneida, for commencement of a civil action in the name of the County to recover a civil penalty in the amounts prescribed by this local law. A cause of action for recovery of such penalty may be released, settled or compromised by such Inspector before the matter is referred to the County Attorney or thereafter by such attorney.

## Section 9. RULES AND REGULATIONS

The Oneida County Board of Legislators may promulgate such rules and regulations as they may deem necessary or appropriate to effectuate the purposes of this local law.

**Section 10. AMENDMENT OF PRIOR LEGISLATION.**

Local Law Number 4 of 2002 is hereby amended. This local law shall be deemed to supersede any and all prior enactments of the County of Oneida with respect to the subject matter contained herein. Wherever any prior local law of the County of Oneida is found to be inconsistent or in conflict with the provisions contained herein, such prior local law shall be deemed hereby amended. This local law shall be construed liberally so as to provide maximum protection to the consumers of Oneida County.

**Section 11. EFFECTIVE DATE**

This local law shall take effect upon filing with the Secretary of State in accordance with Section 20, 21 and 27 of New York State Municipal Home Rule Law.

APPROVED: Ways & Means Committee ( )

DATED: