INTRODUCTORY

F.N. 2000-302

NO. 320

ONEIDA COUNTY BOARD OF LEGISLATORS

RESOLUTION NO. 316

INTRODUCED BY: Messrs. Hendricks, Angell, Hertline, Kelly

2ND BY: Mr. Gigliotti

LOCAL LAW INTRODUCTORY "B" OF 2000

LOCAL LAW NO. 1 OF 2000

A LOCAL LAW PROVIDING FOR CLEARLY DISPLAYED PRICING OF GOODS OFFERED FOR SALE AT RETAIL IN ONEIDA COUNTY; AND SCANNER ACCURACY CERTIFICATION

Legislative Intent: To require 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 prices for consumer protection. In addition, to further encourage pricing accuracy and retail price competition while providing additional potential savings for consumers, Scanner Accuracy Certification is made available by which a store can obtain a waiver from Item Pricing by achieving a rigorously tested scanning accuracy rate of 98% or greater

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

DECLARATION OF LEGISLATIVE FINDINGS AND INTENT

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 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 prices.

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, Scanner Accuracy Certification is made available to stores which choose to pay for and pass a rigorous test 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.

Sections 7, 8, 9, 10, 11, 12 (a) and 12 (b) of Local Law No. 2 of 1999 are renumbered as Sections 8, 9, 10, 11, 12, 13, and 14 and a new section 7 is added and the law, in its entirety, shall now read as follows:

Section 1. DEFINITIONS

a. "Stock keeping unit" SKU shall mean a group of items offered for sale of the same brand name, quantity of contents, retail price, and variety within the following categories:

1. 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

2. napkins, facial tissues, toilet tissues, and any disposable wrapping or container for the storage, handling or serving of food; and

3. detergents, soaps and other cleansing agents; and

4. 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 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:

1) 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

2) had annual gross sales of stock keeping units in the previous calendar year of less than three million dollars or

3) 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.

d. "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.

e. "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..

f. "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.

g. "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.

h. "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 an in-house product code, or by use of its price look-up functions.

i. "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.

j. "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.

Section 2. ITEM PRICING REQUIRED

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 disclose to the consumer the item price of each stock keeping item, except as provided in Sections Three, Four or Seven of this local law, by causing to be conspicuously, clearly and plainly marked, stamped, tagged, or affixed thereto the item price.

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.

m. Baby food, dry gelatin and dry pudding.

Section 4. CERTAIN STORES EXEMPTED

a. 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 maintain a 98% scanner accuracy.

b. The provisions of Section Two of this local law shall not apply to a store that has a Scanner Accuracy Certification, as per Section Seven of this local law.

Section 5. INSPECTION PROCEDURES

a. General Enforcement And Inspection Procedures. For any inspection under this section, 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.

b. Price disclosure. For the purpose of determining a store's compliance with the requirements of Section Two of this local law, an inspection shall be conducted of a sample of no less than fifty stock keeping units. This sample shall be randomly selected by the inspector and shall fairly represent a cross-section of all stock keeping units offered for sale at the location inspected, exclusive of exempt stock keeping units.

c. Price accuracy.

1. 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.

2. 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 on any stock keeping items sold in the store, not to exceed five hundred stock keeping items at any one inspection, with the programmed computer price. The store shall provide such access to the computer as is necessary for the enforcing agent to make the determination.

3. The sampling requirements of paragraph b of this section shall not apply regarding price accuracy.

Section 6. VIOLATIONS & PENALTIES

a. General penalties: Any retail store found in violation of Section Two of this local law shall be subject to the following penalties: for the first violation in any twelve month period, the store shall pay a penalty of twenty-five dollars for each of the first four violations; fifty dollars for each of the next twelve violations; and seventy-five dollars of each of the next four violations, but in no event shall the total penalty therefor exceed one thousand dollars. For a second or subsequent violation in any twelve month period a penalty of fifty dollars shall be imposed for each violation but in no event shall the total penalty therefor exceed twenty-five hundred dollars. No store shall be inspected more frequently than every seven days. No store shall be subject to the penalties in this local law unless the Inspector determines that three and one-half percent of the sampled commodities are in violation of the item pricing requirements of this local law in which case the store shall be subject to appropriate penalties for each violation discovered in excess of three and one-half percent of the sampled commodities.

For purposes of this local law, failure to have a clearly readable price indicated on twelve identical items of the same commodity shall be considered a violation of this local law, except, however, that improper item pricing caused by unintentional, technical error shall not constitute a violation.

b. Each additional group of twelve identical items not item priced or improperly priced shall constitute a violation.

c. Each group of less than twelve identical items not item priced or improperly priced shall constitute a violation if such a group is displayed alone.

d. Each day a violation is continued shall constitute a separate violation.

e. Scanner penalties: In the event that the programmed computer prices exceed the item, shelf, sale or advertised price of any stock keeping item, the store will be subject to the following penalties: For a violation of the provisions of paragraph c of Section five of this local law, a penalty in the amount of thirty dollars per violation shall be imposed for the first two percent of the stock keeping items compared rounded to the nearest whole number; fifty dollars per violation of the next two percent; one hundred dollars for the next two percent; two hundred dollars for each additional violation, but in no event shall the total penalty therefor exceed two thousand dollars. For a second or subsequent violation in a twelve month period, the above penalties shall be doubled. The sampling requirements of paragraph b of Section five of this local law shall not apply to this paragraph.

f. 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.

1. 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.

2. 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.

g. Violations of this local law shall not be subject to the penalties specified in section forty-one of the New York State Agriculture and Markets Law.

Section 7. SCANNER ACCURACY CERTIFICATION

a. Every retail store which uses a computer-assisted checkout system and which would otherwise be required to item price as provided in Section Two of this local law may make application to the Enforcement Agent to qualify for a Scanner Accuracy Certification and a waiver of said item pricing requirement. A separate application shall be required for each store. Each application shall be subject to a non-refundable processing fee to cover the cost of conducting Scanner Accuracy Certification inspections as provided in Subsection B of this section. Such processing fee shall be Five Hundred dollars unless revised by the Enforcing Agent from time to time to reflect the cost of inspection.

b. Upon receipt of a Certification application fee as provided in Subsection A of this section, the Enforcing Agent shall cause to be conducted two scanner accuracy inspections of the store for which the application has been submitted. These Certification inspections shall be conducted on two separate days and shall consist of any SKU's intended to be priced by an optical scanner at the checkout. Such inspection shall consist of not less that 100 nor more than 500 SKU's selected from a cross-section of all SKU's offered for sale in the store If, considering both inspections together, the number of SKU's found to be in violation does not exceed two percent of all SKU's inspected, the Enforcing Agent shall grant to the applicant a one year Scanner Accuracy Certification.

c. Any store with a current Certification shall be exempt from the requirements of Section Two of this local law.

d. A Certification shall be valid for a period of one year from the date of issuance. Stores may reapply annually for renewed Certification. A processing fee and two inspections shall be required for each annual renewal application, as required for an original Certification application.

e. In the event that total violations in excess of two percent are discovered in the inspections provided for in Subsections b or c of this section, the Enforcing Agent shall not grant a Certification to the applicant. Such a store must promptly reapply for a Certification and pay the required fee to the Enforcing Agent within five business days after being notified of the failure. Stores which do not reapply must promptly come into compliance with all the requirements of Section Two.

f. In the event that a Certification inspection pursuant to Subsection b reveals total violations in excess of two percent, and the store promptly reapplies for Certification and pays the proper processing fee, the Enforcement Agent shall grant a 30 day temporary Certification pending

completion of the second set of inspections. The Enforcing Agent shall cause said inspections to be completed as soon as practicable. If, upon completion, the inspections detect a violation rate of two percent or less, the Enforcing Agent shall issue a regular Certification with an expiration date one year from the commencement date of the temporary Certification. If the inspections detect a violation rate in excess of two percent, the temporary Certificate shall be immediately revoked and the provisions of Section 2 shall apply. The store may reapply one year after the date the temporary certification was issued.

g. As a condition of Certification, each store which accepts Certification must agree to meet the following requirements, and no regular or temporary Certification shall be granted to a store which has not agreed to these requirements in writing:

i. The store shall designate and make available a price check scanner to enable consumers to confirm the price of a stock keeping item. This price check scanner shall be in a location convenient to consumers with a sign of sufficient sized lettering identifying this unit to the consumers, and the price check scanner shall be operational all the hours that the store is open to the public. Stores will submit their proposed sign and device location to the Enforcing Agent for approval before receiving Certification;

ii. The store shall not charge any customer a price for any SKU which exceeds the item, shelf, sale or advertised price of that SKU, whichever is least;

iii. This store shall cause to be posted in a conspicuous location, accessible by all consumers and approved by the Enforcing Agent a copy of their temporary or annual Certification and a sign explaining the rights of consumers consistent with Certification and the waiver as set forth in Section Five of this local law. The Enforcing Agent will specify the content and size of this sign by regulation. The store is also required to post the temporary or annual Certification and waiver information in the area designated for handling price discrepancies; and

iv. The store shall correct all pricing errors identified by consumers at store level within three hours and, if applicable, at their firm, partnership, corporation, or association within twenty-four hours.

Section 8. READABLE SHELF LABELS REQUIRED

a. Any store which has been granted an exemption from item pricing pursuant to Section Four of this local law shall provide a clear and readable shelf label for every SKU. Each SKU's retail price shall be printed on a shelf label in characters no less than three-quarters of an inch in height. Shelf price labels on bottom shelves shall be tilted upward at an angle of between thirty and sixty degrees from the floor.

i. SKIs that are individually item priced are exempt from the requirements of this section; and

ii. In cases where the width of the facings of a particular SKI is smaller than the width of the store's standard shelf label, the store may decrease the size requirement specified in this section. In these situations the lettering cannot be reduced below three-eighths of an inch.

b. The Inspector may, by regulation, specify standard shape, typeface, placement, and format of shelf labels, and may set other requirements to ensure the readability of shelf labels and the ability of consumers to identify which shelf label applies to each SKU.

c. No provision of this section shall be construed to diminish the requirements of section 214-h of the Agriculture and Markets law. If any provision of this section of this local law conflicts with section 214-h of the Agriculture and Markets law, the Agriculture and Markets law shall control.

Section 9. PENALTIES FOR IMPROPER SHELF LABELING

Penalties for failure to provide proper shelf labeling. In the event that shelf labels do not conform with the provisions of Section Seven of this local law, the store will be subject to the following penalties: for violations of the provisions of Section Seven of this local law identified in the first inspection following any twelve month period within which no such violations have been found, a penalty in the amount of ten dollars per violation shall be imposed, but in no event shall the total penalty for all violations identified at such first inspection exceed five hundred dollars. For violations identified in a second or subsequent inspection in a twelve month period following a previous violation of section seven of this local law, the penalties shall be doubled, up to a maximum of two thousand dollars per inspection. Each SKU for which proper shelf labeling is not provided shall constitute a separate violation. Every day a violation is continued shall constitute a separate violation.

Section 10. 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 11. 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 12. 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 13. REPEAL OF PRIOR LEGISLATION.

Local Law Number 2 of 1999 is hereby repealed. 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 14. 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 and shall remain in effect until the first day of September, 2002.

APPROVED: Laws & Rules Committee (June 26, 2000)
Ways & Means Committee (June 28, 2000)

DATED: July 26, 2000

Adopted by the following roll call vote:

AYES 22 NAYS 0 ABSENT: 6 (Mr. Porter, Mr. Lawrence, Mrs. Mandryck, Mr. Hertline, Mr. Migliaccio, and

OFFICE, CLERK BOARD OF COUNTY LEGISLATORS)
COUNTY OF ONEIDA) ss:

I, hereby certify that I have compared the foregoing extract from the minutes of a meeting of the Board of County Legislators of Oneida County held on the 26th day of July 20 00 with the original record thereof on file in this office and that the same is a true and correct transcript therefrom, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto affixed the seal of said Board this 27th day of July 20 00

Susan Crabtree CLERK