

# Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County  City  Town  Village  
(Select one:)

of Oneida

FILED  
STATE RECORDS

JAN 31 2017

DEPARTMENT OF STATE

Local Law No. 1 of the year 2017

A local law AMENDING LOCAL LAW 4 OF 2002, PROVIDING FOR ACCURATE PRICING OF  
(Insert Title)  
GOODS OFFERED FOR SALE AT RETAIL IN ONEIDA COUNTY

Be it enacted by the BOARD OF LEGISLATORS of the  
(Name of Legislative Body)

County  City  Town  Village  
(Select one:)

of ONEIDA

as follows:

SEE SCHEDULE A

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

(Name of Legislative Body)

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 20 17 of the (County)~~(City)(Town)(Village)~~ of ONEIDA BOARD OF LEGISLATORS was duly passed by the \_\_\_\_\_ on DECEMBER 28 20 16, and was (approved)~~(not approved)~~ ~~(repassed after disapproval)~~ by the COUNTY EXECUTIVE \_\_\_\_\_ and was deemed duly adopted on JANUARY 26 20 17, in accordance with the applicable provisions of law.

(Name of Legislative Body)

(Elective Chief Executive Officer\*)

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_.

(Name of Legislative Body)

(Elective Chief Executive Officer\*)

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

(Name of Legislative Body)

(Elective Chief Executive Officer\*)

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

**5. (City local law concerning Charter revision proposed by petition.)**

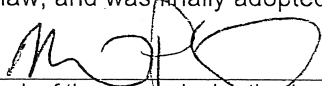
I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph \_\_\_\_\_ above.



\_\_\_\_\_  
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 1/26/17

(Seal)



## *SCHEDULE A*

**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 (UPC) and Quick Response Code (QR) checkout systems 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 Board of County Legislators of Oneida County 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 Board of County Legislators of Oneida County further finds that price marking constitutes an indispensable element to a consumer's right to all reasonable information in order to make an informed purchase choice.

Therefore, the Board of County Legislators of Oneida County 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 the continued testing and improvement of the Universal Product Code and Quick Response code check-out system while retaining accurate item or shelf prices.

Furthermore, recognizing the consumers' 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 manner guaranteeing that consumers will be dealt with fairly in the marketplace and not be overcharged.

**BE IT ENACTED** by the Board of County 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, Quick Response code (QR) 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 Units 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 scanner, QR code scanner, computer system or machine which determines the selling price of a Stock-keeping Item by interpreting its Universal Product Code, Quick Response code, or its 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, or his deputy or designee.
- l. "Overcharge" means a price charged at the point of sale that is higher than the retail price.
- m. "Director" shall mean the Director of the Oneida County Department of Weights and Measures.

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

Except as provided in Sections Three or Four of this Local Law, every person, firm, partnership, corporation, association or other entity 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 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, any entity covered by this Section shall provide the appropriate inspection official access to the scanner 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 scanner 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 located at or near the display of such Stock-keeping Items. On special regional month-long promotions offered by manufacturers or distributors the sale period may be extended to thirty (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 fifteen percent (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 Director 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 (98%) 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 Director or an Oneida County Department of 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 Director or an Oneida County Department of 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, the Director or an Oneida County Department of 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 Director or an Oneida County Department of 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 (2%) 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 2 of this Local Law; or

- v. Failure to conspicuously post a refund policy pursuant to paragraph d of Section 2 of this Local Law; or
  - vi. Failure to conspicuously post the notice provided by the Director pursuant to paragraph e of Section 2 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, or any 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 a 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 a device or system shall be in writing, and shall list the violations. Such stop-removal order shall be stayed for up to two (2) 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 Director 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. Any regulations so promulgated shall be posted for public viewing on the Oneida County website, [www.ocgov.net](http://www.ocgov.net).

- 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, shall cause a hearing to be held to determine whether a violation of this Local Law has occurred. At least ten (10) 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**

- a. The Board of County Legislators of Oneida County may promulgate such rules and regulations as they may deem necessary or appropriate to effectuate the purposes of this Local Law. Any regulations so promulgated shall be posted for public viewing on the Oneida County website, [www.ocgov.net](http://www.ocgov.net).

#### **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 Sections 20, 21 and 27 of New York State Municipal Home Rule Law.