

ORDINANCE NO. 0-15235
(New Series)

(O. 80-187)
3RD REVISION

AN ORDINANCE AMENDING CHAPTER V OF THE SAN
DIEGO MUNICIPAL CODE BY ADDING ARTICLE 2.5,
SECTIONS 52.5.0101 THROUGH 52.5.0109 THERETO
ENTITLED CONSUMER COMMODITIES PRICE MARKING.

APR 7 1980

WHEREAS, in 1975 the State legislature first required grocery stores using automated check out systems to have a clearly readable price indicated on each packaged consumer commodity; and

WHEREAS, this statutory requirement expired on January 1, 1980; and

WHEREAS, considerable concern has been expressed by many community groups about the problems experienced by consumers who shop in automated stores with no prices visibly marked on products; and

WHEREAS, chief among these concerns are the potential for computer error, manipulation of the computer system to fraudulently increase profit, difficulty in detecting errors, and the difficulties presented to consumers who have no visible price on the product to reference; and

WHEREAS, studies have shown shelf-pricing to be inadequate in that customers often move merchandise to different shelves when they change their minds, thereby misshelving many products; and

WHEREAS, the elderly and handicapped often have difficulty bending down to read prices on lower shelves, thereby making shelf-pricing further undesirable; and

WHEREAS, item price marking would alleviate significantly these numerous consumer concerns; and

WHEREAS, in response thereto, several cities and counties across the country have already enacted legislation which would require clearly readable prices marked on each consumer item in any grocery department or store which uses an automated check out system; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter V of the San Diego Municipal Code be and the same is hereby amended by adding thereto Article 2.5, Sections 52.5.0101 through 52.5.0109 to read as follows:

CHAPTER V

ARTICLE 2.5

CONSUMER COMMODITIES PRICE MARKING

SEC. 52.5.0101 PURPOSE AND INTENT. It is the purpose and intent of this Article to provide within the City of San Diego a requirement for visible pricing on packaged consumer commodities to alleviate (a) consumer concern for potential computer error, inadvertent or otherwise, and (b) difficulties presented to consumers who would otherwise have no visible price on the product to refer to for shopping and budgetary purposes.

SEC. 52.5.0102 DEFINITIONS. For the purposes of this article, the following definitions shall apply:

(a) "Automatic checkout system" means an electronic system employing a scanning device combined with a computer and a register to read a universal product code or similar code on packaging to determine and display and total the cost of items purchased.

(b) "Consumer commodity" includes:

(1) Food, including all material whether solid, liquid, or mixed, and whether simple or compound, which is used or intended for consumption by human beings or domestic animals normally kept as household pets, and all substances or ingredients added to any such material for any purpose. This definition shall not apply to individual packages or cigarettes or individual cigars.

(2) Paper and plastic products, such as, but not limited to, napkins, facial tissues, toilet tissues, foil wrapping, plastic wrapping, paper toweling, and disposable plates and cups.

(3) Detergents, soaps and other cleaning agents.

(4) Pharmaceuticals, including nonprescription drugs, bandages, female hygiene products and toiletries.

(c) "Grocery department" means an area within a general retail merchandise store which is engaged primarily in the retail sale of packaged food, rather than food prepared for immediate consumption on or off the premises.

(d) "Grocery store" means a store engaged primarily in the retail sale of packaged food, rather than food prepared for consumption on the premises.

(e) "Grocery chain" means a part or all of a company consisting of three or more individual grocery stores or merchandise stores containing grocery departments.

(f) "Sale item or special" means any consumer commodity offered in good faith for a period of seven days or less, on sale at a price below the normal price that item is usually sold for in that store.

SEC. 52.5.0103 CONSUMER COMMODITY ITEM PRICING.

(a) Every retail grocery store or grocery department within a general retail merchandise store which uses an automatic checkout system shall cause to have a clearly readable price indicated on each packaged consumer commodity offered for sale.

(b) The provisions of this section shall not apply to any of the following:

(1) Any unpackaged fresh food produce, or to consumer commodities which are under three cubic inches in size, weigh less than three ounces, and are priced under thirty cents (\$0.30).

(2) Any consumer commodity offered as a sale item or as a special.

(3) Any business which has as its only regular employees the owner thereof, or the parent, spouse, or

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child of such owner, or, in addition thereto, not more than two other regular employees.

(4) Identical items within a multi-item package.

(5) Items sold through a vending machine.

(6) Any consumer commodity which was not generally item-priced on June 30, 1975, as determined by the California Department of Consumer Affairs (Appendix A).

SEC. 52.5.0104 VIOLATIONS; CIVIL FINES; INJUNCTIONS.

(a) The intentional violation of Section 52.5.0103 is punishable as an infraction and upon conviction thereof, by a fine of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500).

(b) Failure to have a clearly readable price indicated on 12 units of the same item of the same commodity shall constitute a presumption of intent to violate Section 52.5.0103.

(c) Every additional 12 units of the same item that fail to have a price indicated on them shall constitute a presumption of intent to violate Section 52.5.0103.

(d) Each day that a violation continues shall also constitute a separate violation after notification thereof to the manager or assistant manager of the retail grocery store or the grocery department of the general retail merchandise store and shall constitute a presumption of intent to violate Section 52.5.0103.

(e) Any person may bring an action to enjoin a violation of Section 52.5.0103.

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SEC. 52.5.0105 LIABILITY FOR LOSSES AND EXPENSES;
ADDITIONAL PENALTY; APPLICABILITY TO SINGLE PLAINTIFF;
INAPPLICABILITY TO MULTIPLE PLAINTIFF OR CLASS ACTIONS. Any
person, firm, corporation, or association who violates
Sections 52.5.0103 and 52.5.0104 shall be liable to any per-
son injured for any losses and expenses thereby incurred, and
for the sum of fifty dollars (\$50) in addition thereto. The
remedy set forth herein is applicable only to actions brought
in the name of, and on behalf of, a single plaintiff and
shall not be applicable in multiple plaintiff or class actions.

SEC. 52.5.0106 UNINTENTIONAL ERROR; NO VIOLATION.
Improper pricing on the shelf or on the item due to
unintentional error shall not constitute a violation of
this chapter.

SEC. 52.5.0107 EXCLUSIVE REMEDIES. The remedies
set forth in Sections 52.5.0104 and 52.5.0105 are the
exclusive remedies available to any person.

SEC. 52.5.0108 SEVERABILITY. If any part or provision
of this Article, or the application thereof to any person
or circumstance, is held invalid, such decision shall not
affect the validity of the remaining portions of this
Article. The City Council hereby declares that it would
have passed each section, subsection, sentence, clause or
phrase thereof, irrespective of the fact that any one or
more sections, subsections, sentences, clauses or phrases
be declared invalid.

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SEC. 52.5.0109 TERMINATION OF ARTICLE. The provisions of this Article shall terminate and be of no further force and effect after one year from the effective date of implementation unless the City Council acts affirmatively thereupon to extend its provisions.

Section 2. In order to permit experimentation with automatic checkout systems by stores currently operating with or in the process of installing said systems within the City of San Diego, one store per grocery chain, approved by the City Council Committee on Public Services and Safety, may participate in a one-year test period for industry to test shelf price labeling without item pricing and its use with the automatic checkout system. After the effective date of this ordinance, the Committee shall establish procedures for the City Manager to follow to monitor price marking methods in the selected stores during the one-year period for the purpose of gathering information regarding the fiscal and operational viability of the system. Period reports, as deemed necessary by the Committee, and a final report shall be prepared by the City Manager and shall be submitted to the full Council prior to the end of the one-year test period.

The test period provided herein shall become operative on the effective date of this ordinance and shall remain in operation for one full year thereafter.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By Jack Katz
Jack Katz, Chief Deputy

JK:lco:
3/12/80

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APPENDIX A

Consumer Commodities Not Generally

Item Priced on January 1, 1977

1. Beer, individual containers
2. Soft drinks, individual containers
3. Candy bars, mints
4. Dry drink, individual packets (Kool-aid type)
5. Cigarettes and cigars, either individually or in cartons
6. Baby food (strained and junior jars only)
7. Eggs
8. Frozen novelties (ice cream bars, popsicles, etc.)
9. Ice cream, cartons
10. Milk, including buttermilk and chocolate drink
11. Packaged produce
12. Yogurt

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Passed and adopted by the Council of The City of San Diego on APR 7 1980,
 by the following vote:

Councilmen	Yeas	Nays	Not Present	Ineligible
Bill Mitchell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bill Cleator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bill Lowery	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fred Schnaubelt	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Gotch	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Larry Stirling	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lucy Killea	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON
 Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR
 City Clerk of The City of San Diego, California.

(Seal)

By Rita Andrews, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

MAR 24 1980, and on APR 7 1980.

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR
 City Clerk of The City of San Diego, California.

(Seal)

By Rita Andrews, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number O. 15235 Adopted APR 7 1980

CERTIFICATE OF PUBLICATION

RECEIVED
CITY CLERK'S OFFICE
1980 APR 25 AM 10:30
SAN DIEGO, CALIF.

San Diego, City of
12th floor, City Admin. Bldg.
202 C St.
San Diego, CA 92101
ATTN: Rita Andrews

IN THE MATTER OF
AN ORDINANCE AMENDING CHAPTER V OF THE SAN DIEGO
MUNICIPAL CODE BY ADDING ARTICLE 2.5, SECTIONS 52.5.0101
THROUGH 52.5.0109 THERETO ENTITLED CONSUMER COM-
MODITIES PRICE MARKING.

NO.

I, Camille Simpson, am a citizen
of the United States and a resident of the County aforesaid; I am over the
age of eighteen years, and not a party to or interested in the above-entitled
matter. I am the principal clerk of the San Diego Daily Transcript, a
newspaper of general circulation, printed and published daily, except
Saturdays and Sundays, in the City of San Diego, County of San Diego, and
which newspaper has been adjudged a newspaper of general circulation by
the Superior Court of the County of San Diego, State of California, under
the date of January 23, 1909, Decree No. 14894; and the

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(New Series)
AN ORDINANCE AMENDING CHAPTER V OF THE SAN DIEGO
MUNICIPAL CODE BY ADDING ARTICLE 2.5, SECTIONS 52.5.0101
THROUGH 52.5.0109 THERETO ENTITLED CONSUMER COM-
MODITIES PRICE MARKING.
This ordinance would add a new article to the Municipal Code re-
quiring specified consumer commodities sold in grocery stores or in
grocery departments of general retail stores which use automated
checkout systems to be individually and visibly priced. The ordinance
provides that intentional violation of its pricing requirements shall be
punishable as an infraction. It also makes provision for injunctive
relief by individuals. Contains sunset clause terminating Article after
one year unless City Council, by ordinance, extends the act. Ex-
empts from provisions for test purposes one store from each grocery
chain.
Introduced on March 24, 1980.
Passed and adopted by the Council of The City of San Diego on
April 7, 1980.
AUTHENTICATED BY: PETE WILSON,
Mayor of The City of San Diego, California.
CHARLES G. ABDELNOUR,
City Clerk of The City of San Diego, California.
(SEAL)
By RITA ANDREWS, Deputy.
Published April 21, 1980

ORDINANCE NO. 0-15235 (New Series)

is a true and correct copy of which the annexed is a printed copy and was
published in said newspaper on the following date(s), to wit:

April 21, 1980

I certify under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California this 21st day of April, 1980.

Camille Simpson

(Signature)

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