

A LOCAL LAW TO AMEND SECTION 21-10.2(2)(c) OF THE NASSAU COUNTY ADMINISTRATIVE CODE WITH RESPECT TO DUE PROCESS FOR TRADE PRACTICE VIOLATIONS

WHEREAS, there are unscrupulous retail businesses that participate in unconscionable trade practice, or price gouging, drastically raising prices of highly sought, scarcely available consumer goods well above their intrinsic value; and

WHEREAS, there are also upstanding retail businesses that are unfortunately forced to raise prices as a result of increased costs that are beyond their control, such as increased shipping and wholesale costs; and

WHEREAS, Nassau County Administrative Code § 21-10.2 prohibits businesses from engaging in unconscionable trade practice, but does explicitly provide an opportunity for businesses to provide books, receipts, or other documentation to dispute such an allegation; and

WHEREAS, such procedure is necessary to protect the due process rights of Nassau County businesses; NOW THEREFORE

BE IT ENACTED by the County Legislature of the County of Nassau as follows:

Section 1. §21-10.2(3) shall be amended to read as follows:

3. Regulations. The Commissioner may, after a public hearing, adopt such rules and regulations as may be necessary to effectuate the purposes of this section, including regulations defining specific deceptive or unconscionable trade practices. At least seven days prior notice of such public hearing shall be published in the official newspapers of the County. A copy of the rules and regulations adopted hereunder and any amendments thereto shall be filed in the office of the clerk of the Legislature and posted to the Department of Consumer Affairs webpage on the official website of Nassau County.

§ 2. § 21-10.2(4)(a) of the Administrative Code of Nassau County is amended to include the following subdivision:

4. Enforcement.

(a) The violation of any provision of this section or any rule or regulation promulgated hereunder shall render the violator liable for the payment to the County of a civil

penalty, recoverable in a civil action, in the sum of not more than \$5,000 for each violation, together with, in each instance, the cost of the investigation incurred by the Commissioner.

- (i) Prior to the issuance of a ticket or summons for an alleged unconscionable trade practice in violation of any provision of this section or any rule promulgated hereunder, the Department of Consumer Affairs shall provide a reasonable opportunity for businesses to present evidence including receipts, books, and records showing that the increased price to be paid by a consumer is attributable to increased or additional costs incurred that are not within the control of the business or that the amount charged preserves the margin of profit that the business received for the same goods or services prior to the abnormal disruption in the market. Notwithstanding the foregoing, there shall be no obligation for businesses to present such evidence.
  - (ii) Prior to the issuance of a ticket or summons for an alleged deceptive trade practice in violation of any provision of this section or any rule promulgated hereunder, the Department of Consumer Affairs shall provide a reasonable opportunity for businesses to present exculpatory evidence. Notwithstanding the foregoing, there shall be no obligation for businesses to present such evidence.
  - (iii) After the issuance of a summons for alleged violation of any provision of this section or any rule promulgated hereunder and within five (5) business days prior to a hearing or conference on such charges, the Department of Consumer Affairs shall provide a written explanation of the alleged violations to the defendant business including the evidence it will present to prove that a violation has occurred under this section. Failure of the Department to meet this deadline shall result in the adjournment of the matter for a first offense and dismissal of the matter for a second offense.
- § 2. Severability. If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined to its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.
- § 3. SEQRA Determination. It is hereby determined, pursuant to the provisions of the State Environmental Quality Review Act (SEQRA), 8 N.Y.E.C.L. Section 0101 et seq. and its implementing regulations, Part 617 of 6 N.Y.C.R.R., and Section 1611 of the County Government Law of Nassau County, that the adoption of this local

law is a “Type II” Action within the meaning of Section 617(c)(20) and (27) of 6 N.Y.C.R.R., and, accordingly is of a class of actions which do not have a significant effect on the environment, and no further review is required.

§ 4. Effective Date. This local law shall take effect immediately.