Chapter 7.28 Regulation of Dynamic Pricing and Prohibition of Surveillance Pricing in Retail

7.28.010 Purpose.

The purpose of this Chapter is to prevent retailers from using personal data to charge customers different prices for the same product. This chapter regulates the use of dynamic pricing and prohibits the use of surveillance pricing by retail vendors and third-party service providers to ensure fair pricing for all Portland consumers.

7.28.020 Definitions.

A. Consumer means a natural person who is seeking or solicited to purchase a good for personal, family, or household purposes.

B. Consumer good means any article that is purchased, leased, exchanged or received primarily for personal, family or household purposes.

C. Dynamic pricing means the real-time alteration of retail prices on consumer goods that is particularized to a timeframe, location, consumer, or group of consumers, including but not limited to alterations based on weather, demand, availability of supply, and perishability.

D. Personal data means any information that can be associated with a specific or identifiable consumer, account, or device, including data about consumer behavior, demographic characteristics, protected class data, biometric data, or other personally identifying information.

E. Protected class data means any information about an individual or group of individuals that identifies a characteristic that is legally protected from discrimination under local, state, or federal law.

F. Retail price means the then-current price of a good, offered to a consumer, prior to the application of any loyalty or membership pricing, promotions, limited-time sales, discounts and fees for premium or additional features.

G. Retail vendor means any business that sells consumer goods to consumers who are located in the city of Portland.

H. Surveillance pricing means offering or facilitating the offering of a retail price for a consumer good that is based on personal data about a specific consumer, account, or device. Surveillance pricing includes the use of technological methods, systems, or tools like sensors, cameras, device tracking, behavioral tracking, biometric monitoring, or other forms of observation or data collection that are capable of gathering information about a consumer's behavior, characteristics, location, or other personal attributes, whether in physical or digital environments.

I. Third-party service provider means any business that facilitates delivery or online ordering of consumer goods for consumers located in the City of Portland.

7.28.030 Restrictions and Prohibitions.

A. Surveillance pricing. A retail vendor or third-party service provider may not engage in surveillance pricing.

B. Dynamic pricing. A retail vendor or third-party service provider may not increase the retail price of a consumer good more than once in a calendar day.

C. The restrictions set forth in this Section do not apply to:

1. Offering discounts to a consumer through a voluntary loyalty, membership, rewards program, or subscription;

2. Offering discounts to a consumer based on publicly disclosed, uniform terms and conditions that may be satisfied by any consumer, including, but not limited to, by signing up for a mailing list, disclosing personal data, registering for promotional communications, or participating in a promotional event;

3. Offering discounts available to all consumers who self-identify as members of a broadly defined professional group, including, but not limited to, veterans or members of the armed forces, students, or teachers;

4. Offering discounts available to all youth, senior citizens or residents of a specific area;

5. Offering to all consumers competition matching, coupons, markdowns, promotions, rebates, sales, and other similar discounts; or

6. Offering different delivery or service fees based on objective costs of delivering or shipping a consumer good to a consumer.

7.28.040 Enforcement and Penalties.

A. The City Administrator may administer and enforce the provisions of this Chapter.

B. The City Administrator may investigate violations of this Chapter and issue administrative subpoenas for the production of documents, information, and materials, and for the attendance and testimony of witnesses under oath, related to the investigation of a violation or potential violation of this Section. The City Administrator may inspect, examine, and copy any books, papers, records, invoices, and other data needed to investigate potential violations. If any party refuses to obey a subpoena issued under this Section, the City Administrator may petition the Circuit Court of Multnomah County for an order requiring compliance with the subpoena.

C. Upon identifying a violation of this Chapter, the City Administrator shall issue a written notice of violation to the retail vendor or third-party service provider.

> **1.** If all noticed violations are cured by ceasing prohibited conduct within 45 days after the notice of violation is received, the City Administrator may determine not to initiate an enforcement action for that violation.
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> **2.** If an entity that receives an initial notice of violation engages in additional conduct prohibited by this Chapter within 24 months, the City Administrator may initiate enforcement action related to any subsequent notice of violation without providing an opportunity to cure the violation.

D. The City Administrator may initiate an enforcement action by filing a complaint with the Code Hearings Officer, as provided under Portland City Code Section 22.03.020, for any violation of this Chapter, asking the Code Hearings Officer to award injunctive relief, damages, restitution, reasonable attorney's fees, enforcements costs, and civil penalties authorized by this Chapter.

E. Violations of this Chapter are subject to civil penalties up to the following amounts:

> **1.** $1,000 for all violations related to the first notice of violation sent by the City in a 24-month period;
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> **2.** $5,000 for all violations related to the second notice of violation sent by the City in the same 24-month period; and

3. $7,500 for all violations related to any subsequent notice sent by the City in the same 24-month period.

4. For the purpose of calculating violations, each consumer for whom a price was set in violation of this Chapter constitutes a separate violation.

F. The City Administrator may enter into settlement agreements related to enforcement actions brought under this Section.

G. This Section does not authorize a private right of action for violations of this Chapter or any other law.

7.28.050 Effective Date and Interaction with Other Laws.

A. The provisions of this Chapter will take effect July 1, 2027.

B. The provisions of this Chapter will be superseded and unenforceable upon the effective date of any conflicting law passed by the State of Oregon.