The City of Seattle

Ordinance __________

Council Bill __________

..title
An ordinance relating to prohibiting algorithmic-based price discrimination; requiring covered retailer disclosures to consumers; requiring that covered retailers retain certain records; and adding a new Chapter 7.35 to the Seattle Municipal Code.

..body
Recitals:

Many jurisdictions across the country, including California, Connecticut, Colorado, Illinois, Maryland, New York State, and New York City, among others, have considered, are considering, or have passed legislation to regulate the use of algorithmic software and consumer data to set prices.

The Washington State Legislature considered regulating algorithmic price discrimination in House Bill 2481 in the 2026 legislative session.

In January 2025, the Federal Trade Commission released a report detailing methods of algorithmic price setting. The report found that algorithmic price discrimination tools are being developed and marketed across "[s]everal types of consumer-facing businesses . . . including grocery stores, apparel retailers, health and beauty retailers, home goods and furnishing stores, convenience stores, building and hardware stores, and general merchandise retailers such as department or discount stores."[1]

The report further found that "[c]onsumer segmentation and profiling tools create unique consumer profiles and divide consumers into segments based on attributes or behaviors that are either inferred or explicitly defined. Those segments can then be used as targets for ads, promotions, and coupons based on what a company has learned about a consumer, including how the consumer interacts with its website, what they have spent on specific products or services, or predictions about what that consumer might purchase in the future."[2]

These tools create the environment for retailers to set individual prices through both different base prices, but also "discounts" that result in higher prices for some consumers, based on their inferred willingness to pay. This is often accomplished through what is called "false reference pricing,"[3]—the practice of advertising a false "original price" to make discounts appear larger than they are. "Companies that collect or obtain individualized information about their actual or potential customers can potentially use a variety of features to target prices to specific consumers and charge particular groups higher prices or use those features to generate greater profits."[4]

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[1] Federal Trade Commission, *FTC Surveillance Pricing 6(b) Study: Research Summaries; A Staff Perspective* at 7 (2025) available at https://www.ftc.gov/system/files/ftc_gov/pdf/p246202_surveillancepricing6bstudy_researchsummaries_redacted.pdf
[2] *Id*.
[3] Stephanie T. Nguyen and Adam Teitelbaum, *Dissecting the Discount; The Illusion of a Discount: If Prices Are Ever-Changing, When Are Discounts Real?*, The Division of Field Notes, June 24, 2026, available at https://divfn.substack.com/p/dissecting-the-discount
[4] Federal Trade Commission, *FTC Surveillance Pricing 6(b) Study: Research Summaries; A Staff Perspective* at 7 (2025) available at

These practices are being used by grocers, delivery service providers, and mixed-use stores today.

According to a Consumer Reports investigation Kroger grocery stores collect extensive consumer data, use it to make detailed inferences about consumers, including an "income predictor", determine loyalty levels, and target discounts to consumers based on those inferences. A "shopper deemed to have less education or with a lower income, for example, could end up getting fewer of Kroger's best discounts."[5]

Consumer loyalty and frequent shopper cards are widely adopted and provide a mechanism for retailers to track consumer purchase history and target discounts accordingly. 95 percent of Kroger transactions are tied to a loyalty card.[6] In 2023, Kroger's marketing materials claimed that it had "unaggregated" data about individual product sales "from 2 billion annual transactions across 60 million households [that it could tie to individuals] with a persistent household identifier."[7] The materials state "[w]e have collected over 2,000 variables on customers."[8]

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https://www.ftc.gov/system/files/ftc_gov/pdf/p246202_surveillancepricing6bstudy_researchsummaries_redacted.pdf

[5] *Consumer Reports investigation uncovers Kroger's widespread data collection of loyalty program members to create secret shopper profiles*, Consumer Reports (May 21 2025) available at https://www.consumerreports.org/media-room/press-releases/2025/05/consumer-reports-investigation-uncovers-krogers-widespread-data-collection-of-loyalty-program-members-to-create-secret-shopper-profiles/

[6] Derek Kravitz, *Instacart's AI-Enabled Pricing Experiments May Be Inflating Your Grocery Bill, CR and Groundwork Collaborative Investigation Finds,* Consumer Reports (Dec. 9, 2025), available at https://www.consumerreports.org/money/questionable-business-practices/instacart-ai-pricing-experiment-inflating-grocery-bills-a1142182490/

[7] Jon Keegan, *Forget Milk and Eggs: Supermarkets Are Having a Fire Sale on Data About You*, The Markup (Feb. 16 2023), available at https://themarkup.org/privacy/2023/02/16/forget-milk-and-eggs-supermarkets-are-having-a-fire-sale-on-data-about-you

[8] *Id.*

Retailers' own data is combined with data purchased from third-party data brokers, including "demographic and financial data, such as income levels, debt, or even how often someone shops online. Together, these data form a comprehensive picture of an individual's behavior, preferences, and financial situation."[9]

This level of data allows companies to determine "purchasing habits, urgency of need, and geographic constraints and adjust prices accordingly."[10] This allows companies "to identify an individual's "pain point"—the maximum price a consumer will pay" by "experimenting with higher and higher prices for individuals who may be more financially desperate."[11]

Frequently, algorithmically generated prices as well as discounts become not a means for a better deal for consumers, but a method to identify that "pain point". Instacart offers pricing software to grocers with the capability for grocers to provide individualized prices, promotions, and discounts. "Instacart claims the technology can increase grocery store sales by 1 to 3 percent and 'incremental margins'—the extra profit a company gets from each additional sale—by 2 to 5 percent."[12]

In 2025, Consumer Reports conducted an experiment with 437 shoppers adding identical items to their Instacart shopping carts and comparing prices. About 75 percent of the products were "offered at different prices to different customers.

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[9] *Prohibiting Surveillance Prices and Wages* (Feb. 2025) at 7, available at https://towardsjustice.org/wp-content/uploads/2025/02/Real-Surveillance-Prices-and-Wages-Report.pdf.
[10] *Id.*
[11] *Id.*
[12] Derek Kravitz, *Instacart's AI-Enabled Pricing Experiments May Be Inflating Your Grocery Bill, CR and Groundwork Collaborative Investigation Finds,* Consumer Reports (Dec. 9, 2025), available at https://www.consumerreports.org/money/questionable-business-practices/instacart-ai-pricing-experiment-inflating-grocery-bills-a1142182490/

Some products were offered at as many as five different prices, and price variations for the same products ranged from as little as 7 cents to $2.56 per item" and between $114 and $123 in total for all items."[13] "Based on how much Instacart says the typical household of four spends on groceries, the average price variations observed could translate into a cost swing of about $1,200 per year."[14]

The investigation further found that Instacart offered different "original" or "reference" prices to different consumers, thus making purported discounts seem larger or smaller. The investigation includes Seattle-specific findings: participants shopping on Instacart at a Seattle Safeway were shown different "reference" or prices for saltine crackers ranging from $5.93 to $6.69.[15]

A 2026 poll conducted by Groundwork Collaborative and Data for Progress found "80% of voters agree that every customer should pay the same price for the same item", that 76 percent of American support efforts to end algorithmic pricing schemes and that 72 percent would accept smaller discounts in exchange for all consumers being offered the same price.[16] A nationally representative survey conducted by Consumer Reports in September 2025 found that 72 percent of

[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] Groundwork Collaborative, *Strong Majority of Americans Want Corporations to End Deceptive Surveillance Pricing Schemes* (May 21, 2026), available at https://groundworkcollaborative.org/news/strong-majority-of-americans-want-corporations-to-end-deceptive-surveillance-pricing-schemes/

respondents did not want Instacart to charge different consumers different prices for any reason.[17] Therefore,

Be it ordained by The City of Seattle as follows:

Section 1. A new Chapter 7.35 is added to the Seattle Municipal Code as follows:

Chapter 7.35 Fair Pricing and Transparency

7.35.000 Findings

A. In the exercise of The City of Seattle's (City's) police powers, the City is granted authority to pass regulations designed to protect and promote public health, safety, and welfare.

B. This ordinance protects and promotes public health, safety, and welfare by protecting consumers, ensuring equitable and fair pricing of grocery goods, prohibiting algorithmic-based price discrimination, and addressing factors that artificially inflate or modify consumer prices for groceries and other essential goods based on personal information.

C. The use of algorithms for algorithmic-based price discrimination threatens fair market access to grocery goods. The use of automation and algorithmic pricing models in retail grocery sales exacerbates inequality and undermines consumer trust. The price of retail grocery goods should be rooted in fairness, not in profiling or prediction.

D. Comprehensive consumer protection is needed to prevent discriminatory and opaque pricing practices in retail grocery sales as businesses increasingly adopt data-

[17] Consumer Reports, *American Experience Survey: A Nationally Representative Multi-Mode Survey*, https://article.images.consumerreports.org/image/upload/v1760040676/prod/content/dam/surveys/Consumer_Reports_AES_September_2025.pdf at 8.

driven technologies to set prices. Innovation should not come at the expense of transparency, fairness, or access to grocery goods.

E. Prohibiting the use of electronic shelf label systems for algorithmic-based price discrimination by covered retailers will protect consumers from data collection without their knowledge from their electronic devices, such as smartphones, to modify the price of grocery goods for individual shoppers. Pricing should remain consistent and be clearly posted.

F. The prohibition of algorithmic-based price discrimination will protect consumers from profiling and ensure equitable and fair pricing of grocery goods.

7.35.010 Definitions

"Aggrieved party" means a consumer or other person who suffers tangible or intangible harm due to a covered retailer or other person's violation of this Chapter 7.35.

"Algorithmic-based price discrimination" means the practice of setting, altering, or manipulating the price of goods offered to a consumer or a segment of consumers, based in whole or in part on monitoring, tracking, or automated analysis of the consumer's behavior, location, demographic characteristics, biometric data, or other personal information, including personal information acquired from a third party or personal information that is collected, gathered, purchased, or collected by a covered retailer using electronic surveillance technology. "Algorithmic-based price discrimination" includes offering random variations in prices to different consumers. "Algorithmic-based price discrimination" does not include:

1. The difference in price is based on differences in the delivery costs of providing goods to consumers based on delivery locations, order size, delivery

windows, time of day, traffic, or weather conditions and provided the only personal information used in setting such price is the consumers' location information;

2. The difference in price is based on prices set at the physical-store location that are available to all consumers at the location;

3. The difference in price is based on a discounted price available through a manufacturer or third-party funded coupon, provided the covered retailer does not use or share personal information to determine or facilitate determining the amount or the targeting of the distribution of such coupons;

4. The difference in price is the result of a discounted price offered to a consumer terminating or taking steps to terminate a subscription, loyalty program, rewards program, membership, or co-operative membership with a covered retailer, to reestablish a consumer as a membership or subscription enrollee, or to cross-sell a similar or related item to a consumer, provided that the discounted price is available on equal terms to all similarly situated consumers; or

5. The covered retailer offers a discounted price on equal terms to one of the following groups of consumers:

a. All consumers who meet eligibility criteria, such as criteria related to volume purchases, signing up for a mailing list, registering for promotional communications, or participating in a promotional event, provided that any consumer could potentially meet the eligibility criteria;

b. All members of a broadly defined and commonly accepted group of consumers, including but not limited to teachers, active or retired military personnel, senior citizens, students, employees of a covered retailer, or residents of a certain area; or

c. Members, enrollees, or participants in a loyalty, membership, including cooperative memberships, or rewards program that consumers affirmatively purchase or enroll in, subject to the following provisions:

1) The discounted price is provided to all members of the loyalty program of that covered retailer in Seattle; or

2) The discounted price is offered to a subset of the loyalty program members based on prior purchase history, provided: any discounted price based on prior purchase history are based only on tiers or groupings of consumer, rather than individualized prices, such tiers are based only on prior purchase data and prior purchase history data is not used to make inferences about the consumer or the consumer's price sensitivities nor is paired, combined, or cross-referenced with any other personal information data except enrollment in the loyalty, membership or rewards program. The Director may issue rules to implement subsection 5.c.2 of this definition, including rules providing for additional restrictions on the use of prior purchase history and permissible tiers.

"Bona fide market price" means the price at which a consumer good or consumer service is advertised to the public on a regular basis by the covered retailer for a reasonably substantial period of time.

"Consumer" means a natural person who is seeking or solicited to purchase a good for personal, family, or household use, however identified, including by any unique identifier.

"Covered retailer" means a delivery service provider, a mixed-use grocery business, or a grocery business that has 20 or more retail locations globally, including but not limited to chains and integrated enterprises. When determining the number of grocery businesses worldwide, each grocery business operated by an independent contractor pursuant to a licensing or independent contractor agreement shall be evaluated separately.

"Delivery service provider" means an organization whether a corporation, partnership, sole proprietor, or other form, operating in Seattle, that employs 100 or more employees worldwide regardless of where those employees are employed, including but not limited to chains, integrated enterprises, or franchises associated with a franchisor or network of franchises that employ 100 or more employees in aggregate and facilitates delivery or online ordering services from a grocery business, mixed-use grocery business, or warehouse to a consumer in Seattle, regardless of whether the grocery business, mixed-use grocery business, or warehouse is located within Seattle.

"Department" means the Department of Finance and Administrative Services (FAS).

"Diapers" means an absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.

"Director" means the Director or the Director's designee of the Department.

"Discounted price" means a price that is verifiably lower than the widely available and publicly disclosed bona fide market price.

"Electronic shelf label system" means any hardware, software, or connected technology used to display or update prices electronically, including electronic shelf labels, pricing servers, wireless beacons, and consumer-facing applications, that directly or indirectly, collects, receives, infers, analyzes, or uses personal information for the purpose of modifying, personalizing, or varying the price of goods.

"Electronic surveillance technology" means technological methods, systems, or tools, including, but not limited to sensors, cameras, software and technology that may be used to identify and track people or devices, or collect biometric information, and that are capable of gathering personal information about a consumers' behavior, characteristics, location, or other personal attributes, whether in physical or digital environments.

"Franchise" means an agreement by which:

1. A person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate;

2. The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol designated, owned by, or licensed by the grantor or its affiliate; and

3. The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee.

"Franchisor" means a person who grants a franchise to another person.

"Groceries" has the same meaning as RCW 82.84.030.

"Grocery business" means a retail store operating in Seattle over 10,000 square feet in size and that is primarily engaged in retailing groceries for offsite consumption, including but not limited to the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned and frozen foods, dry foods, beverages, baked foods, and/or prepared foods. Other household supplies or other products shall be secondary to the primary purpose of groceries sales. “Grocery business” does not include convenience stores or food marts primarily engaged in retailing a limited line of goods that generally includes milk, bread, soda, and snacks. “Grocery business” also does not include farmers’ markets as defined by the City’s Multi-Departmental Administrative Rule 09-01 for the Farmers Markets Pilot Program or its successor rule.

“Grooming and hygiene products” means soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and screens, menstrual products, prophylactics, and reproductive products, regardless of whether the item meets the definition of “over-the-counter drug.”

“Mixed-use grocery business” means a retail store operating in Seattle that is not a grocery business and has 10,000 square feet or more of its sales floor area dedicated to the sale of groceries.

“Over-the-counter drug” has the same meaning as RCW 82.08.0281.

“Personal information” means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer, household, or device, including, but not limited to derived data, unique identifiers, and inferences drawn from any of the information identified in this definition to create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes. The Director may issue rules further defining “personal information” and may include definitions from Attachment A to this ordinance.

"Rate of inflation" means 100 percent of the annual average growth rate of the bi-monthly Seattle-Tacoma-Bellevue Area Consumer Price Index for Urban Wage Earners and Clerical Workers, termed CPI-W, for the 12 month period ending in August, provided that the percentage increase shall not be less than zero.

"Warehouse" means a storage use in which space is provided in an enclosed structure for the storage of goods produced off-site, for distribution or transfer to another location or delivery to a consumer.

7.35.020 Prohibition on algorithmic-based price discrimination

A. A covered retailer may not use an electronic shelf label system to display a price for a good that has been modified using algorithmic-based price discrimination.

B. A covered retailer or covered retailer's agent may not use algorithmic-based price discrimination to modify the price of goods, including mandatory fees or charges necessary to receive such goods, for a consumer as follows:

1. A grocery business that has 20 or more retail locations globally, including but not limited to chains or integrated enterprises, may not use algorithmic-based price discrimination to modify the price of any goods for a consumer.

2. A mixed-use grocery business may not use algorithmic-based price discrimination to modify the price of groceries, diapers, grooming and hygiene products, or over-the-counter drugs for a consumer.

3. A delivery service provider may not use algorithmic-based price discrimination to:

a. Modify the price of any goods for a consumer ordered for pickup, delivered from, or otherwise provided via a grocery business regardless of the number of retail locations the grocery business operates; or

b. Modify the price of groceries, diapers, grooming and hygiene products, or over-the-counter drugs for a consumer ordered for pickup, delivered from, or otherwise provided via a warehouse or mixed-use store.

7.35.030 Covered retailer disclosures

A. A grocery business must clearly post the price of goods in a retail location as prescribed by law.

B. A covered retailer must clearly and conspicuously disclose via its internet website, or where the discount is offered, in such a manner that an ordinary consumer would notice and understand:

1. The eligibility criteria for any discounted price based on volume purchases, signing up for a mailing list, registering for promotional communications, or participating in a promotional event under subsection 5.a of the exclusions in the definition of algorithmic-based price discrimination;

2. The eligibility criteria for any discounted price based on broadly defined and publicly recognized groups of consumers that may qualify for a discounted price under subsection 5.b of the exclusions in the definition of algorithmic-based price discrimination; and

3. All consumer tiers used for discounted prices based on prior purchase history pursuant to subsection 5.c of the exclusions in the definition of algorithmic-based

price discrimination, including any criteria or factors for grouping consumers into each tier.

The Director may issue additional rules requiring disclosures should covered retailer business practices change such that the disclosures in this Section 7.35.030 are insufficient to meet the public policy goals of this Chapter 7.35.

7.35.040 Rulemaking authority

The Director is authorized to administer this Chapter 7.35. The Director is authorized to promulgate, revise, or rescind rules and regulations deemed necessary, appropriate, or convenient to administer, evaluate and implement the provisions of this Chapter 7.35 pursuant to Chapter 3.02, providing affected entities with due process of law and in conformity with the intent and purpose of this Chapter 7.35. Any rules promulgated by the Director shall have the force and effect of law and may be relied on by a covered retailer and other parties to determine their rights and responsibilities under this Chapter 7.35.

7.35.050 Covered retailer records

A. A covered retailer shall retain records that document compliance with this Chapter 7.35. The Director may issue rules governing the specific records and form, format, and content of such records needed to constitute compliance with this Section 7.35.050, including the maintenance of a compliance file. Required records may include, but are not limited to the eligibility criteria for discounted price under subsection 5.a of the exclusions in the definition of algorithmic-based price discrimination, the eligibility criteria for all broadly defined and publicly recognized groups of consumers that may qualify for a discounted price under subsection 5.b of the exclusions in the definition of algorithmic-based price discrimination, method of public disclosure under Section 7.35.030, use of consumer prior purchase history, use of consumer tiering, information regarding what data is considered in setting prices based on personal information, and other records that are material and necessary to effectuate the terms of this Chapter 7.35.

B. A covered retailer shall retain the records required by subsection 7.35.050.A for a period of three years.

C. If a covered retailer fails to retain adequate records required under subsection 7.35.050.A, there shall be a presumption, rebuttable by clear and convincing evidence, that the covered retailer violated this Chapter 7.35 for the relevant periods for which records were not retained. This presumption is substantive and necessary to effectuate the rights provided in this Chapter 7.35.

7.35.060 Private right of action

A. Any person or class of persons that suffers an injury as a result of a violation of Section 7.35.020 may bring a civil action in a court of competent jurisdiction against a grocery business that owns or controls 25 or more grocery establishments, including but not limited to chains, integrated enterprises, or franchises, in the state of Washington, a mixed-use grocery business, or a delivery service provider violating Section 7.35.020. Upon prevailing such person or class of persons, may be awarded (1) reasonable attorney fees and costs; (2) such legal or equitable relief as may be appropriate to remedy the violation plus interest due; and (3) civil penalties of up to $3,000 per aggrieved party and up to $10,000 for each subsequent violation per aggrieved party. Civil penalties shall not exceed one million dollars, or an amount adjusted for inflation under subsection 7.35.060.B, in a single action. Interest shall accrue from the date of the injury at a rate of 12 percent per annum, or the maximum rate permitted under RCW 19.52.020. To the extent that actual damages are unliquidated or difficult to prove, a court may award liquidated damages of up to $10,000 instead of actual damages.

B. The amount of civil penalties, the civil penalty cap, and the amount of liquidated damages in this Section 7.35.060 shall be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter. The Department shall determine the amounts and file a schedule of such amounts with the City Clerk.

C. A civil action must be commenced within three years of the violation.

7.35.070 Enforcement and penalties

A. The City Attorney shall have the authority to investigate violations of this Chapter 7.35. During an investigation, the City Attorney may request issuance of a subpoena by a judicial officer to a covered retailer to compel testimony or to obtain evidence that is material to the investigation of a violation of this Chapter 7.35. The City Attorney may file a civil action in a court of competent jurisdiction for violations of this Chapter 7.35 and upon prevailing, may be awarded (1) reasonable attorney's fees and enforcement costs; (2) such legal or equitable relief as may be appropriate to remedy the violation plus interest due; and (3) civil penalties of up to $3,000 per violation and up to $10,000 for each subsequent violation per aggrieved party. Interest shall accrue from the date of the violation at a rate of 12 percent per annum, or the maximum rate permitted under RCW 19.52.020. To the extent that actual damages are unliquidated or difficult to prove, a court may award liquidated damages of up to $10,000 instead of actual damages. The amount of civil penalties and liquidated damages in this Section 7.35.070 shall be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter. Enforcement costs as used above includes but is not limited to staff time, filing fees, service costs, and investigation expenses.

B. Any action brought by the City Attorney must be commenced within three years of the violation.

7.35.080 Waiver

Any waiver by an individual of any provisions of this Chapter 7.35 shall be deemed contrary to public policy and shall be void and unenforceable.

7.35.090 Severability

The provisions of this Chapter 7.35 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 7.35, or the application thereof to any person, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this Chapter 7.35, or the validity of its application to other persons or circumstances.

Section 2. Section 1 of this ordinance shall take effect on September 1, 2027.

Attachments:

Attachment A – Personal Information

This ordinance shall take effect as provided by Seattle Municipal Code Sections 1.04.020 and 1.04.070.

Passed by the City Council and signed in open session in authentication of its passage on ____________________.

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President __________ of the City Council

____________________ on ____________________.

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Katie B. Wilson, Mayor

Attested on ____________________.

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Scheereen Dedman, City Clerk

Seal