

## ARTICLE I: REGULATED RIGHTS AND ACTIONS

### CHAPTER 601: PUBLIC ORDER

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#### § 601.01 POSTING SIGNS WITHOUT CONSENT; EXCEPTIONS.

(a) No person shall paste, paint, stamp or in any manner place, affix or attach to any building, fence, bridge, gate or any other public or private property any written, printed or painted advertisement, bill, notice, sign, card or poster, without first obtaining the written consent of the owner or other person lawfully in charge or control of property. This section does not prevent the posting of any notice required or permitted to be posted by law or order of court.

(b) The Department of Public Works is hereby authorized and directed to make rules and regulations for the posting of directional signage within the public right-of-way. The Department is authorized to assess fees and prescribe procedures for the issuance of permits for the erection of the signs. The rules, regulations and fees and any amendments thereto shall be submitted to Council for their approval and become effective after due posting and advertising by the Director of Public Works.

(Ord. 16-1993, eff. 6-28-93)

#### § 601.02 DISTRIBUTING HANDBILLS AND SAMPLES.

No person shall intentionally, recklessly or negligently distribute any handbill, advertisement, flyer, announcement or any sample merchandise so as to cause litter or unreasonably interfere with pedestrians or traffic.

#### § 601.03 SOLICITING BUSINESS.

No person engaged in any business shall solicit customers in front of their place of business, by crying, commonly called "barking" their goods, either by themselves or by agents or employees, or by stopping or accosting persons and soliciting their patronage.

## § 601.04 NOISE CONTROL.

(a) *Purpose:* Excessive noise is a serious threat to the welfare, contentment, safety, health and the peace and quiet of the residents of the City. It is the intent of this Ordinance to establish requirements to prevent excessive noise that may jeopardize the health and welfare of its residents or degrade their quality of life. This Ordinance is not intended and shall not be interpreted to be a regulation of the content of speech or communication; this Ordinance is intended to be entirely content-neutral; this Ordinance regulates only the time, place and manner of noise as defined below.

(b) *Definitions.*

**Apartment.** A building containing multiple residential units.

**Decibel.** Unit of measure of the noise level. Symbol is dB.

**dB(A).** The symbol designation of a noise level, reported in decibels, using the A-Weighting network of a sound level meter, as defined in ANSI S1.4--Specification For Sound Level Meters. For example, noise will be reported as seventy-two (72) dB(A). For purposes of this ordinance, the noise shall be measured using the slow exponential time weighting characteristic of the sound level meter.

**dB(C).** The symbol designation of a noise level, reported in decibels, measured using the C-Weighting network of a sound level meter, as defined in ANSI S1.4--Specification For Sound Level Meters. For example, noise will be reported as twelve (12) dB(C) over the background noise level. For purposes of this ordinance, the noise shall be measured using the slow exponential time weighting characteristic of the sound level meter.

**General background noise.** Noise created by many distant noise sources individually indistinguishable. This type noise can be present during noise measurements.

**Individual background noise sources.** Clearly identifiable noise sources including, but not limited to, barking dogs, airplane flyovers, passing cars/trucks, raised voices, televisions and radios. These sources shall not be present during noise measurements.

**Noise or noise level** (used interchangeably for purposes of this ordinance). The terms noise and noise level shall mean the sound that is measured as sound pressure level in decibels. Noise levels relative to Tables A and B below will be recorded as the visual average for any continuous measurement period of thirty (30) seconds, and the maximum noise level measured at any time. The offending noise will be deemed to violate the provisions of Tables A and B below of this ordinance if the visual average exceeds the maximum allowable noise levels and/or the maximum noise level measured at any time exceeds the maximum allowable noise levels by five (5) dB(A) or five (5) dB(C).

**Park facility.** As defined in Pittsburgh Code Section 477.01(b)(2).

**Person.** Includes individual natural persons, firms, partnerships, joint ventures, societies, associations, clubs, trustees, trusts, corporations, companies or organizations of any kind; or any officers, agents, employees, factors or any kind of personal representative of any kind of the above, in any capacity, acting either for her/himself, or for any other person, under either personal appointment or pursuant to law. Whenever used in any provision prescribing or imposing a penalty, the term "person" as applied to partnerships or associations includes the partners or members thereof, and if applied to corporations, the officers thereof.

**Plainly audible.** Any noise that clearly can be heard, however, words or phrases need not be discernible.

**Premises.** Any building, structure, land, including yards, lots, courts, inner yards owned or controlled by a person.

**Property line.** The real or imaginary line and its vertical extension which separates real property owned or controlled by a person from contiguous real property owned or controlled by another person and separates real property from the public premises.

**Receiving premises.** All lands, and buildings or structures thereon, equipment or appurtenances connected or used therewith and any personal property affixed or otherwise used in connection with use of such premises affected by noise emanating from another premises.

**Residential zoning districts.** Only those zoning districts described in Pittsburgh Code, Title Nine, Zoning, Chapter 903, Residential Zoning Districts. and Chapter 908.02, Grandview Avenue Public Realm District, Subdistricts A and B.

**Special event.** A pre-planned event or series of events sponsored by a public or private person or entity which is:

- (a) Located wholly or partially on property owned or maintained by the City; or
- (b) Located on any other property and requires for its successful execution, the provision and coordination of municipal services to a degree equal to and/or over and above that which the City routinely provides.

Permits for special events currently are obtained through the Special Events Committee in the Office of the Mayor, and permit holders are required to reimburse the City forty (40) percent of the incremental personnel cost of services provided. Excluded from the definition of special event in this noise control ordinance and therefore subject to it are events where a fee is charged for admission to the premises or for the entertainment.

**Sound pressure level.** In decibels, ten (10) times the logarithm (to the base ten (10)) of the ratio of the square of a sound pressure to the square of the reference sound pressure of twenty (20) microPascals.

(c) *Restriction of noise between premises:*

- (1) *Unamplified noise.* No person shall transmit or cause to be transmitted any unamplified noise, which leaves the premises from which it originates, and enters any premises in a residential zoning district in excess of the noise levels specified below in Table A.

Table A

Maximum Allowable Noise

Levels at Receiving Premises

TABLE INSET:

Type of Receiving Premises	Daytime: 7:00 a.m.--10:00 p.m.	Nighttime: 10:00 p.m.--7:00 a.m.
Residential	65 dB(A)	60 dB(A)

- (2) *Amplified noise.* No person shall transmit or cause to be transmitted any noise created by loudspeaker(s), audio amplification device(s) or other similar devices which leaves the premises from which it originates, and enters any premises in a residential zoning district in excess of the sound levels specified below in Table B.

Table B

Maximum Allowable Noise Levels at Receiving Premises from loudspeakers, audio amplification devices and other similar devices

TABLE INSET:

Type of Receiving Premises	Daytime: 7:00 a.m.--10:00 p.m.	Nighttime: 10:00 p.m.--7:00 a.m.
Residential	75 dB(C)	75 dB(C)

(3) *Noise measurements.*

(a) *Location of noise measurements.* Noise levels shall be measured at the property line of a receiving premises if at a distance of twenty-five (25) feet or greater from the noise source. If the receiving premises property line is not at least twenty-five (25) feet from the noise source, the measurement will be taken within the property of the receiving premises at the lesser of twenty-five (25) feet from the noise source or the farthest possible distance from the noise source.

(b) *Background noise.* The noise measurements to determine compliance with the noise levels in Table A and Table B, shall be taken in such a manner as to eliminate individual background noises. The measurement shall be of the offending noise source in the absence of such individual background noises. It is proper to take the measurements with general background noise present.

(d) *Apartment to apartment and residence to residence noise.*

(1) *Noise limit above the background noise level.* No person shall transmit or cause to be transmitted any noise that leaves the residential premises from which it originates and enters any residential unit creating noise levels in excess of the background noise level in the complainant's residential unit at the levels specified below in Table C.

Table C

Maximum Allowable Noise Level Above the Background Noise Level--Measured at Complainant's Unit

TABLE INSET:

Type of Receiving Premises	Daytime: 7:00 a.m.--10:00 p.m.	Nighttime: 10:00 p.m.--7:00 a.m.
Residential	10 dB(C)	5 dB(C)

(2) *Noise measurement.* An officer responding to a complaint shall measure the noise at a centralized location in the complainant's unit corresponding to the noise source located on the offending premises.

(e) *Amplified noise from vehicles or handheld devices.*

- (1) No person shall transmit noise from a vehicle being operated on a public street, or alley, or in commercial or residential parking facilities, by playing any radio, tape player, compact disc player, loudspeaker, or other electronic device used for the amplification of music or other entertainment, which is plainly audible to an officer at a distance of seventy-five (75) feet from the source of the noise.
  - (2) This provision also includes portable, hand carried, audio amplification or reproduction devices including, but not limited to, hand carried radios, cassettes, or compact disc players.
  - (3) Vehicles with permits for activities consistent with the transmission of amplified noise shall be exempt from this section.
- (f) *Refuse collection.* No person shall operate any trash, rubbish or garbage collection activities within any residentially zoned district between the hours of 10:00 p.m. and 6:00 a.m. during daylight savings time, thereafter between the hours of 10:00 p.m. and 7:00 a.m.
- (g) *Exemptions.* A person shall be exempt from this section provided that:
- (1) The noise is being generated to request assistance or warn of a hazardous situation; or
  - (2) The noise emanates from an authorized emergency vehicle or a vehicle operated by a gas, electric, communication or water utility; or
  - (3) The noise emanates from a bell, chime or similar device used by a church, mosque, synagogue or school; or
  - (4) The noise emanates from lawn care and other household maintenance equipment and tools used between 7:00 a.m. and 10:00 p.m.; or
  - (5) The noise is being generated by construction activities properly permitted in the City of Pittsburgh; or
  - (6) The noise is in connection with a parade, or "special event" (as described in Section 601.04(b) above) that is being conducted under a parade or special event permit issued by the City and is otherwise in compliance with the applicable sections of the Pittsburgh Code provided that the maximum allowable noise level in the applicable subsection is not exceeded between the hours of 11:00 p.m. and 7:00 a.m.;
  - (7) The noise is being generated by the crowd at a sporting event or other event being conducted pursuant to a permit issued by the City; or
  - (8) The noise is being generated from the engine of a motor vehicle that is subject to regulation exclusively by the Pennsylvania Department of Transportation; or
  - (9) The noise level is not violated in a residential zoning district, but the noise interferes with, interrupts or excludes others in their right to legal use of the same area of a park facility. The noise would then be subject to regulation under Pittsburgh Code Section 477.01(d)(1)(e).
- (h) *Instrumentation.* Noise levels shall be measured using a sound level meter that meets or exceeds the requirements for Type 1 or Type 2 instruments as defined in ANSI S1.4--Specification For Sound Level Meters.
- (i) *Penalties.*
- (1) Any person violating any provision of this section, unless otherwise specified in this section, shall be fined not more than three hundred dollars (\$300.00) and costs

for each offense, and in default of payment thereof may be imprisoned for not more than thirty (30) days.

(2) Violation of section 601.04(e)(1) shall result in the mandatory fine of one hundred fifty dollars (\$150.00) for a first time violation and a mandatory three hundred dollar (\$300.00) fine and booting of a vehicle for the second offense. Booting of the vehicle shall occur if the fine from the first violation is outstanding. The owner of the vehicle shall be responsible for all costs associated with the booting.

(3) In addition to any penalty provided or imposed, violation of any provision in this ordinance is a public nuisance, disturbing the peace and injurious to the public interest, and may be fully or partially abated forthwith.

(4) Unless the noise level is more than three (3.0) dB(A) or three (3.)0 dB(C) over the maximum allowable noise levels in Tables A and B above, plus five (5) dB(A) or five (5) dB(C) if the measurement is not an average over thirty (30) seconds (as required by (b), above) no fine may be imposed for violations of those limits and abatement shall not be an available remedy.

(Ord. 17-1991, eff. 5-24-91; Am. Ord. 22-1998, eff. 10-1-98; Ord. 24-2001, eff. 11-30-01)

#### **§ 601.05 CHARITABLE SOLICITATIONS.**

(a) *Registration required.* All charitable, beneficial, benevolent or religious organizations or institutions intending to solicit funds from the general public in the City by means of personal representatives, or collectors shall register with the Department of Police.

(b) *Registration information.* Registration shall contain the following information:

- (1) The name of the organization or institution, its aim and purposes;
- (2) Local and national address and phone numbers;
- (3) Names and residence addresses of each officer, together with complete list of names and residence addresses of any board of managers or directors;
- (4) Names of persons authorized to solicit, residence addresses and terms of their employment.

(c) *Current listing of solicitors.* The information required in subsection (b) hereof shall be furnished annually to the Department during the month of January, except the names of persons authorized to solicit shall be furnished to the Department at least twenty-four (24) hours before they begin to solicit collections, and shall be verified by the affidavit of at least two (2) persons connected with the organization or institution stating they are personally familiar with the facts and that they are correct.

(d) *Annual financial statement required.* Any registered organization or institution shall, annually within sixty (60) days after January 1, file with the Department a sworn statement setting forth the total contributions and income from all sources received during the preceding year ending December 31, together with a detailed statement of expenditures, including cost of management and operation, and the amount expended or given to its purposes or objects during such period.

(e) *Tag days.* The personal solicitation of the general public on the public streets or other public places by solicitors or collectors and so called "tag days" are hereby prohibited. However, any registered organization or institution which has complied with this section may, on application to the Police Department, receive a permit, which shall not be granted

more than once in each year, to station collectors on the streets at fixed points or in booths, for the purpose of receiving voluntary contributions from the public. The purpose for which the contributions are being received shall be printed on signs, boards or cards, conspicuously displayed by each collector. Solicitations for contributions for personal use by the collectors shall be deemed a sufficient cause for the revocation of the permit.

(f) *Permit fee.* The fee for a charitable solicitations permit shall be fifty dollars (\$50.00).

(Ord. 55-1991, eff. 12-31-91)

#### **§ 601.06 INTERSEXUAL MASSAGE PROHIBITED.**

(a) No person employed or engaged in the business of a masseur or masseuse shall massage, offer or solicit to massage a person of the opposite sex. Each act of massage, offer or solicitation to massage shall constitute a separate offense and is punishable as hereunder.

(b) No person shall own, operate, manage or have any interest, direct or indirect, in a place of business where a masseur or masseuse massages, offers or solicits to massage a person of the opposite sex. Each day the violation is committed or permitted to continue constitutes a separate offense and is punishable as hereunder.

(c) The provisions of this section shall not apply to massage treatments given:

- (1) In the office or upon the written order of a licensed physician, osteopath or chiropractor;
- (2) In a regularly established medical center, hospital or sanitarium;
- (3) In the residence of a person under a doctor's care by direction of the doctor; and
- (4) By members of the American Massage Therapy Association, in good standing, or organizations who can demonstrate comparable educational and training requirements.

(Ord. 29-1989, eff. 12-29-89)

#### **§ 601.07 UNLICENSED ALCOHOL OR LIQUOR SALE.**

(a) No person shall keep, operate or be employed at any place or establishment where alcohol or liquor is sold without a license to do so.

(b) No person shall patronize any place or establishment where alcohol or liquor is sold without a license to do so.

(c) No person who has legal or equitable ownership in any property in the City shall knowingly permit such property to be used as a place or establishment where persons are engaged in the unlicensed sale of alcohol or liquor.

#### **§ 601.08 ALCOHOL OR LIQUOR CONSUMPTION ON STREETS OR SIDEWALKS.**

(a) **Prohibited Conduct.** No person shall consume alcoholic beverages or carry or possess an open container of alcoholic beverages in the public right-of-way, or on private property without the consent of the landowner or tenant, except that this prohibition shall not apply to block parties held under special permit issued by the Department of Public Works and in

accordance with regulations issued pursuant thereto.

(b) Penalty. Any person who violates the provisions of this section shall be subject to:

(1) A fine not exceeding fifty dollars (\$50.00) for a first violation.

(2) A fine not exceeding one hundred dollars (\$100.00) for a second violation of this section within one (1) year and, in default thereof, imprisonment not exceeding twenty-four (24) hours.

(3) A fine not exceeding five hundred dollars (\$500.00) for each additional violation of this section within one (1) year, and in default thereof, imprisonment not exceeding seventy-two (72) hours.

(c) This section shall be known as the "Open Container Law"

(Ord. 23-1994, eff. 9-23-94)

### **§ 601.09 DISTRIBUTION OR SALE OF CIGARETTES AND OTHER TOBACCO PRODUCTS THROUGH VENDING MACHINES.**

(a) It is the purpose of this section to regulate vending machine sales of cigarettes and other tobacco products because Council does hereby find and declare that:

(1) Cigarette smoking and the use of tobacco in other forms is dangerous to human health; and

(2) The Director of the National Institute on Drug Abuse has concluded that the majority of Americans who die each year from cigarette smoking and other tobacco use became addicted to nicotine as adolescents before the age of legal consent; and

(3) A significant number of children under the legal age who purchase cigarettes and other tobacco products do so through vending machines.

(b) Except as provided in subsection (c) hereof, no person, firm or corporation shall distribute or sell cigarettes and other tobacco products by the use of a vending machine, or install or maintain a vending machine with the intent to make such distributions or sales, unless the vending machine may be operated exclusively by insertion of tokens, available for purchase on the premises.

(c) Cigarette or tobacco vending machines of any type may be maintained upon the premises of:

(1) A private business establishment licensed by the Pennsylvania Liquor Control Board and/or a privately owned and operated club or association requiring a paid membership;

(2) Private facilities not accessible to the general public, including, but not limited to nursing homes and senior citizens facilities; or

(3) A work place, including, but not limited to factories, private businesses, offices or other private facilities not open to the general public.

However, no cigarette or tobacco vending machine shall be placed in a doorway or any other area which is readily accessible to minors.

(d) No person, firm or corporation shall sell, give, furnish or otherwise make available to any minor under the age of eighteen (18) years any token for insertion into a vending machine.

(e) For the purpose of this section, the following terms shall have the meanings given herein:

(1) **TOKEN.** Any metal or other materials fashioned in the shape of coins, but excluding currency of the United States of America, which serve to operate any vending machine, as defined in this section.

(2) **VENDING MACHINE.** Any automated self-service device which, upon insertion of money, token or other form of payment, dispenses cigarettes or other tobacco products.

(f) The Department of Public Safety shall conduct random undercover investigations for the purpose of enforcement of the provisions of this section and all other state laws regarding the illegal distribution of tobacco to youth. The Department shall annually (January) report to Council its findings and activities.

(Ord. 21-1990, eff. 10-22-90)

### § 601.10 SPITTING.

(a) No person shall spit or expectorate upon any sidewalk or upon the floors of any public place or conveyance.

(b) Every corporation or person owning or controlling or having the management of any public building, street car, bus or other public conveyance shall keep conspicuously and permanently posted at all times in such buildings and conveyances notices forbidding expectoration and warning against violating the provisions of this section and stating the penalty for each violation.

### § 601.11 LITTERING AND DUMPING.

(a) No person shall cause any waste paper, sweepings, ashes, household waste, glass, metal, refuse or rubbish, or any dangerous or detrimental substance into or upon any street, sidewalk or other public place, or into any gutter, sewer or onto any vacant lot or the private premise of another or into the waters in the city.

(b) No person who is the owner or operator, or agent of either, of a trash, garbage or debris collection vehicle, including private automobiles and small trucks, or other type of vehicles used to collect or transport trash, garbage or other debris, shall knowingly cause to be deposited or deposit the vehicle's load or any part thereof upon any road, street, highway, alley or railroad right-of-way, or upon the land of another or into any water in the city.

(c) No person shall knowingly dump or cause the dumping of any hazardous waste or materials, as defined and/or numbered by the State Department of Environmental Resources and the United States Environmental Protection Agency, onto any public place, vacant lot or any private premises.

(d) All banking operations and other businesses that own or operate automated teller machines (ATM's) and/or device(s) that dispense paper into the public right-of-way shall supply a trash receptacle no greater than two (2) feet away from said ATM(s). All bank operations and businesses currently operating an ATM and other covered devices at the time of the passing of this legislation shall have nine (9) months to install trash receptacles, before the penalties listed in section 601.14 subsection (d) begin to take effect.

(e) The Director of the Department of Public Works shall be empowered to review and to

determine the appropriateness of installed trash receptacles.

(Ord. 25-1991, eff. 7-15-91; Ord. 8-2002, § 1, eff. 4-2-02)

### **§ 601.12 INTERFERENCE WITH OFFICIAL DUTIES.**

No person shall in any way interfere or cause or permit any interference with any City officer, employee or agent in their official duties.

(Ord. 15-1979, eff. 5-29-79; Am. Ord. 37-1990, eff. 12-28-90)

### **§ 601.13 REQUIRED SIGNS ON ALL GASOLINE STATIONS.**

(a) At least one (1) price sign per gasoline station, service station or other retail gasoline outlet is required whether illuminated or otherwise. The sign shall be prominently placed and be easily read from a passing motor vehicle operator on abutting streets. The size of the sign shall be a minimum of twelve (12) square feet or four (4) square feet for each grade of fuel. A sign permit shall be required in accordance with Title Nine, Zoning and Title Ten, Building.

(b) Should a gasoline station, service station or other retail gasoline outlet sell leaded gasoline fuel, at least one (1) octane level price in a unit price increment shall be displayed in numerals no smaller than ten (10) inches tall on the sign. Should a gasoline station, service station or other retail gasoline outlet also sell unleaded gasoline fuel, at least one octane level price, in a unit price increment shall also be displayed in numerals no smaller than ten (10) inches tall, on the sign. Should a gasoline station, service station or other retail petroleum outlet also sell diesel fuel, at least one (1) price of fuel in unit price increment shall be displayed in numerals no smaller than ten (10) inches tall on the sign.

(c) Should a gasoline station, service station or other retail gasoline outlet be out of any type of gasoline posted the price shall be replaced with the word "out" in letters no smaller than ten (10) inches tall on the sign.

(d) Should a gasoline station, service station or other retail gasoline outlet charge for a service previously offered free, the price of the service shall be displayed in numerals no smaller than five (5) inches tall on the sign.

(Ord. 10-1980, eff. 7-3-80; Am. Ord. 37-1990, eff. 12-28-90)

### **§ 601.14 VIOLATION AND PENALTY.**

(a) Any person violating any provision of this Chapter, unless otherwise specified in this section shall be fined a minimum of fifteen dollars (\$15.00) plus court costs for an initial violation and up to five hundred dollars (\$500.00) plus court costs for each additional violation.

(b) Any person violating § 601.13 shall be fined up to one thousand dollars (\$1,000.00) plus court costs. Each day the condition continues shall constitute a separate offense.

(c) Any owner of a multi-family dwelling six (6) units or larger or any commercial, institutional or municipal establishment violating § 601.11(a) shall be fined a minimum of one hundred dollars (\$100.00) plus court costs for an initial violation and a maximum of five hundred dollars (\$500.00) plus court costs for each additional violation. Each day such condition continues shall constitute a separate offense. Any person, firm or corporation

violating § 601.11(b) or (c) shall be fined a minimum of five hundred dollars (\$500.00) plus court costs and a maximum of five thousand dollars (\$5,000.00) plus costs or a minimum of one thousand dollars (\$1,000.00) plus court costs and a maximum of ten thousand dollars (\$10,000.00) plus court costs for subsequent offenses.

(d) All banking operations and other businesses found in violation of section 601.11 subsection (d) will be fined up to one hundred dollars (\$100.00) plus court costs.

(Ord. 25-1991, eff. 7-15-91; Am. Ord. 30-1994, eff. 12-16-94; Ord. 8-2002, § 1, eff. 4-2-02)

### § 601.15 REWARDS.

(a) The City Controller is hereby authorized and directed to establish a special trust fund known as the Illegal Dumping Trust Fund for the receipt and deposit of the fines resulting from violations of § 601.11. A portion of the funds shall be used specifically for rewards, public awareness and costs associated with the investigation and surveillance of illegal dumping activity.

(b) The Director of Public Safety shall grant rewards up to the sum of five hundred dollars (\$500.00) to individuals, organizations or other entities who provide information leading to the arrest and conviction of any individual, firm or corporation violating § 601.11.

(c) The rewards shall be granted from the Department of Public Safety Community Crime Prevention Trust Fund, the Illegal Dumping Trust Fund or such other Trust Fund or Code Account within the Department of Public Safety, as the Director shall deem appropriate.

(Ord. 25-1991, eff. 7-15-91)

### § 601.16 RESERVED.

(Reserved for future legislation.)

### § 601.17 RESERVED.

(Reserved for future legislation.)

### § 601.18 PROHIBITED BILLING PRACTICE.

(a) *Definitions.* As used in this section, certain terms are defined as follows:

(1) **NEGATIVE OPTION BILLING.** A business practice whereby a provider of goods or services provides such goods or services without any prior agreement of or a request from the recipient and then bills or otherwise attempts to collect payment from the recipient for such goods or services. **NEGATIVE OPTION BILLING** shall not include isolated instances where a provider mistakenly provides goods or services to a recipient and shall not include any tax or fee charged by a governmental or quasi-governmental entity.

(2) **GOODS.** Any tangible or intangible things or items of value.

(3) **SERVICE.** Any labor, activity or action of value.

(b) *Negative option billing prohibited.* The use of negative option billing by any individual

or any business entity, organization or association is prohibited. Any person that receives goods or services as a result of a billing practice that has been judicially determined to be negative option billing has no obligation to pay for or return such goods or services. Any person who suffers a loss as a result of a negative option billing practice may bring a private action to recover actual and other damages.

(c) *Exceptions.* This section shall not apply to any goods or services provided in an emergency situation or in a situation that the provider of the goods or services reasonably believed to be an emergency.

(d) *Violation and penalty.* Any individual, or any business entity, organization or association violating this section shall be fined up to five hundred dollars (\$500.00) for each violation, plus costs. Every day that a negative option billing plan is in effect shall constitute a separate violation.

(Ord. 22-1991, eff. 6-28-91)