

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

MEMORANDUM

LAND USE AND TRANSPORTATION COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Myrna Melgar, Chair
Land Use and Transportation Committee

FROM: John Carroll, Assistant Clerk

DATE: July 29, 2025

SUBJECT **COMMITTEE REPORT, BOARD MEETING**
Tuesday, July 29, 2025

The following file should be presented as COMMITTEE REPORT during the Board meeting on Tuesday, July 29, 2025. This ordinance was acted upon during the Land Use and Transportation Committee meeting on Monday, July 28, 2025, at 1:30 p.m., by the votes indicated.

BOS Item No. 61

File No. 240796

[Administrative Code - Ban on Automated Rent-Setting]

Ordinance amending the Administrative Code to authorize tenant's rights organizations to enforce the prohibition against landlords' use of algorithmic devices to set rents or manage occupancy levels for residential dwelling units located in San Francisco.

RECOMMENDED AS A AMENDED AS A COMMITTEE REPORT

Vote: Supervisor Myrna Melgar – Aye
Supervisor Chyanne Chen – Aye
Supervisor Bilal Mahmood – Aye

Cc: Board of Supervisors
Angela Calvillo, Clerk of the Board
Alisa Somera, Legislative Deputy
Brad Russi, Deputy City Attorney

File No. 240796

Committee Item No. 5

Board Item No. 61

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation

Date: July 28, 2025

Board of Supervisors Meeting:

Date: July 29, 2025

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance - VERSION 3 |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest - VERSION 3 |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract / DRAFT Mills Act Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Public Correspondence |

OTHER

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>ACLU Presentation – July 29, 2024</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Referral FYI – July 22, 2024</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Committee Report Request Memo – July 24, 2025</u> |
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Prepared by: John Carroll

Date: July 25, 2025

Prepared by: John Carroll

Date: July 29, 2025

Prepared by:

Date:

[Administrative Code - Ban on Automated Rent-Setting]

Ordinance amending the Administrative Code to authorize tenant's rights organizations to enforce the prohibition against landlords' ~~prohibit the sale or use of~~ algorithmic devices to set rents or manage occupancy levels for residential dwelling units located in San Francisco, and to authorize enforcement by tenants' rights organizations.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in *strikethrough italics Times New Roman font*.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Chapter 37 of the Administrative Code is hereby amended by revising Section 37.10C, to read as follows:

SEC. 37.10C. USE AND SALE OF ALGORITHMIC DEVICES PROHIBITED.

(a) **Prohibition on Sale.** It shall be unlawful to sell, license, or otherwise provide to San Francisco landlords any algorithmic device that sets, recommends, or advises on rents or occupancy levels that may be achieved for residential dwelling units in San Francisco.

(b) **Prohibition on Use.** It shall be unlawful for a landlord to use an algorithmic device described in subdivision (a) when setting rents or occupancy levels for residential dwelling units in San Francisco. Each separate month that a violation exists or continues, and each separate residential dwelling unit for which the landlord used the algorithmic device, shall constitute a separate and distinct violation.

1 * * * *

2 (d) **Remedies.**

3 (1) The City Attorney may file a civil action for violations of subsections (a)
4 and/or (b), for damages, injunctive relief, restitution/return of illegal profits, and/or civil
5 penalties of up to \$1,000 per violation. The court shall award reasonable attorney's fees and
6 costs to the City Attorney if the City Attorney is the prevailing party in such a civil action.

7 (2) A tenant may file a civil action for violations of subsection (b), for injunctive
8 relief, money damages, and/or civil penalties of up to \$1,000 per violation. The court shall
9 award reasonable attorney's fees and costs to the tenant if the tenant is the prevailing party in
10 such a civil action. A lease provision that limits a prevailing tenant from obtaining attorneys'
11 fees shall not be enforceable against a tenant's claim for attorneys' fees that arises under this
12 subsection (d)(2).

13 (3) A nonprofit organization with tax-exempt status under 26 United States
14 Code Section 501(c)(3) or 501(c)(4) and with a primary mission of protecting the rights of
15 tenants in San Francisco may also bring a civil action to enforce violations of subsection (b)
16 and seek the remedies set forth in subsection (d)(2), including attorneys' fees and costs.

17 * * * *

18
19 Section 2. Clarification Regarding Existing Text. This ordinance was duplicated from
20 Board File No. 240766 in the Land Use and Transportation Committee on July 29, 2024. That
21 ordinance was adopted by the Board of Supervisors on September 3, 2024, and took effect
22 following approval by the Mayor as Ordinance No. 224-24. This ordinance now shows the
23 amendments from the original file that became effective as existing text (consistent with the
24 explanatory note immediately below the long title), does not show sections of the original file
25 that are not being amended by this ordinance, including the uncodified Section 1 of that

1 ordinance, and shows the amendments to this ordinance approved in Committee as Board
2 amendments.

3
4 Section 3. Effective Date. This ordinance shall become effective 30 days after
5 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
6 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
7 of Supervisors overrides the Mayor's veto of the ordinance.

8
9 APPROVED AS TO FORM:
10 DAVID CHIU, City Attorney

11 By: /s/
12 MANU PRADHAN
13 Deputy City Attorney
14 n:\legana\as2024\2400283\01858173.docx

REVISED LEGISLATIVE DIGEST
(Amended in Committee – July 28, 202)

[Administrative Code - Ban on Automated Rent-Setting]

Ordinance amending the Administrative Code to authorize tenant’s rights organizations to enforce the prohibition against landlords’ use of algorithmic devices to set rents or manage occupancy levels for residential dwelling units located in San Francisco.

Existing Law

City law prohibits landlords from using “algorithmic devices” when setting rents or occupancy levels for residential rental units in San Francisco. For purposes of this law, an “algorithmic device” is a device such as a software program, sometimes known as revenue management software, that uses algorithms to analyze non-public competitor rental data for the purposes of recommending to landlords when to leave their units vacant or how much rent to charge. The City Attorney and individual tenants may file civil lawsuits against landlords to enforce this law.

Amendments to Current Law

The ordinance would also allow tenants’ rights organizations to file civil lawsuits to enforce the prohibition on landlords use of algorithmic devices.

Background Information

On July 29, 2024, the ordinance was created as a duplicate of File No. 240766, which was later enacted into law as Ordinance No. 224-24.

n:\legana\as2024\2400283\01856782.docx

The logo for the American Economic Liberties Project. It features a red square with the text "AMERICAN ECONOMIC LIBERTIES PROJECT" in white, all-caps, sans-serif font. To the left of the square are several horizontal blue wavy lines, and below the square are three horizontal blue wavy lines.

**AMERICAN
ECONOMIC
LIBERTIES
PROJECT**

**Presentation before the
SF Board of Supervisors,
Land Use & Transportation
Committee:**

**File No. 240766 – Ban on
Automated Rent Setting**

Lee Hepner, Senior Legal Counsel

What is “automated rent setting” or “AI revenue management”?

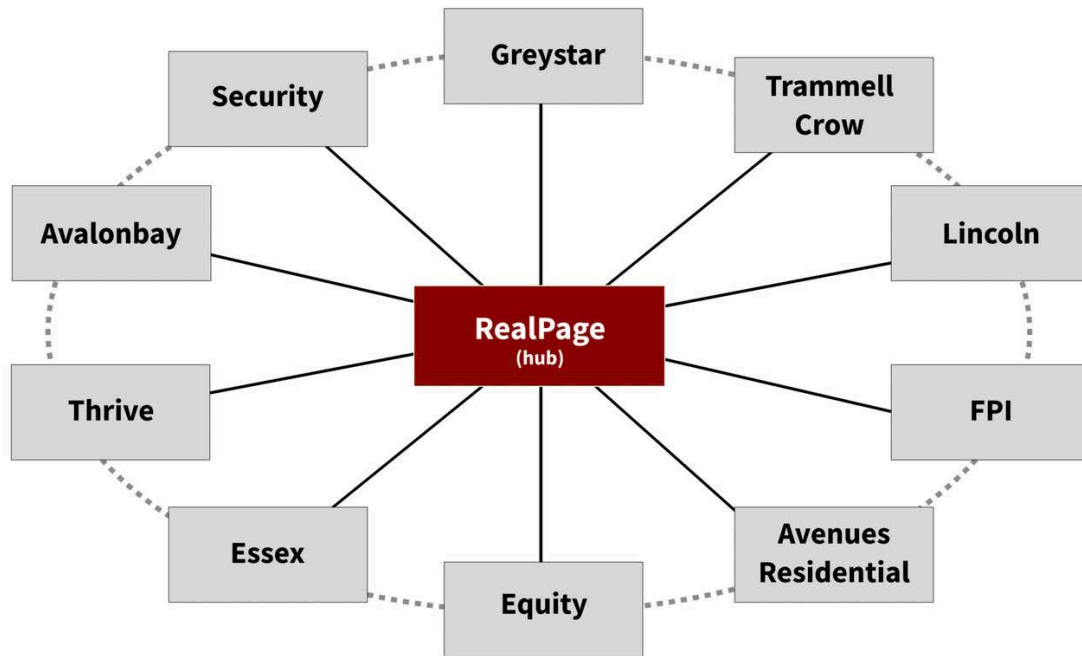
- Landlords delegate their rental price and supply decisions to a common decisionmaker
- Landlords who should ordinarily be competing with each other as to price share data with a common decisionmaker, and the common decisionmaker provides “daily pricing and ongoing revenue oversight”
- Rather than function as separate economic entities, participating landlords make key competitive decisions regarding the price and supply of multifamily apartments collectively

What is “automated rent setting” or “AI revenue management”?

“[W]e are all technically competitors . . . [but RealPage] helps us to work together . . . to make us all more successful in our pricing . . . [RealPage] is designed to work with a community in pricing strategies, not work separately . . . we rarely make any overrides to the [pricing] recommendations . . .”

With this software, owners used live dynamic pricing that updates regularly, based on a model trained on a large dataset of over **16 million units**. The software is also improving as new property managers are added to their list of clients, and is currently responsible for the pricing of **8% of all rentals units** nationwide.

“Hub and Spoke” Price Fixing:



Non-public, competitively-sensitive data:

- **The sharing of nonpublic, sensitive pricing and supply data is against a competitor's economic self-interest, *unless they know they are receiving in return the benefits of their competitors' data***

its competitors. (See, e.g., Doc. No. 530 ¶¶ 31, 287, 289). In doing so, RealPage would make true its vow to its RMS clients to “outperform the market,” primarily by increasing rent prices. It would clearly not be in any individual Defendant's economic self-interest to contribute its data to RealPage without knowing that it would benefit from its horizontal competitors doing the same. Put another way, the contribution of sensitive pricing and supply data for use by RealPage to recommend prices for competitor units is in Defendants' economic self-interest if and only if Defendants know they are receiving in return the benefit of their competitors' data in pricing their own units. While Defendants

Source: *In re RealPage, Inc., Rental Software Antitrust Litig. (No. II)*, No. 3:23-MD-03071, 2023 WL 9004806, at *15 (M.D. Tenn. Dec. 28, 2023)

Price setting algorithms increase rents, restrict supply, and increase eviction rates.

Price setting algorithms increase rents.

YieldStar Does More than Rent Pricing

Our partners uncover additional revenue every day through YieldStar's lease expiration management and move-in day optimization. By focusing on your asset strategy, managing internal supply and demand, and leveraging millions of units of real-time lease transactions, YieldStar drives your performance so you can continually outpace the market in good times and bad.

Find out how [YieldStar](#) can help you outperform the market 3% to 7%

Source: <https://www.realtor.com/videos/yieldstar-helps-top-nmhc-companies/>

Price setting algorithms increase rents.

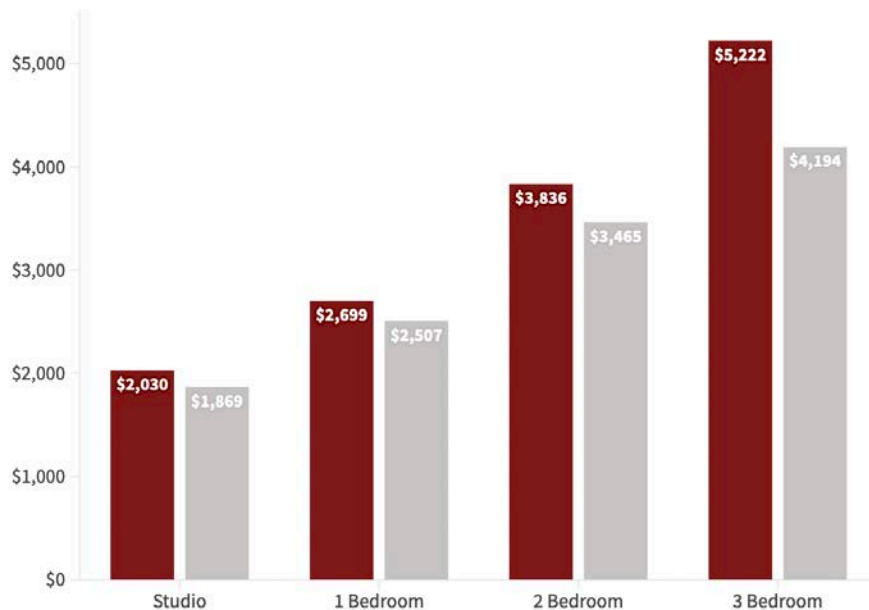
239. Here, the SSNIP test is satisfied, and the market is properly defined. As described above and below, pursuant to the Lessors' agreement not to compete on price, Lessors are able to increase rents "year over year, between 5% and 12% in every market," yet those increases have not driven enough renters out of the market such that the SSNIP has become unprofitable to Lessors. Because Lessors are able to increase prices by a SSNIP without losing sufficient sales to render the increase unprofitable, the Multifamily Rental Market is properly defined.

Source: *In re RealPage Antitrust Litigation (Multi-District Class Action)*, Middle District of Tennessee, Case No. 3:23-md-03071

Price setting algorithms increase rents.

Average Advertised Rent in Downtown Seattle

RealPage Defendants Non-Defendants



Source: Fideres Partners

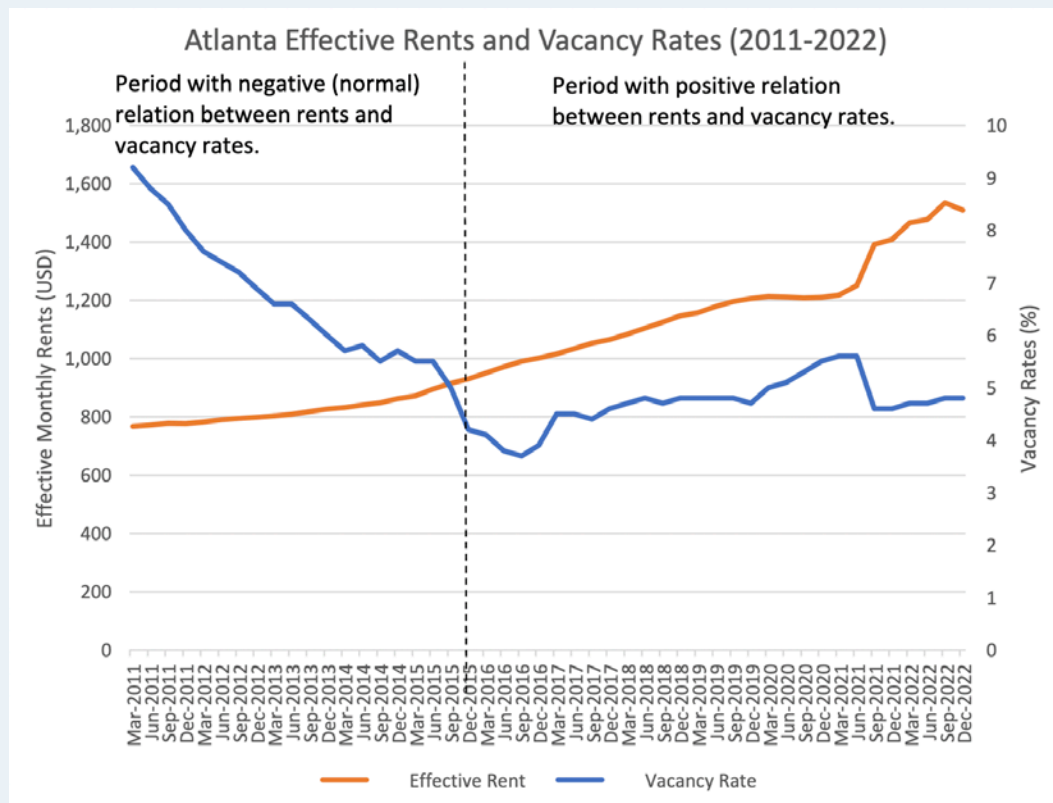
PROMARKET

Price setting algorithms restrict supply.

“My generation grew up worshipping the occupancy gods. We learned that if you were not 95 percent-plus occupied, the asset was failing. But that's not necessarily true anymore.” – Landlord operator, quoted

19. Defendant RealPage has not been shy about its desire to raise vacancy rates. During a 2017 earnings call, then-CEO of RealPage, Steve Winn, described how one large client, managing over 40,000 units, drastically increased its profit by operating at a vacancy rate that “would have made [that property manager’s] management uncomfortable before.”²¹ The client had previously targeted 97% or 98% occupancy rates in markets where it was a leader. After outsourcing rent prices and lease terms to RealPage, the company began targeting 3%-4% revenue growth while operating at a 95% occupancy rate (*i.e.*, 5% vacancy rate).²²

Price setting algorithms restrict supply.



Price setting algorithms increase eviction rates.

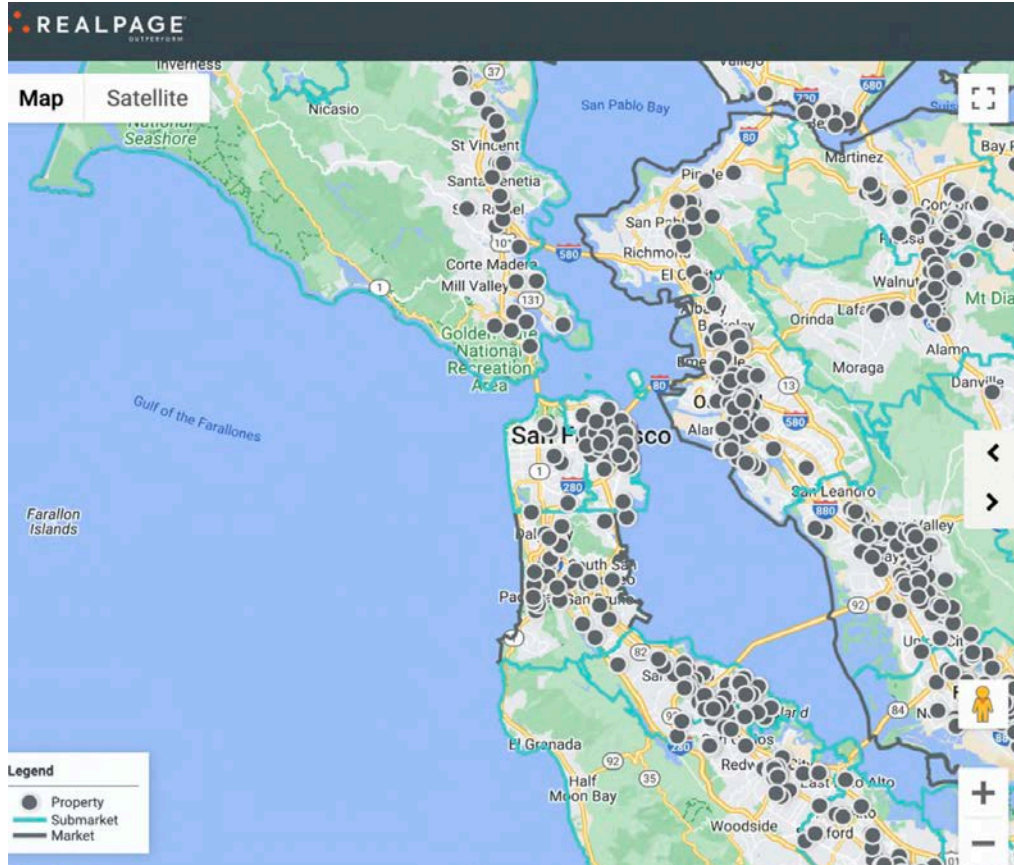
*“One lessor defendant has acknowledged that adopting this pricing **increased turnover rates by 15 percentage points**—meaning tenants had to find new apartments because of these above-market price increases. But as the lessor defendant’s CEO observed, the ‘net effect’ of RealPage’s software ‘pushing people out’ was an additional ‘\$10 million in income.’”*

(Source: State of Arizona v. RealPage, Inc., et al., Superior Court of Arizona, accessible online: <https://www.azag.gov/sites/default/files/2024-02/RealPage%20Complaint.pdf>)

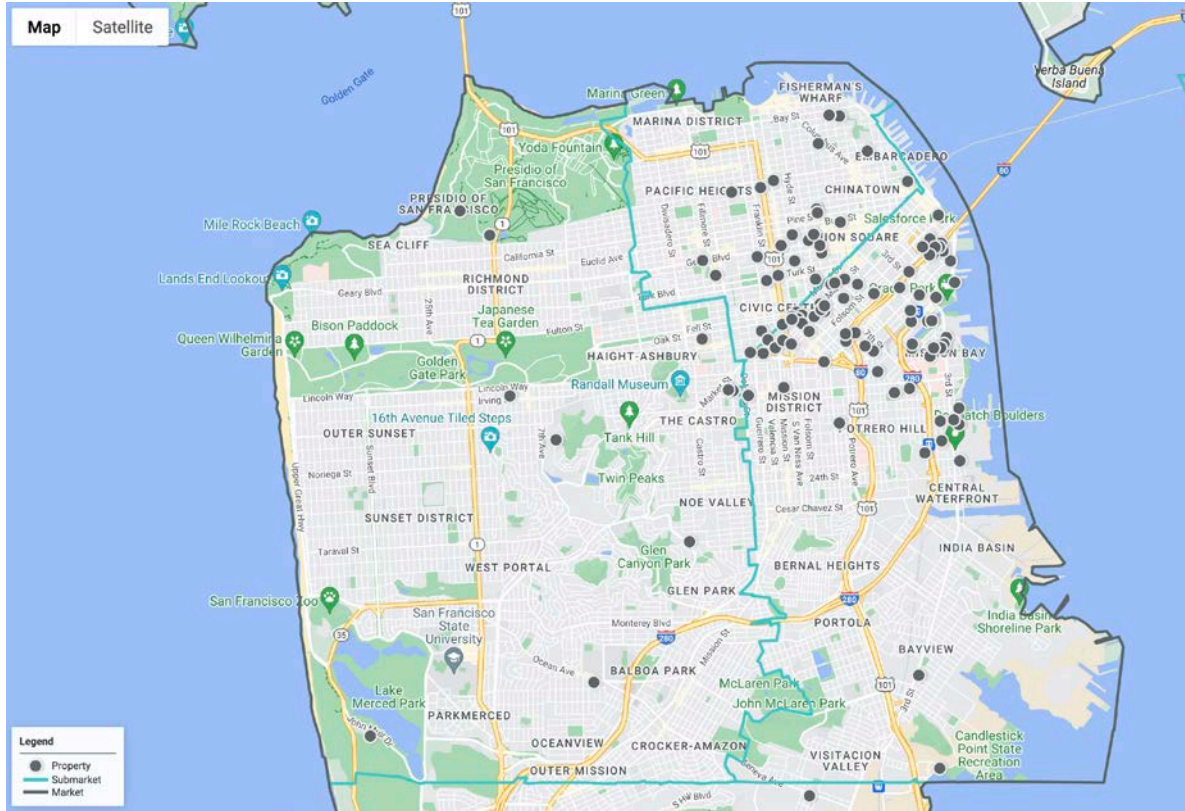
Price setting algorithms increase eviction rates.

134. RealPage also encouraged its clients, including Lessor Defendants, to abandon other traditional market share maximizing practices, such as keeping low turnover rates. Ric Campo, the CEO of Defendant Camden, admitted that Camden's turnover rates increased around 15 percentage points in 2006 after implementing YieldStar. Despite that increase in turnover rates, Defendant Camden's overall same-property revenue grew over 7% in its first year using YieldStar. "What we found," Campo said, "was that driving our turnover rate up actually captured additional revenue."⁷⁴ While Defendant Camden's turnover expenses increased by \$2.5 million, revenue increased \$12.5 million. According to Campo, "[T]he net effect of driving revenue and pushing people out was \$10 million in income."⁷⁵

Market Penetration in San Francisco



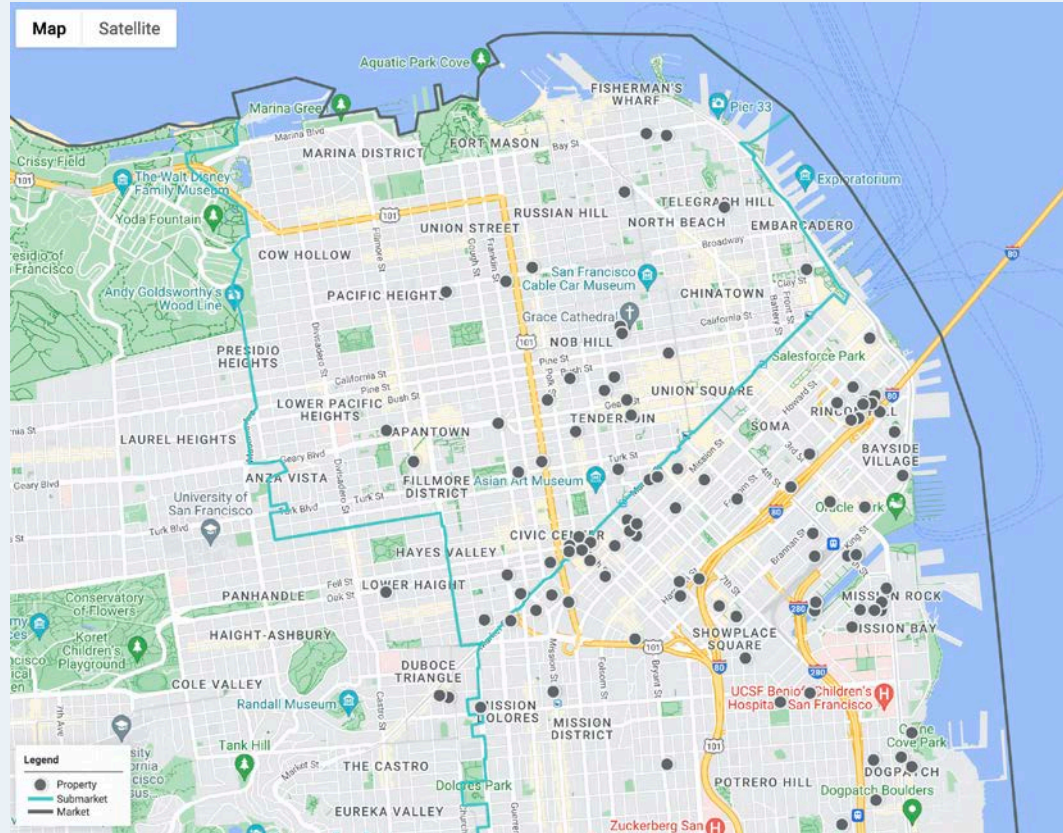
Market Penetration in San Francisco



Source: www.realpage.com/explore

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Market Penetration in San Francisco



Source: www.realtor.com/explore

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San Francisco Landlords Accused of AI Rent Fixing

The following landlords are named defendants in federal litigation:

- Brookfield Properties Multifamily LLC: 76 buildings in San Francisco, 2,100 units in recently-purchased Veritas portfolio
- Greystar Management Services, LP: 44 buildings in San Francisco
- Equity Residential: 43 buildings in San Francisco, approx. 11,667 units, estimated 15% net operating income
- AvalonBay Communities, Inc.: 14 buildings in San Francisco, approx. 3,385 units
- UDR, Inc.: 14 buildings in San Francisco, approx. 3,309 units
- FPI Management, Inc.: 10 buildings in San Francisco
- Essex Property Trust, Inc.: 5 buildings in San Francisco

Source: Various 10-K filings.

Low Market Penetration Can Still Cause Harm

- Even low market penetration (e.g., 5%) can suggest high levels of market manipulation (up to 70% of certain sub-markets)
- Housing market striation (e.g., Class A, Class B, Class C properties; multi-family v. single family home units) can obscure the extent of market penetration
- Market manipulation can have “spillover effects” into other building typologies
- The cost of moving from one apartment to another (“switching costs”) can enhance the market power of a landlord to manipulate prices
- Consolidation of rental housing ownership – and common ownership of rental housing – obscures extent of price fixing schemes

Enforcement Actions:



Attorney General Mayes Sues RealPage and Residential Landlords for Illegal Price-Fixing Conspiracy

Wednesday, February 28, 2024

PHOENIX – Attorney General Kris Mayes today announced a lawsuit against RealPage, Inc. and nine major residential apartment landlords operating in Arizona for conspiring to illegally raise rents for hundreds of thousands of Arizona renters in the Phoenix and Tucson metro areas. RealPage is a software company that offers what it calls “revenue management” to its clients, including those named as its co-defendants in this lawsuit.



Office of the Attorney General for the
District of Columbia

MENU



Newsroom



Attorney General Schwalb Sues RealPage & Residential Landlords for Rental Price-Fixing, Illegally Raising Thousands of District Residents' Rents

November 1, 2023

Lawsuit Alleges that 14 of DC's Largest Landlords Coordinated Through RealPage's Centralized Price-Setting Algorithm to Artificially Inflate Rent Prices



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METRO ATLANTA

FBI raid thrusts antitrust claims against Atlanta landlords into spotlight

A Texas-based tech company is accused of colluding with management companies and landlords to artificially inflate the price of rents.



My News 

Litigation | Antitrust | Real Estate | Litigation

RealPage antitrust lawsuits over rent prices consolidated in Tennessee

By Mike Scarcella

April 10, 2023 1:55 PM PDT · Updated a year ago

AMERICAN ECONOMIC LIBERTIES PROJECT

Federal Legislative Efforts:

Wyden and Welch Introduce Legislation to Crack down on Companies that Inflate Rents with Price-Fixing Algorithms

Senators Klobuchar, Sanders, Hirono, Butler, Merkley and Blumenthal Cosponsor the Preventing the Algorithmic Facilitation of Rental Housing Cartels Act to Speed Up Enforcement Against Companies That Allow Landlords to Collude on Rent Increases

Klobuchar, Colleagues Introduce Antitrust Legislation to Prevent Algorithmic Price Fixing

February 2, 2024

WASHINGTON - U.S. Senator Amy Klobuchar (D-MN), Chairwoman of the Senate Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights, along with Senators Ron Wyden (D-OR), Dick Durbin (D-IL), Peter Welch (D-VT), Mazie Hirono (D-HI), and Richard Blumenthal (D-CT), introduced the *Preventing Algorithmic Collusion Act* to prevent companies from using algorithms to collude to set higher prices.

Reps. Becca Balint and Jesús “Chuy” García Introduce Legislation to Crack Down on Companies Exacerbating Rental Housing Crisis Through Price-Fixing Algorithms

Washington, June 6, 2024



The White House Makes Algorithmic Price Fixing a Priority:



- **Fighting Rent Gouging by Corporate Landlords.** The Biden-Harris Administration is taking action to combat egregious rent increases and other unfair practices that are driving up rents. Corporate landlords and private equity firms across the country have been accused of illegal information sharing, price fixing, and inflating rents. As part of the Strike Force on Unfair and Illegal Pricing announced by President Biden on Tuesday, the President is calling on federal agencies to root out and stop illegal corporate behavior that hikes prices on American families through anti-competitive, unfair, deceptive, or fraudulent business practices. In a recent filing [↗](#), the Department of Justice (DOJ) made clear its position that inflated rents caused by algorithmic use of sensitive nonpublic pricing and supply information violate antitrust laws. Earlier this month, the Federal Trade Commission and DOJ filed a joint brief [↗](#) further arguing that it is illegal for landlords and property managers to collude on pricing to inflate rents – including when using algorithms to do so.

Source: The White House, “President Biden Announces Plan to Lower Housing Costs for Working Families”

State and Local Lawmakers Can Act!

MEMO

A NEW CULPRIT IN THE HOUSING CRISIS: RENT-SETTING SOFTWARE ALGORITHMS

MARCH 2024



Overview

The purpose of this memo is to alert state and local leaders to the problem of algorithmic price fixing in rental housing markets – responsible for driving up rents – and to offer solutions to combat it.

Source: <http://www.economicliberties.us/wp-content/uploads/2024/03/Policy-Memo-Rent-Setting-Software-Algorithms.pdf>

AMERICAN ECONOMIC LIBERTIES PROJECT

The logo for the American Economic Liberties Project. It features a red square with the text "AMERICAN ECONOMIC LIBERTIES PROJECT" in white, all-caps, sans-serif font. To the left of the square are several horizontal blue wavy lines, and below the square are three horizontal blue wavy lines.

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Thank you!

Lee Hepner
Senior Legal Counsel
Lhepner@economicliberties.us

BOARD of SUPERVISORS



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1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-5184
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TDD/TTY No. (415) 554-5227

MEMORANDUM

TO: Christina Varner, Executive Director, Rent Board
Tonia Lediju, Chief Executive Officer, Housing Authority

FROM: Victor Young, Assistant Clerk *Victor Young*

DATE: July 22, 2024

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed Ordinance:

File No. 240766

Ordinance amending the Administrative Code to prohibit the sale or use of algorithmic devices to set rents or manage occupancy levels for residential dwelling units located in San Francisco.

If you have comments or reports to be included with the file, please forward them to Victor Young at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

c: Linda Martin-Mason, Housing Authority



MYRNA MELGAR

DATE: July 23, 2025

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Supervisor Myrna Melgar, Chair, Land Use and Transportation Committee

RE: Land Use and Transportation Committee
COMMITTEE REPORTS

Pursuant to Board Rule 4.20, as Chair of the Land Use and Transportation Committee, I have deemed the following matters are of an urgent nature and request them be considered by the full Board on Tuesday, July 29, 2025

- | | |
|------------------------|--|
| File No. 250760 | Commemorative Plaques - San Francisco Little Italy Honor Walk Expansion Sponsors: Sauter; Dorsey |
| File No. 240803 | Planning, Building Codes - Unauthorized and Rent-Controlled Dwelling Units Sponsor: Melgar |
| File No. 250634 | Planning Code - Use Size Limits Sponsors: Melgar; Sherrill and Sauter |
| File No. 250702 | Building Code - All-Electric Major Renovations Sponsors: Mandelman; Mahmood, Fielder and Melgar |
| File No. 240796 | Administrative Code - Ban on Automated Rent-Setting Sponsors: Chan; Melgar |

These matters will be heard in the Land Use and Transportation Committee at a Regular Meeting on Monday, July 28, 2025.

From: [Board of Supervisors \(BOS\)](#)
To: [BOS-Supervisors](#); [BOS-Legislative Aides](#)
Cc: [BOS-Operations](#); [Carroll, John \(BOS\)](#); [Calvillo, Angela \(BOS\)](#); [De Asis, Edward \(BOS\)](#); [Entezari, Mehran \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: FW: Submitting Written Testimony for File Number 240766
Date: Tuesday, September 3, 2024 12:34:33 PM
Attachments: [ACI SF letter.pdf](#)

Hello,

Please see below communication and attached regarding **File No. 240766:**

Ordinance amending the Administrative Code to prohibit the sale or use of algorithmic devices to set rents or manage occupancy levels for residential dwelling units located in San Francisco.

Regards,

John Bullock
Office of the Clerk of the Board
San Francisco Board of Supervisor
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
(415) 554-5184
BOS@sfgov.org | www.sfbos.org

Disclosures: *Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.*

From: Steve Pociask <steve@theamericanconsumer.org>
Sent: Friday, August 30, 2024 9:39 AM
To: Board of Supervisors (BOS) <board.of.supervisors@sfgov.org>
Subject: Submitting Written Testimony for File Number 240766

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

August 30, 2024

Dear members of the San Francisco Board of Supervisors:

On behalf of the American Consumer Institute, an organization dedicated to advocating for consumers' rights, I write to express our opposition to a proposed ordinance that would ban the use of Artificial Intelligence (AI) in rental pricing decisions. While we share your concern about housing affordability in the city, File Number 240766 will make no impact on the structural problems that cause high rent prices. We strongly urge you to reject File Number 240766 and instead focus on real solutions that will yield meaningful outcomes.

AI presents a major opportunity for businesses to become more efficient, which will ultimately increase consumer welfare. But in order to fully unlock the innovative nature of AI, policymakers must do more to embrace its use and not stymie its development. Unfortunately, the Board's proposal would discourage future innovations and progress. Worse yet, it continues the new trend by some lawmakers appearing to take the easy route of blaming algorithms at the expense of doing the real work to identify causes and solutions to the more difficult and wider issues driving rent prices upwards.

Revenue management software simply manages supply and demand inputs to help renters price units at a rate that people are willing to pay and maintain high occupancy rates. If algorithms are responsible for higher rental prices in San Francisco, why then does the [public information provided from Zillow](#) indicate that overall rent prices in San Francisco fell hundreds of dollars year-over-year?

As the American Consumer Institute noted in a recent [op-ed](#), "while rent-setting algorithms have taken the blame for rising prices, there is scant evidence they are responsible. Roger Valdez from the Center for Housing Economics argues that the rise in rent prices is caused by other factors in the market and that algorithms react to these factors when they compile data to determine the optimal price."

Markets fluctuate and are influenced by inflation, interest rates, capacity, demand, and many other factors.

Rather than pointing blame at a single software company, like RealPage Inc., consumers in San Francisco would be better served if the city worked in conjunction with the private sector to build more housing. For decades, local governments like San Francisco have

put up complicated roadblocks that make it difficult for people and businesses to use their land for the most efficient use. These government-mandated barriers include exclusionary land use requirements, exorbitant building fees, stringent environmental laws, and even quotas on minimum parking lot space per apartment unit.

The [San Francisco Standard](#) noted in a recent story the many factors that cause the cost of building in the U.S. to be the highest in the world. Interestingly, the piece highlights the Board's role in perpetuating this crisis, "The capper is that even if the years-long permitting process goes well, there is the threat of arbitrary project denial at the Board of Supervisors."

Burdensome regulations make it costly to build high-density housing units, which prevents the supply of housing from reaching an equilibrium with housing demand. This imbalance ultimately increases prices in the market and compounds the challenge of higher construction costs that make housing less affordable.

AI is a consumer welfare enhancing technology. And scapegoating technology for the unintended effects of poor policy decisions that have made housing unaffordable does nothing to solve the underlying issues. In summary, we stand in opposition to the proposed anti-consumer law File Number 240766.

Sincerely,

Steve Pociask
President and CEO
American Consumer Institute
Steve@TheAmericanConsumer.Org

ATTACHMENT: PDF with ACI Letterhead



August 30, 2024

Dear members of the San Francisco Board of Supervisors:

On behalf of the American Consumer Institute, an organization dedicated to advocating for consumers' rights, I write to express our opposition to a proposed ordinance that would ban the use of Artificial Intelligence (AI) in rental pricing decisions. While we share your concern about housing affordability in the city, File Number 240766 will make no impact on the structural problems that cause high rent prices. We strongly urge you to reject File Number 240766 and instead focus on real solutions that will yield meaningful outcomes.

AI presents a major opportunity for businesses to become more efficient, which will ultimately increase consumer welfare. But in order to fully unlock the innovative nature of AI, policymakers must do more to embrace its use and not stymie its development. Unfortunately, the Board's proposal would discourage future innovations and progress. Worse yet, it continues the new trend by some lawmakers appearing to take the easy route of blaming algorithms at the expense of doing the real work to identify causes and solutions to the more difficult and wider issues driving rent prices upwards.

Revenue management software simply manages supply and demand inputs to help renters price units at a rate that people are willing to pay and maintain high occupancy rates. If algorithms are responsible for higher rental prices in San Francisco, why then does the [public information provided from Zillow](#) indicate that overall rent prices in San Francisco fell hundreds of dollars year-over-year?

As the American Consumer Institute noted in a recent [op-ed](#), "while rent-setting algorithms have taken the blame for rising prices, there is scant evidence they are responsible. Roger Valdez from the Center for Housing Economics argues that the rise in rent prices is caused by other factors in the market and that algorithms react to these factors when they compile data to determine the optimal price."

Markets fluctuate and are influenced by inflation, interest rates, capacity, demand, and many other factors.

Rather than pointing blame at a single software company, like RealPage Inc., consumers in San Francisco would be better served if the city worked in conjunction with the private sector to build more housing. For decades, local governments like San Francisco have put

up complicated roadblocks that make it difficult for people and businesses to use their land for the most efficient use. These government-mandated barriers include exclusionary land use requirements, exorbitant building fees, stringent environmental laws, and even quotas on minimum parking lot space per apartment unit.

The [San Francisco Standard](#) noted in a recent story the many factors that cause the cost of building in the U.S. to be the highest in the world. Interestingly, the piece highlights the Board's role in perpetuating this crisis, "The capper is that even if the years-long permitting process goes well, there is the threat of arbitrary project denial at the Board of Supervisors."

Burdensome regulations make it costly to build high-density housing units, which prevents the supply of housing from reaching an equilibrium with housing demand. This imbalance ultimately increases prices in the market and compounds the challenge of higher construction costs that make housing less affordable.

AI is a consumer welfare enhancing technology. And scapegoating technology for the unintended effects of poor policy decisions that have made housing unaffordable does nothing to solve the underlying issues. In summary, we stand in opposition to the proposed anti-consumer law File Number 240766.

Sincerely,

Steve Pociask
President and CEO
American Consumer Institute
Steve@TheAmericanConsumer.Org

From: [Board of Supervisors \(BOS\)](#)
To: [BOS-Supervisors](#); [BOS-Legislative Aides](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [De Asis, Edward \(BOS\)](#); [BOS-Operations](#); [Board of Supervisors \(BOS\)](#); [Carroll, John \(BOS\)](#)
Subject: FW: Banning rent fixing! Cancel real page (File Nos. 240766 & 240796)
Date: Thursday, August 29, 2024 11:51:50 AM
Attachments: [Screenshot_20240801-142846.png](#)

Dear Supervisors,

Please see below for a letter from a member of the public regarding:

File No. 240766 - Ordinance amending the Administrative Code to prohibit the sale or use of algorithmic devices to set rents or manage occupancy levels for residential dwelling units located in San Francisco.

File No. 240796 - Ordinance amending the Administrative Code to prohibit the sale or use of algorithmic devices to set rents or manage occupancy levels for residential dwelling units located in San Francisco, and to authorize enforcement by tenants' rights organizations.

Regards.

Richard Lagunte
Office of the Clerk of the Board
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
Voice (415) 554-5184 | Fax (415) 554-5163
bos@sfgov.org | www.sfbos.org

Pronouns: he, him, his

***Disclosures:** Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors' website or in other public documents that members of the public may inspect or copy.*

From: Aaron Cravens <aaron@revelpharmaceuticals.com>
Sent: Thursday, August 1, 2024 2:30 PM

To: Board of Supervisors (BOS) <board.of.supervisors@sfgov.org>

Subject: Banning rent fixing! Cancel real page

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I'm thrilled to see the recent news article highlighting the board of supervisors pursued and hopeful banning of the real page price fixing system.

I know many people in my Mission Bay neighborhood who have been abused by this technology.

Thank you for your efforts!!!

Aaron



San Francisco becomes first US city to ban automated rent-fixing technology

Hamza Fahmy

2 days ago



SAN FRANCISCO - JULY 08: A sign advertising an apartment for rent is displayed in a window July 8, 2009 in San Francisco, California. As the economy continues to falter, vacancy rates for U.S. apartments have spiked to a twenty two year high of 7.5 percent, just short of the record high of 7.8 percent set in 1986. (Photo by Justin Sullivan/Getty Images)

SAN FRANCISCO ([KRON](#)) — On Tuesday, San Francisco became the first city in the nation to have a local ban on automated rent-fixing software. The ban on the use and sale of the technology, penned by Board of Supervisors President Aaron Peskin, aims to ultimately “put more units on the market.”



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From: [Board of Supervisors \(BOS\)](#)
To: [BOS-Supervisors](#); [BOS-Legislative Aides](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [De Asis, Edward \(BOS\)](#); [BOS-Operations](#); [Board of Supervisors \(BOS\)](#); [Carroll, John \(BOS\)](#)
Subject: FW: Attachment to the Official Record for File no. 240766 and 240796
Date: Thursday, August 29, 2024 2:22:13 PM
Attachments: [2024.08.20 Letter from RealPage, Inc. to American Economic Liberties Project.pdf](#)

Dear Supervisors

Please see below and attached for a letter from Gibson, Dunn & Crutcher LLP, on behalf of RealPage, Inc., regarding:

File No. 240766 - Ordinance amending the Administrative Code to prohibit the sale or use of algorithmic devices to set rents or manage occupancy levels for residential dwelling units located in San Francisco.

File No. 240796 - Ordinance amending the Administrative Code to prohibit the sale or use of algorithmic devices to set rents or manage occupancy levels for residential dwelling units located in San Francisco, and to authorize enforcement by tenants' rights organizations.

Regards,

Richard Lagunte
Office of the Clerk of the Board
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
Voice (415) 554-5184 | Fax (415) 554-5163
bos@sfgov.org | www.sfbos.org

Pronouns: he, him, his

Disclosures: *Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors' website or in other public documents that members of the public may inspect or copy.*

From: Johnston, Gabriella <GJohnston@gibsondunn.com>
Sent: Thursday, August 29, 2024 1:25 PM

To: Carroll, John (BOS) <john.carroll@sfgov.org>; Board of Supervisors (BOS) <board.of.supervisors@sfgov.org>
Cc: Weissman, Stephen <SWeissman@gibsondunn.com>
Subject: Attachment to the Official Record for File no. 240766 and 240796

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Mr. Carroll,

We would like to add the attachment to the official record for File no. 240766 and 240796.

This should be reflected in both the upcoming full Board of Supervisors meeting and the 9/9 Land-use and transportation committee meeting.

Sincerely,
Gabriella

Gabriella Johnston
Associate Attorney

T: +1 332.253.7641 | M: +1 347.503.5117
GJohnston@gibsondunn.com

GIBSON DUNN
Gibson, Dunn & Crutcher LLP
200 Park Avenue, New York, NY 10166-0193

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Please see our website at
https://url.avanan.click/v2/_https://www.gibsondunn.com/_YXAzOnNmZHQyOmE6bz_o3MDQ0MTRmYzBIMDU2NWYyYTRkM2QyNjNkMzhiZGNjNDo2OjNhOWE6MmM2ZTQ2YzM4NDQ4M2UzODI2OTc5ZmQwYTUzZThlNTcyMjlkZGRhY2YzNGJmZTIxMzV_mOWI4MDJmODY3NzEyZDp0OkY6Tg for information regarding the firm and/or our privacy policy.

August 20, 2024

Lee Hepner
Senior Legal Counsel
American Economic Liberties Project
lhepner@economicliberties.us

Re: False and Misleading Statements Regarding RealPage, Inc.

Dear Mr. Hepner:

We write regarding false and misleading statements that you and your organization, American Economic Liberties Project, have made regarding revenue management software (“RMS”) sold by our client RealPage, Inc. (“RealPage”). For example, in a recent presentation to the San Francisco City Council, you falsely characterized RealPage’s RMS as an “automated rent setting” tool, you presented unsupported allegations from complaints in pending lawsuits as if they were facts, and you knowingly, or at least recklessly, presented false information about RealPage’s RMS market penetration, including in San Francisco. At best, these misrepresentations and false statements reflect a worrying lack of due diligence on your part. There is extensive publicly available information, including on RealPage’s website,¹ that describes, in detail, how RealPage’s RMS works and why the assertions by you and your organization perpetuate a false narrative about RealPage and its RMS products.

In the presentation you submitted to the San Francisco City Council, you begin, on page 2, by defining “‘automated rent setting’ or ‘AI revenue management.’” On this slide you claim, in three bullet points, that this process involves: (1) landlords delegating pricing and supply decisions to a common decisionmaker, (2) landlords sharing data with a common decisionmaker who have oversight of daily pricing decisions, and (3) landlords making collective decisions about the pricing and supply of multifamily apartments. But this is not how RealPage’s RMS products work and even minimal diligence on your part would have revealed as much. Users of RealPage products, including AI Revenue Management, do not “delegate their rental price and supply decisions to a common decisionmaker.” To the contrary, RealPage’s RMS makes pricing *recommendations*, that users then decide to accept or reject. And RealPage has published data on its website that shows this allegation is demonstrably false: on average, landlords using RealPage’s RMS accept the software’s recommendations *less than 50% of the time*.²

Throughout your presentation to the San Francisco City Council, you also referred to allegations in currently pending lawsuits against RealPage, including the private multi-district class action litigation in Nashville (the “MDL”) and the lawsuit by the Arizona Attorney General’s Office (the

¹ See <https://www.realpagepublicpolicy.com/>.

² See <https://www.realpagepublicpolicy.com/realpagestatement> at 3.

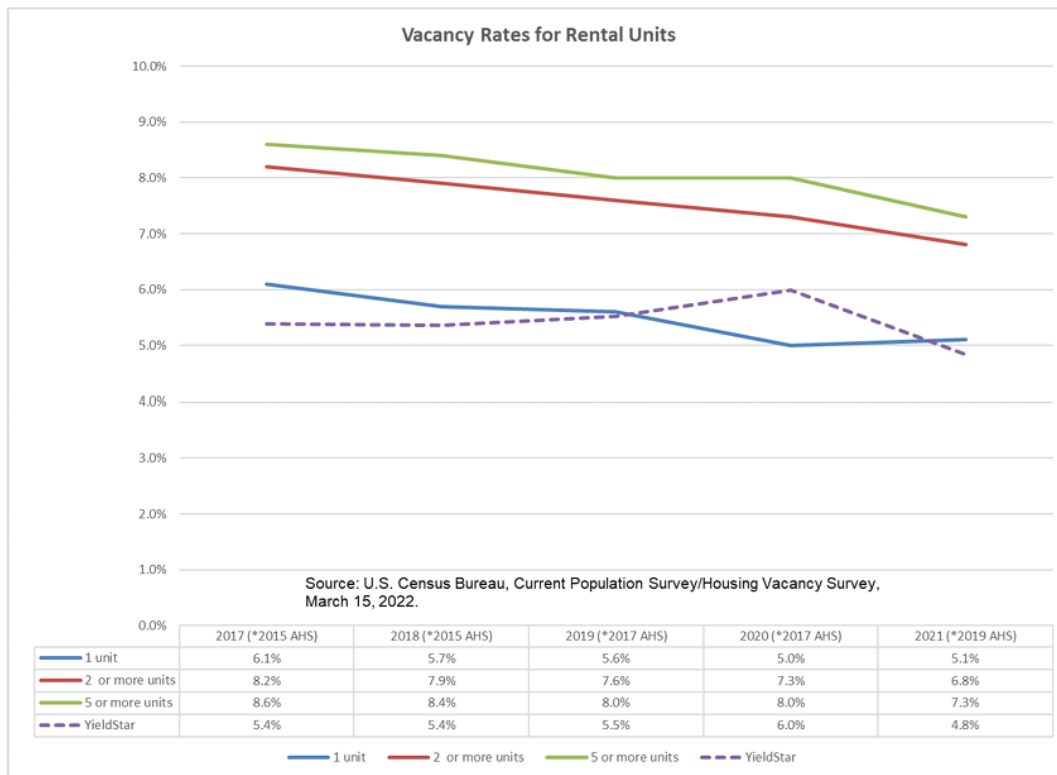
“AZAG lawsuit”). The allegations you reference in both complaints are just that—allegations. You know full well that, at the pleadings stage, courts are required to treat these allegations as true. But they have never been proven and will not be; to the contrary, RealPage has explained publicly—citing to irrefutable evidence—why they are false. Yet, you misleadingly present these allegations as established facts. For example, on page 8 of your presentation to the San Francisco City Council, you cite to an allegation in the MDL complaint that “Lessors are able to increase rents ‘year over year, between 5% and 12% in every market’” *as if it were a fact*, without clarifying that this statement is an unsupported allegation in a pending lawsuit. Documents that you reference in your presentation contradict your assertion that RealPage’s RMS was designed to increase rents. For example, the excerpt from RealPage’s website—with information on how YieldStar can help customers—referenced on page 7 expressly notes that “YieldStar does more than rent pricing.” This snapshot references RealPage’s lease expiration management and move-in day optimization features, both of which help customers to better align supply and demand so units are not sitting vacant. In other words, these features help customers to increase revenue by increasing *occupancy* (not rents).

Despite acknowledging features of RealPage’s RMS designed to *increase* occupancy, later in your presentation, on page 11, you include a slide that purports to show a shift over time from a negative to positive relationship between rents and vacancy rates (i.e., a shift to both vacancy rates and rents increasing in parallel) beginning in late 2015. You attribute this shift to “the advent of RealPage” and assert that “there’s no reason in a healthy market why vacancies should be increasing and causing an increase in rent.”³ Notably, this chart does not include *any* specific data about properties using RealPage’s RMS and does not differentiate between the vacancy rates for properties using RealPage’s RMS versus those that do not. In fact, RealPage’s own data shows that properties using RealPage’s RMS have *lower* vacancy rates than the national average (see Fig. 1).⁴ And a shift in late 2015 (even if one occurred) could not be attributed to “the advent of RealPage” when RealPage’s RMS has been commercially available since 2005.

³ San Francisco Board of Supervisors Land Use and Transportation Committee Regular Meeting (July 29, 2024) at 21.

⁴ See <https://www.realpage.com/storage/files/pages/faqs/pdfs/2023/03/realpage-response-to-senators-warren-smith-sanders-markey.pdf> at 12.

FIGURE 1



In many cases, the allegations that you reference in your presentation do not even support your assertions. For example, on pages 12 and 13 of your presentation, you assert that “[p]rice setting algorithms increase eviction rates.” In support of this claim, you cite to two allegations: a statement from the Arizona Attorney General’s complaint alleging that RealPage’s RMS “increased turnover rates by 15 percentage points” and a statement in the MDL complaint alleging that a lessor defendant’s “turnover rates increased around 15 percentage points in 2006 after implementing YieldStar.” Not only are these statements unproven allegations in pending lawsuits (which you again failed to clarify during your presentation), these statements say nothing about eviction rates. Turnover rate in the multifamily residential rental industry is the number of residents that decide to move out when their lease is over versus those that choose to renew their lease. There is simply no basis to assert—and no plaintiff in the suits you rely on has even *alleged*—that RealPage RMS (or RMS generally) increases eviction rates.

Your presentation also falsely overstates the market penetration of RealPage’s RMS in San Francisco. To show RealPage’s “market penetration,” on slides 14 to 16 you include snapshots

from RealPage’s webpage called “RealPage Explore.” RealPage Explore is a publicly available webpage through which RealPage provides regularly updated market and property data collected from public sources. RealPage Explore and the associated data has been available to the public since May 2018. When a user accesses RealPage Explore, the first thing they see is a disclaimer that states:

RealPage Explore provides publicly available property specific information *without regard to whether the properties are RealPage customers*. RealPage Explore does not provide a listing of properties that use RealPage revenue management products. Properties found on Explore may or may not use any RealPage products, including revenue management.”⁵

To access the snippets from RealPage Explore that you included in your presentation, you necessarily would have been taken to the page that includes the disclaimer cited above. Despite this disclaimer—which, again, you either did not bother to review or deliberately ignored—you falsely claimed during your presentation to the San Francisco City Council that these slides with information from RealPage Explore represent “a visual about [RealPage’s] market penetration in the San Francisco bay area.”⁶ They do not; the reality is that the market penetration of RealPage RMS in the San Francisco MSA is very low—approximately 6.1% for AIRM and YieldStar (combined) and 4% for LRO.

In sum, your assertions about RealPage’s RMS are false, misleading, and easily disproven by publicly accessible data and other resources. They are also inflammatory and prejudicial in that you are knowingly contributing to the widespread misinformation about RMS at a time when legislative bodies and courts are considering these issues. We demand that you immediately cease and desist from perpetuating your false assertions about RealPage and correct the record.

Sincerely,

GIBSON, DUNN & CRUTCHER LLP

/s/ Stephen Weissman

Stephen Weissman

⁵ See <https://www.realpage.com/explore/main> (emphasis added).

⁶ San Francisco Board of Supervisors Land Use and Transportation Committee Regular Meeting (July 29, 2024) at 21.

From: [T.Flandrich](#)
To: [Melgar, Myrna \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Fieber, Jennifer \(BOS\)](#); [Horrell, Nate \(BOS\)](#)
Cc: [Carroll, John \(BOS\)](#)
Subject: Item #3 240766 [Administrative Code - Ban on Automated Rent-Setting] IN SUPPORT
Date: Monday, July 29, 2024 12:20:29 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

29.July 2024

Dear Chair Melgar, Vice Chair Preston and President Peskin,

I am writing today in support of this ordinance to ban the sale and use of algorithmic devices that create price-fixing on rental units and control occupancy rates.

This ordinance will deal directly with one of the sets of invisible-hands manipulating the market, one which hugely impacts tenants and our affordable housing crisis in San Francisco today.

Let's not wait. Please vote to pass this legislation today, send to the full board with a positive, urgent, recommendation.

I sincerely thank you!
Theresa Flandrich
North Beach Tenants Committee

From: [Theo Ellington](#)
To: [Carroll, John \(BOS\)](#)
Cc: [Melgar, Myrna \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Horrell, Nate \(BOS\)](#); [Low, Jen \(BOS\)](#); [Kilgore, Preston \(BOS\)](#)
Subject: RE: Land Use and Transportation [item no. 240766]
Date: Friday, July 26, 2024 3:04:03 PM
Attachments: [image001\[40\].png](#)
[RealPage Statement.pdf](#)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To: John Carroll, Clerk

We would like to provide additional information for the file and record regarding RealPage's revenue management software.

RealPage is a key stakeholder in this matter and is even listed in the findings. We are hoping this additional information provides context about the product in question and provides more detailed analysis based on some of the assumptions made in the proposed ordinance.

cc: Supervisors Melgar, Preston, and Peskin



THEO ELLINGTON

Senior Vice President,
Northern California

C 415.691.9121

STRATEGIES360.COM

THE REAL STORY

REALPAGE'S RESPONSE TO FALSE ALLEGATIONS
CONCERNING ITS REVENUE MANAGEMENT SOFTWARE



REALPAGE'S RESPONSE TO FALSE ALLEGATIONS CONCERNING ITS REVENUE MANAGEMENT SOFTWARE

Summary - The Truth

- Attacks on the industry's use of revenue management are based on demonstrably false information.
- RealPage revenue management software benefits both housing providers and residents.
- RealPage customers:
 - decide their own rent prices,
 - always have 100% discretion to accept or reject software price recommendations,
 - are never punished for declining recommendations, and
 - accept recommendations at widely varying rates that are far lower than has been falsely alleged.
- RealPage revenue management software makes price recommendations in all directions – up, down, or no change – to align with property-specific objectives.
- RealPage revenue management software never recommends that a customer withhold vacant units from the market. In fact, properties using our revenue management products consistently achieve vacancy rates below the national average.
- RealPage uses data responsibly, including limited aggregated and anonymized nonpublic data where accuracy aids pro-competitive uses.
- RealPage revenue management software serves a much smaller portion of the rental market than has been falsely alleged.
- The truth shows the distorted narratives and lawsuits have no merit.

Starting in October 2022, media reports and legal filings have asserted false and misleading claims about RealPage and our revenue management software. This has perpetuated an inaccurate and distorted narrative about RealPage, our revenue management solutions, and the many benefits we bring for renters and housing providers, including a healthier and more efficient rental housing ecosystem.

RealPage revenue management software offers prospective residents and housing providers more options and flexibility in lease terms, aids compliance with Fair Housing laws, does not use any personal or demographic data to generate rent price recommendations, and helps ensure that prospective residents have access to the best pricing available to everyone.

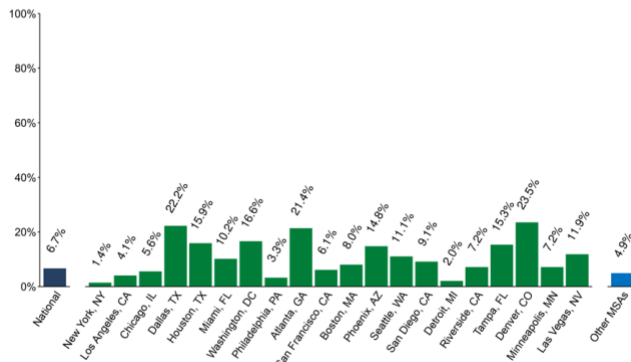
To ensure the public narrative accounts for the true nature of RealPage's products, we want to address some frequently repeated misrepresentations about the prevalence of properties using RealPage revenue management software, our customers' discretion to accept or reject pricing recommendations, and the lawful use of nonpublic information in our revenue management products.

Please visit <https://www.realpagepublicpolicy.com/> to learn the real story.

1. RealPage revenue management software serves a much smaller portion of the rental market than has been falsely alleged.

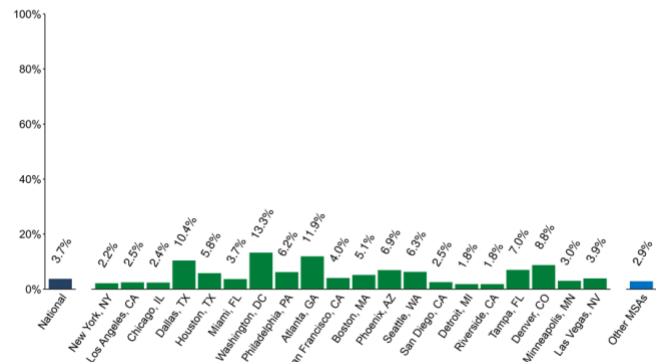
Contrary to the implausible allegations about RealPage’s purported market power, the actual data shows that RealPage revenue management software has low penetration rates that cannot possibly support a conspiracy to fix prices or collude through the software. **As of May 2023, less than 7% of rental units used AI Revenue Management (AIRM) or YieldStar (combined) across metropolitan statistical areas (MSAs) throughout the United States, and less than 4% of rental units used Lease Rent Options (LRO).**

Penetration Rates Across MSAs
AIRM and YieldStar, May 2023



Note: The MSAs listed above are the Top 20 MSAs by number of rental housing units from the 2022 American Community Survey.

Penetration Rate Across MSAs
LRO, May 2023



Note: The MSAs listed above are the Top 20 MSAs by number of rental housing units from the 2022 American Community Survey.

To support false claims about RealPage’s purported market penetration, the lawsuits and media repeatedly and erroneously point to RealPage’s website, specifically the Explore tool (<https://www.realpage.com/explore/main>), for a listing of properties that allegedly use RealPage revenue management products.

As a prominent legend on the website clearly states, RealPage Explore provides publicly available information about specific properties, regardless of whether they are RealPage revenue management customers or have any other RealPage product or service. In fact, many of the properties shown on RealPage Explore do not use any RealPage products at all.



Complimentary market and property data with constant updates.
So you will never miss out.



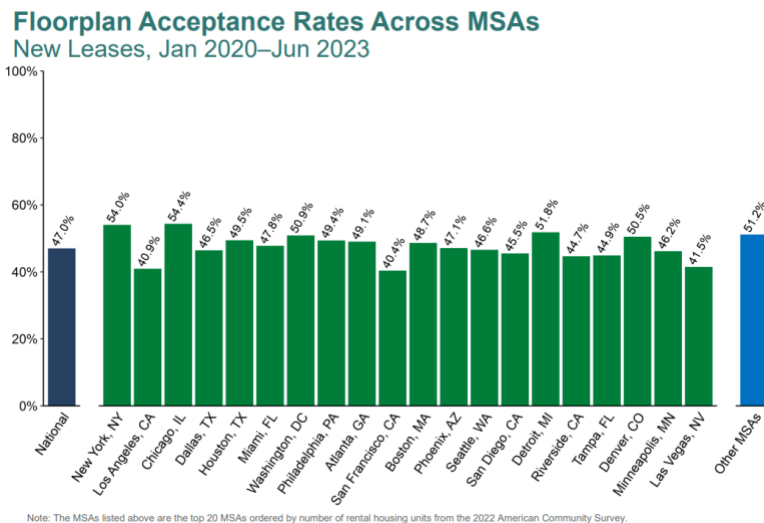
RealPage Explore provides publicly available property specific information without regard to whether the properties are RealPage customers. RealPage Explore does not provide a listing of properties that use RealPage revenue management products. Properties found on Explore may or may not use any RealPage products, including revenue management. AI Revenue Management and YieldStar (combined) are used by less than 7% of rental units and LRO is used by less than 4% of rental units on average across metropolitan statistical areas (MSAs) throughout the United States.*

*Rental units on AI Revenue Management, YieldStar, and LRO as of May 2023 compared to occupied and vacant rental units from the 2022 American Community Survey.

2. *RealPage customers make their own pricing decisions, and acceptance rates of RealPage’s pricing recommendations have been greatly exaggerated.*

RealPage does not “set” its customers’ rents, and the data shows such allegations are without any merit. RealPage customers make decisions about their unique strategies and set their parameters for pricing recommendations. RealPage revenue management software then provides bespoke pricing recommendations to customers based on their unique strategies and property histories. Housing providers do not cede any discretion to RealPage in making their decisions regarding rent setting. While RealPage revenue management software assists housing providers in analyzing their properties’ data and determining how their supply (availability) compares to demand (leasing activity) for each floor plan, the software offers only recommendations.

Our customers always retain 100% flexibility and are never obligated – contractually or otherwise – to follow the pricing recommended by the software. Customers accept RealPage’s price recommendations for their listed rental prices at widely varying rates. Overall, for YieldStar and AIRM, property owners and managers accept RealPage’s floor-plan-level rental price recommendations for new leases less than 50% of the time.¹ A single customer that owns or manages multiple properties often accepts our rental price recommendations at widely varying rates even among its own properties. And these acceptance rates do not account for further deviations at the individual lease level (i.e., the leasing office deciding to make changes) after the customer has made a decision to set a different price or to accept the software’s price recommendation. Such further deviations commonly include additional discounts on the rental price or the inclusion of concessions that benefit prospective renters.



Although the public narrative about RealPage’s software suggests it always recommends higher rents, the reality is far different. Our revenue management products recommend decreases, increases, or maintenance of existing rental prices depending on the housing provider’s preferred strategy.

Contrary to false assertions made by critics, there are no negative consequences when a customer declines RealPage’s pricing recommendation. RealPage does not penalize, remove, “kick off,” or take any adverse action against customers if they have low acceptance rates. It is ludicrous to think that RealPage has any power over its customers to do so. This false claim also fundamentally misunderstands RealPage’s business model in that RealPage is compensated for its services based on the number of units that use RealPage revenue management software—not based on acceptance rates. While RealPage has

¹ From January 2020-June 2023, in the top 20 Metropolitan Statistical Areas (MSAs) across the country, the overall acceptance rates for new leases ranged from just over 40% to just under 55%.

recommended that customers accept pricing recommendations 80-90% of the time, customers choose to accept recommendations at their own discretion at widely varying (and significantly lower) rates, which is always their prerogative.

Nor is it true that RealPage’s revenue management software is designed to recommend “above market” rent prices. To the contrary, RealPage’s revenue management products are focused on recommending rents that will cause a property’s vacant units to be filled at competitive prices. This can only work if the software recommends prices in all directions. When the software detects that units at a property are not leasing up quickly enough to keep pace with upcoming availability at that property, it will routinely recommend price reductions. The software often recommends reductions before an owner would otherwise intuitively determine to lower its rents. The software makes those recommendations without regard to what is happening at other properties and completely independently of any recommendations being made to other RealPage customers.

RealPage software does not recommend withholding any apartment units from the market, and our customers generally experience lower vacancy rates. The software recommends prices for all available units at a property. Properties that utilize our revenue management tools consistently achieve vacancy rates below the national average, promoting a healthier and competitive housing market for apartment owners and their residents.

3. RealPage’s revenue management products use nonpublic data only in anonymized, aggregated forms such that customers gain no insight through the software into their competitors’ specific prices or strategies, which is perfectly consistent with the antitrust laws.

RealPage software makes rent price recommendations based primarily on a property’s own internal supply (availability) and demand (leasing activity) data.

RealPage software does not provide competitors with specific information about any other properties. RealPage revenue management software does not share or use competitor occupancy, competitor occupancy goals, or the rent prices recommended to competitors, and reports to the contrary are false.

YieldStar and AIRM responsibly use aggregated and anonymized rent pricing data from multiple sources to provide the algorithm and customers with insights when the software recommends a change in rent (either up or down). If an increase or decrease in rent price is recommended to balance upcoming availability of a floor plan at the property with expected demand for that floor plan to align with the property’s specific strategy, then the software considers publicly available advertised rents (combined with nonpublic executed lease pricing data, where available) from other properties when calculating the magnitude of the recommended adjustment. RealPage further designed YieldStar and AIRM to ensure that property owners/managers do not have visibility into the pricing of a competitor’s specific properties, nor does the software recommend rents for any property based on the recommendations being made to a competitor’s property.

LRO does not use competitor nonpublic executed lease pricing data in the market insights used to recommend prices for a customer. LRO is also completely separate from YieldStar and AIRM, and contrary to the allegations, LRO does not have access to the YieldStar/AIRM database, and the YieldStar/AIRM database does not have access to the LRO database.

Importantly, our data indicates that nonpublic executed lease pricing data is, on average, **lower** than the corresponding publicly available advertised information about the same properties’ rental units. Intuitively, this makes sense because properties may offer discounts and concessions at the time of lease that lower

the effective executed lease price as compared to the published advertised rent price for any particular unit. Prohibiting use of such nonpublic information, as some politicians and special interest groups have recently tried to do, could result in using incorrect and inflated price information that may harm consumers and will logically result in less accurate market price data and less competitive pricing recommendations.

Using nonpublic data to build, test, enhance, and train revenue management models does not violate antitrust laws because it is pro-competitive and ensures that recommended prices more accurately reflect current market conditions. As a federal court recently noted, the “mere use of algorithmic pricing based on artificial intelligence by a commercial entity, without any allegations about any agreement between competitors—whether explicit or implicit—to accept the prices that the algorithm recommends does not plausibly allege an illegal agreement.” See *Gibson, et al. v. Cendyn Group, LLC, et al.*, Case No. 2:23-cv-00140-MMD-DJA (Order dismissing case dated May 8, 2024, related to a hotel room pricing algorithm that, as alleged in the complaint, runs on the “confidential” and “pooled” data of hotel customers using the software in a central hub and “trains itself” on that data; “calculates demand and generates ‘optimal’ room rates, on a daily basis,” for each hotel customer; and gets better at predicting optimal hotel room pricing with the benefit of information provided by each customer.).²

In 2015, when Jonathan Kanter, the current Assistant Attorney General for the U.S. Department of Justice (DOJ) Antitrust Division, was in private practice, he and his co-authors recognized the “pro-competitive advantages” of algorithm-based software and noted in an article that “there are many consumer benefits stemming from the use of algorithm-based software, **including for pricing** [emphasis added].”³

The DOJ extensively reviewed LRO and YieldStar in 2017, without objecting to, much less challenging, any feature of the products. In 2017, the DOJ reviewed RealPage’s acquisition of LRO to ensure there were no antitrust concerns. As part of DOJ’s comprehensive review that lasted most of the year, the DOJ gathered extensive information about LRO and YieldStar and conducted numerous interviews with RealPage personnel. This process provided DOJ with full visibility into how RealPage’s revenue management software operated. Following this review, the DOJ granted antitrust clearance for RealPage’s acquisition of LRO without any objections about RealPage’s revenue management products or related business practices. RealPage’s revenue management products are fundamentally the same today as they were when the DOJ reviewed them in 2017.

RealPage will continue cooperating with any inquiries from government authorities, including the DOJ.

4. Plaintiffs in the RealPage civil cases will not be able to support their false claims.

In the RealPage multidistrict litigation (MDL), and in copycat suits brought by two state Attorneys General, who did not provide RealPage with any opportunity to be heard before suing, the plaintiffs rely on the same false claims discussed above. Because these claims have no basis in reality, plaintiffs will not be able to find support for them in discovery.

Although we are pleased that the MDL Court dismissed the student housing complaint (which was based on the same revenue management software at issue in the multifamily housing complaint) and rejected applicability of the “per se” rule even as to the false allegations in the multifamily housing complaint, we recognize the Court was legally bound at this stage to accept as true all of the false and inaccurate assertions made in the complaint.

Those lawsuits live or die based on whether the assertions made in the complaint (and refuted above) are true or false.

² Dkt. No. 144 (First Amended Class Action Complaint), Dkt. No. 183 (Order dismissing case with prejudice).

³ “A Closer Look at DOJ’s 1st E-Commerce Price Fixing Case,” Law360 (May 12, 2015).

The lead opposing counsel in the MDL described the “heart” of the plaintiffs’ theory to the Court in the following way:

*That’s the **heart of this case**, is that the horizontal -- the horizontal defendants here, the property owners and managers, are working together on pricing strategy. And it **only works** if they **all work together**. And – because if somebody undercuts it, of course – if somebody doesn’t go in, they’ll steal business away from the others. Because the others are raising the price of the recommendations that RealPage -- and RealPage doesn’t just say, hey, we’re going to set your prices. They say we’re going to set your prices; you’re going to get a super competitive return. We’re going to set your prices above the market. ...*

And that’s what they [RealPage] tell the owners/operators they’re going to do. Okay? And the owner/operators we know accept their recommendation, according to [Confidential Witness 7], at least 80 percent of the time. ...

Because it doesn’t – it doesn’t work unless enough of the property owners, you know, accept ... the price given.⁴

To be clear, these are the allegations on which the plaintiffs’ claims against RealPage rest, but these alleged “facts” are false. As RealPage and its customers know, “the heart of this case” **never had a heartbeat** – the data clearly shows that RealPage does not set customers’ prices and customers do what they believe is best for their respective properties to vigorously compete against each other in the market. **It is unfortunate that the public is repeatedly being told these falsehoods and that RealPage and its customers do not have the opportunity to correct them within the lawsuits until a later stage in the case.**⁵

5. Housing affordability is a national problem created by economic and political forces—not by the use of revenue management software.

Affordability of rental housing in the U.S. is a critically important issue, driven by a persistent undersupply of rental housing units, increasing demand for rental housing in many areas of the country, inflationary pressures that affect costs to build, insure and manage housing properties, inefficient or unnecessarily onerous permit and zoning requirements, elevated mortgage rates, increasing home prices driving more people to rent than own their homes, changes in where and how people choose to live, and many other complex factors.

Everyone should have access to decent housing that is affordable. Unfortunately, rather than focusing on policies and factors that could actually improve housing affordability in the U.S., some have chosen to attack the industry’s use of revenue management software as a potential culprit for the country’s housing affordability crisis. This misguided narrative appeals to fear and ignorance, while sidestepping the underlying issues that could make a real difference for those who are struggling to afford suitable housing.

⁴ Statements by Patrick J. Coughlin, Motion to Dismiss Hearing Transcript, Case No. 3:23-md-03071, Dkt. No. 673 (Hearing on December 11, 2023) [emphasis added].

⁵ By way of example, RealPage learned that on November 23, 2022, Confidential Witness 4 (CW4) rejected all of the statements in the MDL complaint attributed to CW4 by confirming to plaintiffs’ counsel that the statements do not reflect CW4’s sentiment. CW4 contacted RealPage and provided this information unprompted, and on CW4’s own accord, and explained that CW4 does not support the allegations in the lawsuit.



realpagepublicpolicy.com

From: [Amina Rubio](#)
To: [Board of Supervisors \(BOS\)](#)
Subject: Fwd: Open Comment
Date: Tuesday, July 16, 2024 2:27:24 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello Supervisors,
My name is Amina Rubio, residing in district 3
I am supporting legislation that Mr. Peskin is introducing to ban price fixing in order to protect tenants.

The link below is link from
which Senator Elizabeth Warren shares her concern about price fixing software.
Please pass out the Senator's letter to the Supervisors

<https://www.warren.senate.gov/imo/media/doc/2022.11.22%20Letter%20to%20RealPage%20re%20YieldStar%20Algorithm.pdf>

Hi Supervisors,
I'm Amina Rubio, a tenant at 634 Powell, in a 34 unit building that was formerly owned by Mae and Ronald Tong. family owned mom and pop landlords, but taken over in 2016, by Veritas large corporate with over half as market rate units with remaining 9 long-term unit and currently 2 vacant units.

I've noticed that in recent years, turnover and empty units have increased in my building, so much so that it's now like a revolving hotel.

I've heard about this price-fixing software and am concerned that it gives my building owner more power to put pressure on me and other tenants.

If we want to create more housing and make it available to people, this type of software is not the way to do it.

I'd like to quote a letter by Senator Warren who sent an letter to Real Page about it's Yieldstar tool:

"YieldStar's recommendation that landlords keep units vacant when tenants are unable to meet its asking price undermines efforts to ensure that the housing market is fair and free from discrimination. Keeping rental prices artificially high predictably and disproportionately hurts lower-income tenants, tenants of color, female-headed households, and persons with disabilities. It also undermines efforts to increase housing affordability by limiting the expanding the housing supply"

Thank you.

Introduction Form

(by a Member of the Board of Supervisors or the Mayor)

I hereby submit the following item for introduction (select only one):

- ☐ 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- ☐ 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- ☐ 3. Request for Hearing on a subject matter at Committee
- ☐ 4. Request for Letter beginning with "Supervisor inquires..."
- ☐ 5. City Attorney Request
- ☐ 6. Call File No. from Committee.
- ☐ 7. Budget and Legislative Analyst Request (attached written Motion)
- ☐ 8. Substitute Legislation File No.
- ☐ 9. Reactivate File No.
- ☐ 10. Topic submitted for Mayoral Appearance before the Board on

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- ☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission
- ☐ Planning Commission ☐ Building Inspection Commission ☐ Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- ☐ Yes ☐ No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Subject:

Long Title or text listed:

Signature of Sponsoring Supervisor: