1   [Administrative Code - Ban on Automated Rent-Setting]

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3   **Ordinance amending the Administrative Code to prohibit the sale or use of algorithmic**

4   **devices to set rents or manage occupancy levels for residential dwelling units located**

5   **in San Francisco.**

6   NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
               Additions to Codes are in _single-underline italics Times New Roman font_.
7   **Deletions to Codes** are in ~~_strikethrough italics Times New Roman font_~~.
               Board amendment additions are in <u>double-underlined Arial font</u>.
8   **Board amendment deletions** are in ~~strikethrough Arial font~~.
               Asterisks (*   *   *) indicate the omission of unchanged Code
9   subsections or parts of tables.

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

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13   Section 1. Background and Findings.

14   (a)   In recent years, a number of new <u>revenue management </u>software programs,

15   often referred to as "algorithmic devices," have threatened to destabilize rental housing

16   markets in cities nationwide, including San Francisco.

17   (b)   These programs enable landlords to indirectly coordinate with one another

18   through the sharing of non-public competitively sensitive data, in order to artificially inflate

19   rents and vacancy rates for rental housing. Participating landlords provide vast amounts of

20   proprietary data to the programs, which ~~in turn~~ <u>do not just summarize statistical data, but also</u>

21   <u>perform calculations with the data to then </u>set or provide recommendations for rent and

22   occupancy levels.

23   (c)   More and more landlords in large U.S. cities now pool their data and pricing

24   decisions using such software. By some estimates, this includes owners of as much as 70%

25   of all rental housing in San Francisco.

1   (d)   The software has contributed to double-digit rent increases, higher vacancy

2   rates, and higher rates of eviction, and has generally distorted markets so that rents and

3   vacancy rates have increased in tandem.

4   (e)   Often used by large corporate landlords, the software fuels the consolidation of

5   corporate and private equity ownership of rental housing, at the expense of landlords large

6   and small who are willing to play by the normal rules. Landlords using these tools are not

7   engaging in appropriate market behavior. And the companies developing and selling these

8   tools to San Francisco landlords are not doing so either, and are contributing to these

9   problems.

10   (f)   Numerous antitrust lawsuits have been filed against certain of these companies,

11   including RealPage, Inc. and Yardi Systems, Inc. The lawsuits allege that these companies

12   are enabling and participating in a scheme of unlawful rent-fixing. These include a lawsuit

13   filed by the District of Columbia Attorney General in November 2023, a lawsuit filed by the

14   Arizona Attorney General in February 2024, and more than 20 federal private class action

15   lawsuits filed nationwide that have been consolidated in the federal court in the Middle District

16   of Tennessee. The United States Department of Justice recently filed a Statement of Interest

17   in support of the efforts to regulate these companies.

18   (g)   Instead of waiting for court processes which may take years to resolve, this

19   ordinance prohibits the sale or use of algorithmic devices for the purpose of setting rents on

20   residential dwelling units in San Francisco, to bring immediate relief to San Francisco tenants,

21   as well as to put landlords who have been using these devices on equal footing with those

22   who are willing to adhere to fair standards for setting rental rates.

23   (h)   This ordinance is not intended to prevent the development or sale of software to

24   help landlords manage their units generally or through the use of public data. Nor does this

25   ordinance regulate the amount of rent that a landlord may charge. This ordinance takes aim

1   only at the use of ~~the~~ algorithmic devices that analyze and share non-public data, to prevent

2   the harms described above.

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4   Section 2. Chapter 37 of the Administrative Code is hereby amended by adding

5   Section 37.10C, to read as follows:

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

7   *(a)* ***Prohibition on Sale.*** *It shall be unlawful to sell, license, or otherwise provide to San*

8   *Francisco landlords any algorithmic device that sets, recommends, or advises on rents or occupancy*

9   *levels that may be achieved for residential dwelling units in San Francisco.*

10   *(b)* ***Prohibition on Use.*** *It shall be unlawful for a landlord to use an algorithmic device*

11 *described in subdivision (a) when setting rents or occupancy levels for residential dwelling units in San*

12 *Francisco.   Each separate month that a violation exists or continues, and each separate residential*

13 *dwelling unit for which the landlord used the algorithmic device, shall constitute a separate and*

14 *distinct violation.*

15   *(c)* ***Definitions.***

16   *(1)*   *"Algorithmic device" means a device* ~~such as a~~, commonly known as

17 revenue management *software* ~~program~~, *that uses one or more algorithms to perform calculations*

18 *of non-public competitor data concerning local or statewide rents or occupancy levels, for the purpose*

19 *of advising a landlord on whether to leave* ~~their~~ a *unit vacant or on the amount of rent that the*

20 *landlord may obtain* for that unit~~from a tenant~~. *"Algorithmic device'' includes a product that*

21 *incorporates an algorithmic device, but does not include (A)* ~~any~~ report that publishe~~sd by a trade~~

22 ~~association that receives renter~~ existing rental *data*~~and publishes it~~ *in an aggregated manner* but

23 does not recommend rents or occupancy levels for future leases*; or (B) a product used for the*

24 *purpose of establishing rent or income limits in accordance with the affordable housing program*

25 *guidelines of a local government, the state, the federal government, or other political subdivision.*

1   *(2)   "Non-public competitor data" means information that is not available to the*

2 *general public, including information about actual rent prices, occupancy rates, lease start and end*

3 *dates, and similar data, regardless whether the information is attributable to a specific competitor or*

4 *anonymized, and regardless whether it is derived from or otherwise provided by another person that*

5 *competes in the same market or a related market.*

6   *(d) **Remedies.***

7   *(1) The City Attorney may file a civil action for violations of subsections (a) and/or (b),*

8 *for damages, injunctive relief, restitution/return of illegal profits, and/or civil penalties of up to $1,000*

9 *per violation. The court shall award reasonable attorney's fees and costs to the City Attorney if the*

10 *City Attorney is the prevailing party in such a civil action.*

11   *(2) A tenant may file a civil action for violations of subsection (b), for injunctive relief,*

12 *money damages, and/or civil penalties of up to $1,000 per violation. The court shall award reasonable*

13 *attorney's fees and costs to the tenant if the tenant is the prevailing party in such a civil action. A lease*

14 *provision that limits a prevailing tenant from obtaining attorneys' fees shall not be enforceable against*

15 *a tenant's claim for attorneys' fees that arises under this subsection (d)(2).*

16   *(e) **Undertaking for the General Welfare.** In enacting and implementing this Section 37.10C,*

17 *the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it*

18 *imposing on its officers and employees, an obligation for breach of which it is liable in money damages*

19 *to any person who claims that such breach proximately caused injury.*

20   *(f) **Severability.** If any subsection, sentence, clause, phrase, or word of this Section 37.10C,*

21 *or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a*

22 *decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining*

23 *portions or applications of the Section. The Board of Supervisors hereby declares that it would have*

24 *passed this Section and each and every subsection, sentence, clause, phrase, and word not declared*

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1 *invalid or unconstitutional without regard to whether any other portion of this Section or application*

2 *thereof would be subsequently declared invalid or unconstitutional.*

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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.

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9 APPROVED AS TO FORM:
   DAVID CHIU, City Attorney

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11 By: /s/ _____
   MANU PRADHAN

12 Deputy City Attorney
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