

BOARD of SUPERVISORS



City Hall
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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 30, 2024

SUBJECT **COMMITTEE REPORT, BOARD MEETING**
Tuesday, July 30, 2024

The following file should be presented as COMMITTEE REPORT during the Board meeting on Tuesday, July 30, 2024. This ordinance was acted upon during the Land Use and Transportation Committee meeting on Monday, July 29, 2024, at 1:30 p.m., by the votes indicated.

BOS Item No. 35

File No. 240766

[Administrative Code - Ban on Automated Rent-Setting]

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.

RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

Vote: Supervisor Myrna Melgar – Aye
Supervisor Dean Preston – Aye
Supervisor Aaron Peskin – Aye

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

File No. 240766

Committee Item No. 3
Board Item No. 35

COMMITTEE/BOARD OF, SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation
Board of Supervisors Meeting:

Date: July 29, 2024
Date: July 30, 2024

Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input type="checkbox"/>	<input type="checkbox"/>	Resolution
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Ordinance - VERSION 2
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Legislative Digest - VERSION 2
<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 type="checkbox"/>	<input checked="" type="checkbox"/>	Public Correspondence

OTHER

<input type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Committee 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>Presidential Action Transfer Memo – July 22, 2024</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Committee Report Request Memo – July 24, 2024</u>
<input type="checkbox"/>	<input type="checkbox"/>	

Prepared by: John Carroll
Prepared by: John Carroll
Prepared by: _____

Date: July 25, 2024
Date: July 30, 2024
Date: _____

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

2

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.

7 **Additions to Codes** are in *single-underlined italics Times New Roman font*.

8 **Deletions to Codes** are in ~~strikethrough italics Times New Roman font~~.

9 **Board amendment additions** are in double-underlined Arial font.

10 **Board amendment deletions** are in ~~strikethrough Arial font~~.

11 **Asterisks** (* * * *) indicate the omission of unchanged Code

12 subsections or parts of tables.

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

14 Section 1. Background and Findings.

15 (a) In recent years, a number of new revenue management software programs,

16 often referred to as “algorithmic devices,” have threatened to destabilize rental housing

17 markets in cities nationwide, including San Francisco.

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

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

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

21 proprietary data to the programs, which in turn do not just summarize statistical data, but also

22 perform calculations with the data to then set or provide recommendations for rent and

23 occupancy levels.

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

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

26 of all rental housing in San Francisco.

(d) The software has contributed to double-digit rent increases, higher vacancy rates, and higher rates of eviction, and has generally distorted markets so that rents and vacancy rates have increased in tandem.

(e) Often used by large corporate landlords, the software fuels the consolidation of corporate and private equity ownership of rental housing, at the expense of landlords large and small who are willing to play by the normal rules. Landlords using these tools are not engaging in appropriate market behavior. And the companies developing and selling these tools to San Francisco landlords are not doing so either, and are contributing to these problems.

(f) Numerous antitrust lawsuits have been filed against certain of these companies, including RealPage, Inc. and Yardi Systems, Inc. The lawsuits allege that these companies are enabling and participating in a scheme of unlawful rent-fixing. These include a lawsuit filed by the District of Columbia Attorney General in November 2023, a lawsuit filed by the Arizona Attorney General in February 2024, and more than 20 federal private class action lawsuits filed nationwide that have been consolidated in the federal court in the Middle District of Tennessee. The United States Department of Justice recently filed a Statement of Interest in support of the efforts to regulate these companies.

(g) Instead of waiting for court processes which may take years to resolve, this ordinance prohibits the sale or use of algorithmic devices for the purpose of setting rents on residential dwelling units in San Francisco, to bring immediate relief to San Francisco tenants, as well as to put landlords who have been using these devices on equal footing with those who are willing to adhere to fair standards for setting rental rates.

(h) This ordinance is not intended to prevent the development or sale of software to help landlords manage their units generally or through the use of public data. Nor does this 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.

3
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 published 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.

(2) "Non-public competitor data" means information that is not available to the general public, including information about actual rent prices, occupancy rates, lease start and end dates, and similar data, regardless whether the information is attributable to a specific competitor or anonymized, and regardless whether it is derived from or otherwise provided by another person that competes in the same market or a related market.

(d) Remedies.

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

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

(e) Undertaking for the General Welfare. In enacting and implementing this Section 37.10C, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

(f) Severability. If any subsection, sentence, clause, phrase, or word of this Section 37.10C, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Section. The Board of Supervisors hereby declares that it would have passed this Section and each and every subsection, sentence, clause, phrase, and word not declared

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.

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\01775704.docx

REVISED LEGISLATIVE DIGEST
(Amended in Committee – July 29, 2024)

[Administrative Code - Ban on Automated Rent-Setting]

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.

Existing Law

City law does not regulate how landlords may set rents or occupancy levels for residential rental units in San Francisco.

Amendments to Current Law

The proposed ordinance would prohibit the sale or use of “algorithmic devices” to set, recommend, or advise on rents or occupancy levels for residential rental units in San Francisco. The term “algorithmic device” means 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 providing a landlord recommendations on whether to leave their unit vacant or on what rent to charge. An entity that sold such a device for use on residential rental units in San Francisco, or a San Francisco landlord that used such a device, could face a civil action and be ordered to pay damages, restitution, civil penalties of up to \$1,000 per violation, and/or attorneys’ fees.

Background Information

It has been alleged that automated rent-setting through algorithmic devices is a form of price-fixing that violates federal and state antitrust law. The ordinance would prohibit the sale or use of algorithmic devices that analyze and share non-public data for the purpose of setting rents or occupancy levels for residential rental units, but does not prevent the development or sale of software to help landlords manage their units generally, or regulate the amount of rent that a landlord may charge.

On July 29, 2024, the ordinance was amended in committee to clarify the definitions in the ordinance.

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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”?

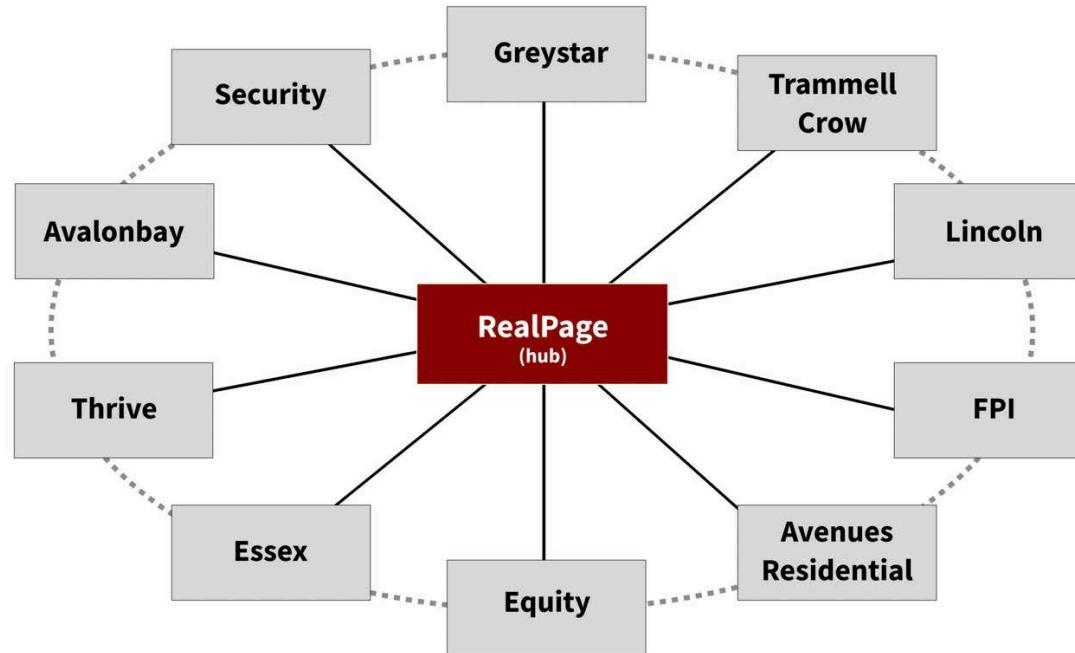
- Landlords delegate their rental price and supply decisions to a common decisionmaker
- Landlords who should ordinarily be competing with each other as to price share data with a common decisionmaker, and the common decisionmaker provides “daily pricing and ongoing revenue oversight”
- Rather than function 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.realpage.com/videos/yieldstar-helps-top-nmhc-companies/>

Price setting algorithms increase rents.

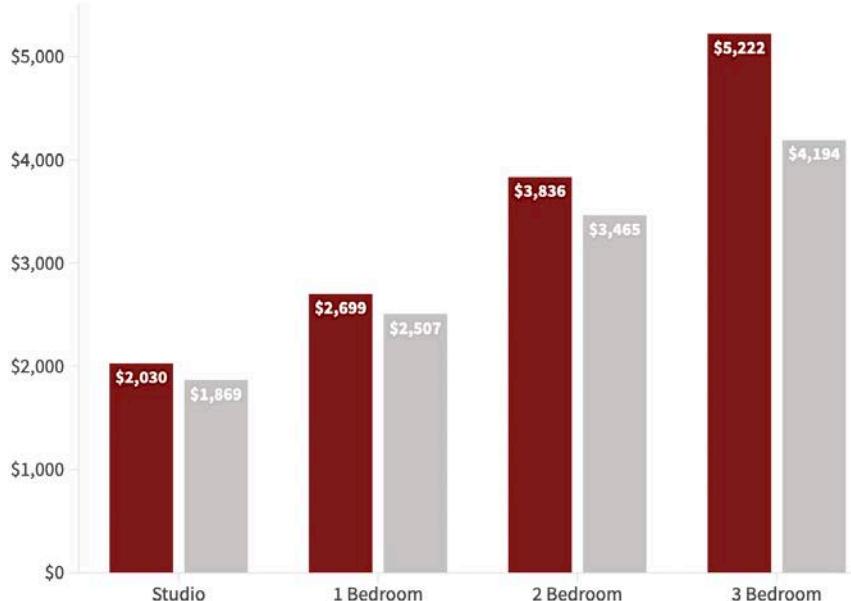
239. Here, the SSNIP test is satisfied, and the market is properly defined. As described above and below, pursuant to the Lessors' agreement not to compete on price, Lessors are able to increase rents "year over year, between 5% and 12% in every market," yet those increases have not driven enough renters 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: Fidernes Partners

PROMARKET

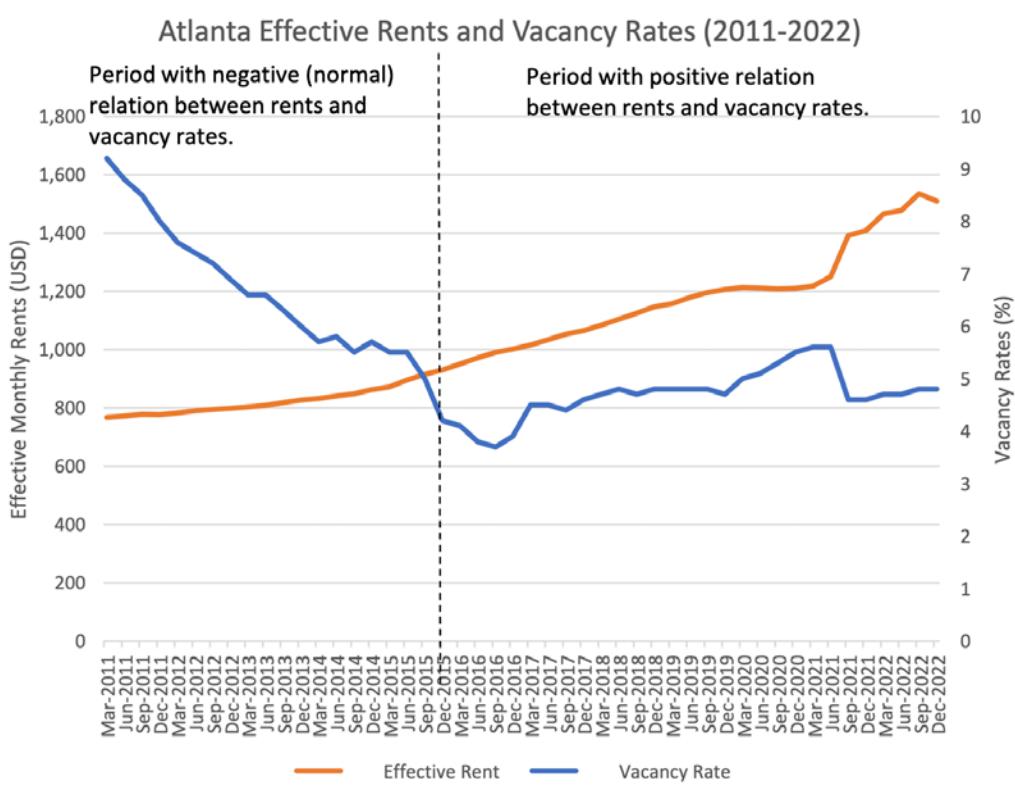
AMERICAN ECONOMIC LIBERTIES PROJECT

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.

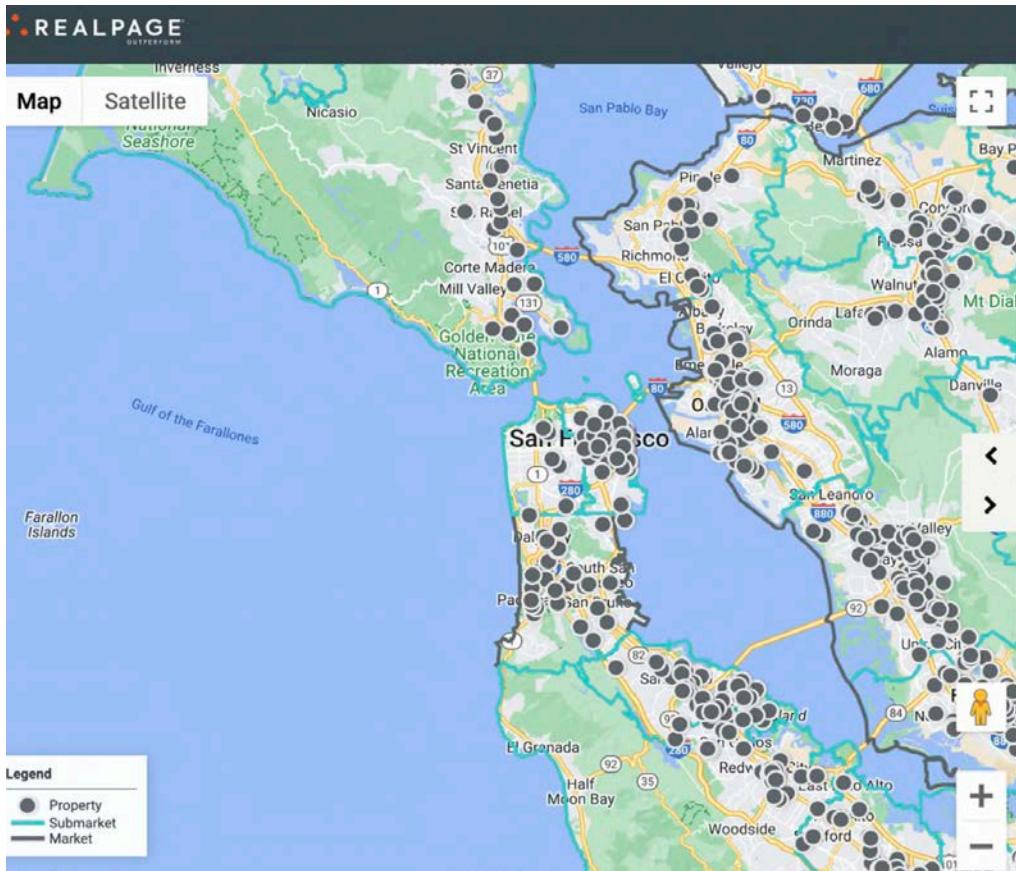
“One lessor defendant has acknowledged that adopting this pricing increased turnover rates by 15 percentage points—meaning tenants had to find new apartments because of these above-market price increases. But as the lessor defendant’s CEO observed, the ‘net effect’ of RealPage’s software ‘pushing people 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>)

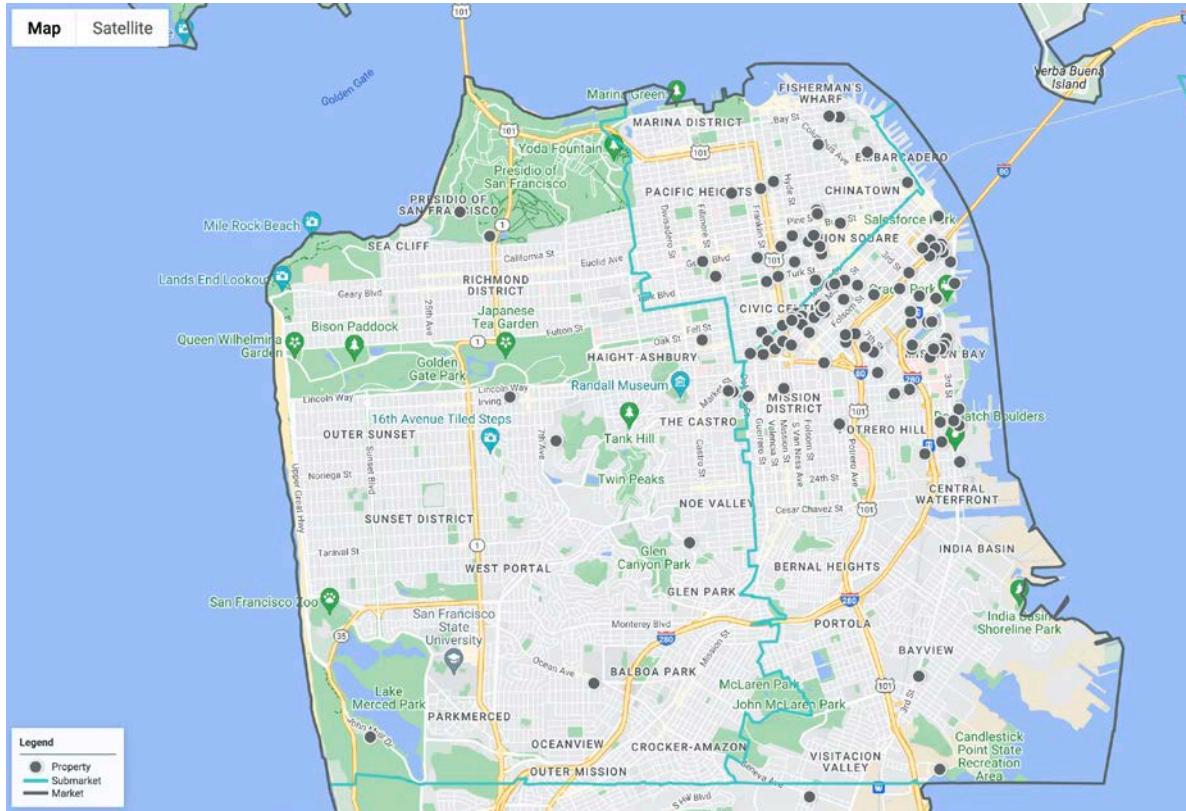
Price setting algorithms increase eviction rates.

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



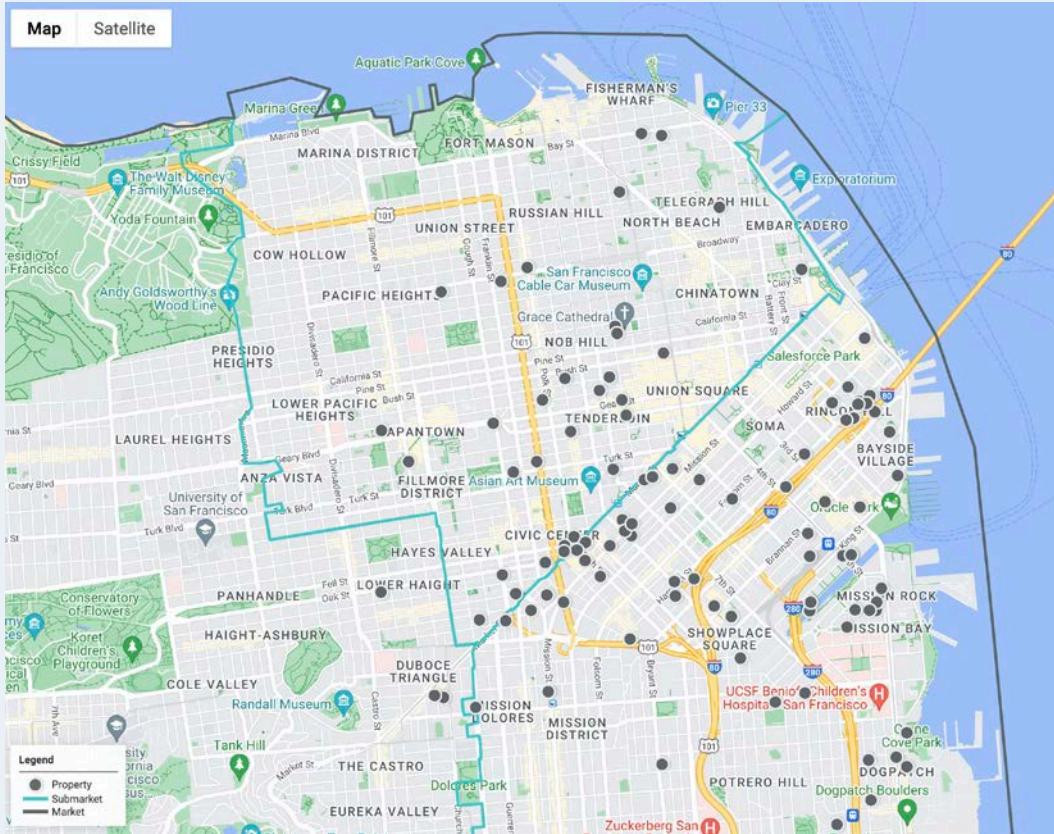
Market Penetration in San Francisco



Source: www.realpage.com/explore

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Market Penetration in San Francisco



Source: www.realpage.com/explore

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.

AMERICAN ECONOMIC LIBERTIES PROJECT

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.



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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.



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



My News

Litigation | Antitrust | Real Estate | Litigation

RealPage antitrust lawsuits over rent prices consolidated in Tennessee

By Mike Scarella

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

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

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



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.

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>



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Thank you!

Lee Hepner
Senior Legal Counsel
Lhepner@economicliberties.us

BOARD of SUPERVISORS



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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

President, District 3
BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Tel. No. 554-7450
Fax No. 554-7454
TDD/TTY No. 544-6546

Aaron Peskin

PRESIDENTIAL ACTION

Date: July 22, 2024

To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,

Pursuant to Board Rules, I am hereby:

Waiving 30-Day Rule (Board Rule No. 3.23)

File No. _____ (Primary Sponsor)

Title.

Transferring (Board Rule No 3.3)

File No. 240766 Peskin
(Primary Sponsor)

Title. [Administrative Code - Ban on Automated Rent-Setting]

From: Rules Committee

To: Land Use & Transportation Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor: _____ Replacing Supervisor: _____

For: _____ Meeting
(Date) (Committee)

Start Time: _____ End Time: _____

Temporary Assignment: Partial Full Meeting


Aaron Peskin, President
Board of Supervisors



MYRNA MELGAR

DATE: July 24, 2024

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

MM

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 30, 2024, as Committee Reports:

File No. 240725	Planning Code - Landmark Designation - Rainbow Flag at Harvey Milk Plaza Sponsors: Mandelman; Engardio, Dorsey, Peskin, Chan, and Melgar
File No. 240766	Administrative Code - Ban on Automated Rent-Setting Sponsors: Peskin; Chan

These matters will be heard in the Land Use and Transportation Committee at a Regular Meeting on Monday, July 29, 2024, at 1:30 p.m.

From: [T Flandrich](#)
To: [Melgar, Myrna \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Eieber, 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, Vise 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](#)

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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

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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.

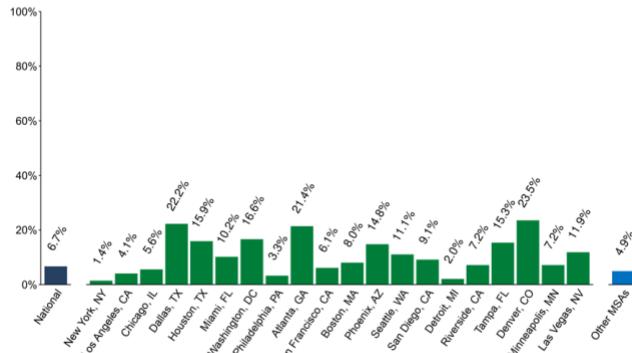
To ensure the public narrative accounts for the true nature of RealPage's products, we want to address some frequently repeated misrepresentations about the prevalence of properties using RealPage revenue management software, our customers' discretion to accept or reject pricing recommendations, and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

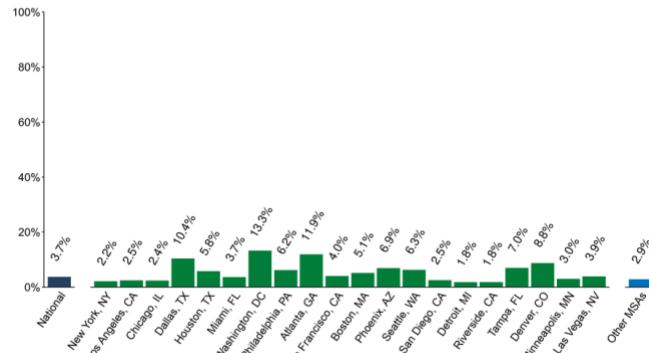
Contrary to the implausible allegations about RealPage's purported market power, the actual data shows that RealPage revenue management software has low penetration rates that cannot possibly support a conspiracy to fix prices or collude through the software. **As of May 2023, less than 7% of rental 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.*

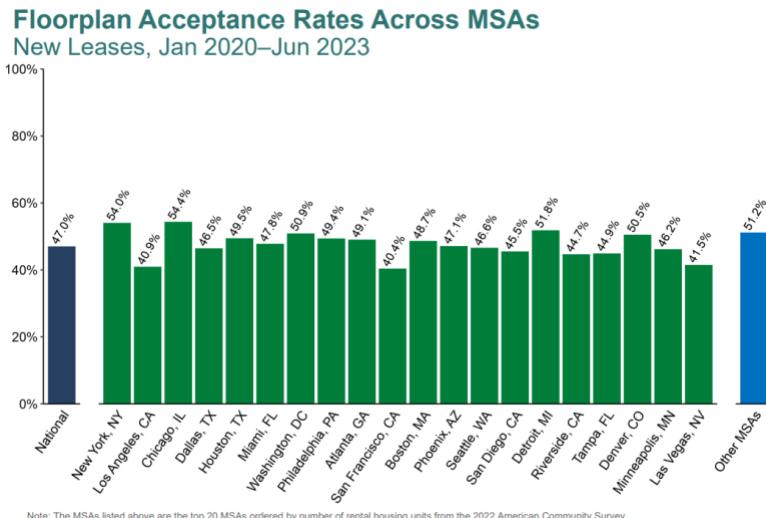
*Rental units on AI Revenue Management, YieldStar, and LRO as of May 2023 compared to occupied and vacant rental units from the 2022 American Community Survey.



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.



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

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

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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: