BOARD of SUPERVISORS

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M E M O R A N D U M

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

FROM: Victor Young, Assistant Clerk

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

[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.

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. Background and Findings.

(a) In recent years, a number of new software programs, often referred to as "algorithmic devices," have threatened to destabilize rental housing markets in cities nationwide, including San Francisco.

(b) These programs enable landlords to indirectly coordinate with one another through the sharing of non-public competitively sensitive data, in order to artificially inflate rents and vacancy rates for rental housing. Participating landlords provide vast amounts of proprietary data to the programs, which in turn set or provide recommendations for rent and occupancy levels.

(c) More and more landlords in large U.S. cities now pool their data and pricing decisions using such software. By some estimates, this includes owners of as much as 70% 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

only at the use of the algorithmic devices that analyze and share non-public data, to prevent the harms described above.

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

(c) ***Definitions.***

(1) "Algorithmic device" means a device such as a software program that uses one or more algorithms to perform calculations of non-public competitor data concerning local or statewide rents or occupancy levels, for the purpose of advising a landlord whether to leave their unit vacant or on the amount of rent that the landlord may obtain from a tenant. "Algorithmic device" includes a product that incorporates an algorithmic device, but does not include (A) any report published by a trade association that receives renter data and publishes it in an aggregated and anonymous manner; or (B) a product used for the purpose of establishing rent or income limits in accordance with the affordable housing program 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*

invalid or unconstitutional without regard to whether any other portion of this Section or application thereof would be subsequently declared invalid or unconstitutional.

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

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/
MANU PRADHAN
Deputy City Attorney
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FILE NO. 240766

LEGISLATIVE DIGEST

[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 that uses algorithms to calculate and/or analyze non-public competitor rental data for the purposes of advising a landlord 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.

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Introduction Form

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

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

- [x] 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):

Supervisor Peskin

Subject:

[Administrative Code - Ban on Automated Rent-Setting]

Long Title or text listed:

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.

Signature of Sponsoring Supervisor: //AP//