[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 revenue management 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~~ do not just summarize statistical data, but also perform calculations with the data to then 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~~, commonly known as revenue management *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 on whether to leave* ~~their~~ a *unit vacant or on the amount of rent that the landlord may obtain* for that unit~~from a tenant~~. *"Algorithmic device" includes a product that incorporates an algorithmic device, but does not include (A)* ~~any~~ report that publishes~~d by a trade association that receives renter~~ existing rental *data*~~and publishes it~~ *in an aggregated manner* but does not recommend rents or occupancy levels for future leases; *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:
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By: /s/
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Deputy City Attorney
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