# Memorandum

**CITY OF SAN JOSE**
CAPITAL OF SILICON VALLEY

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** Councilmember Ortiz
Councilmember Torres
Councilmember Cohen

**SUBJECT:** SEE BELOW

**DATE:** August 29, 2024

**Approved:** *(signatures)*

**SUBJECT:** REQUEST TO ADD ORDINANCE AMENDING MUNICIPAL CODE TO PROHIBIT THE SALE OR USE OF ALGORITHMIC DEVICES TO SET RENTS OR MANAGE OCCUPANCY LEVELS FOR RESIDENTIAL DWELLING UNITS LOCATED IN SAN JOSE TO CITY COUNCIL MEETING AGENDA OF SEPTEMBER 10, 2024.

## RECOMMENDATION:

1. Consider an Ordinance Prohibiting the Sale or Use of algorithmic devices to set rents or manage occupancy levels for residential dwelling units in San José.
2. Add the draft Ordinance of the City Council of the City of San José Amending Municipal Code to Prohibit the Sale or Use of Algorithmic Devices to Set Rents or Manage Occupancy Levels for Residential Dwelling Units Located in San José to the City Council Agenda for its regular meeting of September 10, 2024.

## BACKGROUND

The increasing adoption of algorithmic rent-setting tools such as RealPage by landlords, which use a vast amount of proprietary data from contributing landlords and publicly available data on local housing markets to boost profits for landlords while driving up housing costs. "Dynamic pricing" tools such as RealPage have grown popular across the economy, offering market actors the ability to maximize profits disguised by an inflationary environment. In the context of the housing market, the use of algorithmic rent-setting has yielded double-digit rent increases, increased evictions, and an exacerbation of the City's housing affordability and homelessness crisis.

The use of rent-setting algorithms, often by large institutional landlords, is a manipulation of the market that increases rents and vacancy rates in tandem. The practice both harms tenants in San José and unfairly disadvantages landlords who adhere to fair pricing standards.

These practices have earned legal scrutiny across the country, as RealPage is currently facing lawsuits from the United States Attorney General, District of Columbia Attorney General, and Arizona Attorney General, as well as more than 20 federal private class action lawsuits. According to a Mercury News Article, Tenants have filed lawsuits against a collection of real estate developers and property management organizations, including several in the Bay Area, alleging that they collaborated to raise prices by sharing information using RealPage pricing software.[1]

While these cases will most likely take years to resolve, San José residents cannot afford to wait. We believe that it is the duty of the city to protect tenants and prevent unnecessary evictions and displacement by banning the use of RealPage and other algorithmic devices to set the rents on multifamily units in the City of San José.

---

[1] Kate Talerico. 2024. Tenants say Bay Area landlords colluded to inflate rents. Now, the Department of Justice is involved. *San José Mercury*; https://www.mercurynews.com/2024/08/26/tenants-say-bay-area-landlords-colluded-to-inflate-rents-now-the-department-of-justice-is-involved/

ORDINANCE NO. _____


**AN ORDINANCE OF THE CITY OF SAN JOSE ADDING CHAPTER 13 TO TITLE 5 OF THE SAN JOSE MUNICIPAL CODE TO PROHIBIT THE SALE OR USE OF ALGORITHMIC DEVICES TO SET RENTS OR MANAGE OCCUPANCY LEVELS FOR RESIDENTIAL DWELLING UNITS LOCATED IN SAN JOSE**


**WHEREAS,** 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 José; and

**WHEREAS,** 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; and

**WHEREAS,** more and more landlords in large U.S. cities now pool their data and pricing decisions using such software; and

**WHEREAS,** 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; and

**WHEREAS,** 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 José landlords are not doing so either, and are contributing to these problems; and

**WHEREAS,** 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 José, to bring immediate relief to San José 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; and

**WHEREAS,** 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.

**NOW, THEREFORE,** BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Chapter 5.13 of Title 5 of the San José Municipal Code is amended to read as follows:

**15.13 PROHIBITION ON USE AND SALE OF ALGORITHMIC DEVICES**

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

(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 José. 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 Chapter 5.13, 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 Chapter 5.13, 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 Chapter.


SECTION 2. Effective Date. This ordinance shall become effective 30 days after enactment.