

Request for Policy Analysis (Council Referrals)

Department Housing Rules Date 10/23/2024 Item C.2
 Department Rep. Name/Ext. Erik Solivan Councilmember Sponsorship Councilmember Ortiz
 Policy/Ordinance Subject Ordinance Amendment for Sale or Use of Algorithmic Councilmember Torres
Algorithmic Devices for Residential Dwelling Units Councilmember Cohen

Staff Recommendation			
<input type="checkbox"/> GREEN Adopt based on tradeoffs outlined on next page	<input checked="" type="checkbox"/> YELLOW Defer to a later designated date or the annual Budget Process	<input type="checkbox"/> RED Recommend Council not adopt nominated idea	<input type="checkbox"/> NEEDS CLARIFICATION OR MORE TIME TO EVALUATE

Staff Evaluation		
Is this already underway in a department work plan? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is this time critical or an emergency? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Will this require substantial resources, staffing, budget, strategic support, or reprioritizing existing work plan? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Criterion to Determine Scale of Project Complexity

Project complexity is determined by scoring the project in each of the 3 criteria below and then summing the score.

a. Low Complexity is a sum of 6 or less.

b. Medium Complexity is a sum of 7 – 9.

c. High Complexity is a sum of 10 or greater.

Total Score = 14

Scoring Criterion			Low Complexity		Medium Complexity				High Complexity		
	Estimated Duration		6 – 9 months <input type="checkbox"/> = 1		9 - 18 months <input type="checkbox"/> = 2				More than 18 months <input checked="" type="checkbox"/> = 3		
	Organizational Complexity (Internal)		Can easily be absorbed into existing work plan <input type="checkbox"/> = 1		Planned work (future) <input type="checkbox"/> = 2				Work not currently proposed <input checked="" type="checkbox"/> = 3		
			Have staff with required skillset/knowledge <input type="checkbox"/> = 1		Have staff with required skillset/ requires moderate research <input type="checkbox"/> = 2				Do not have staff with required skillset/requires significant research <input checked="" type="checkbox"/> = 3		
			Less than or equal 2 staff required <input type="checkbox"/> = 1		3 - 4 staff required <input checked="" type="checkbox"/> = 2				More than 5 staff required <input type="checkbox"/> = 3		
	(External)		1 Additional department; no community outreach required <input type="checkbox"/> = 1		2 Other departments Involved; some community outreach required <input type="checkbox"/> = 2				3 or more departments and/or external partners involved; significant community outreach required <input checked="" type="checkbox"/> = 3		
DEPT. Required	<input type="checkbox"/> Airport	<input type="checkbox"/> Auditor	<input checked="" type="checkbox"/> CMO	<input type="checkbox"/> OEDCA	<input type="checkbox"/> ESD	<input type="checkbox"/> Fire	<input type="checkbox"/> HR	<input checked="" type="checkbox"/> IT	<input type="checkbox"/> PRNS	<input type="checkbox"/> Police	<input type="checkbox"/> Retirement
	<input checked="" type="checkbox"/> Attorney	<input type="checkbox"/> Clerk	<input type="checkbox"/> CMO – Budget	<input type="checkbox"/> Community Energy	<input checked="" type="checkbox"/> Finance	<input checked="" type="checkbox"/> Housing	<input type="checkbox"/> IPA	<input type="checkbox"/> Library	<input checked="" type="checkbox"/> PBCE	<input type="checkbox"/> PW	<input type="checkbox"/> DOT

CMO Approval: /s/ Lee Wilcox Date 10/18/2024

Analysis
Explain the rationale for staff recommendation, including any mitigating factors that need to be considered (recent legislative action, significant work plan changes, etc.). Please address the following as well.
<p>GREEN LIGHT: The Administration can implement this nominated idea under its current work plan. Item should be sent to Council to add to department work plan. (1) How will the idea be approached? (2) If adopted, what is its impact and/or tradeoff to the City Council Focus Area or to a department work plan, including strategic support? (3) What is the minimum viable scope to move the idea forward and reduce its complexity?</p>
<p>N/A</p>
<p>YELLOW LIGHT: Administration recommends Council defer this nominated idea to a later designated date or the annual Budget Process due to (describe cost implications, workload impacts, or other factors)</p>
<p>Summary: Staff cannot complete this referral without delays to existing workload. Given that state and/or federal actions may soon regulate algorithmic pricing, and that a similar ordinance passed in San Francisco remains novel and untested, staff recommend deferring consideration of this ordinance at this time.</p> <p>(Analysis continued on page 3.)</p>
<p>RED LIGHT: The Administration recommends Council not to adopt this nominated idea due to (describe reason implementation would be difficult if not impossible – conflict with other laws, etc.).</p>
<p>N/A</p>

Analysis (Continued)

Background: Algorithmic pricing is a common tool within the software for the property management industry of market-rate, affordable, and mixed-income housing developments. These tools use data-driven algorithms to optimize rental rates, streamline property management, and enhance operational efficiency. RealPage, Yardi, and many asset and property management software developers use these tools, which are ubiquitous in the industry in all fifty states.

There has been a recent move to regulate these algorithms at the state, and federal level. Price-setting mechanisms used by national software companies are largely governed by state and federal law. The Federal Trade Commission and the United States Department of Justice have already taken action to address unfair economic practices facilitated by algorithmic pricing. (source: <https://www.ftc.gov/business-guidance/blog/2024/03/price-fixing-algorithm-still-price-fixing>). The California Department of Civil Rights is also exploring options for regulating the algorithmic tools (source: <https://calcivilrights.ca.gov/2021/05/06/dfeh-holds-civil-rights-hearing-on-algorithms-and-bias/>). In addition, over twenty lawsuits have been filed nationwide against the use of these tools. New state and/or federal regulation in this policy area may preempt local regulation. These state and federal moves have begun to impact industry practices, as seen in the National Apartment Association's recent warning to its members in response to the Federal Trade Commission guidance (source: <https://www.naahq.org/ftc-issues-guidance-algorithms-rental-housing>).

Despite this potential for state and federal regulations, the City and County of San Francisco has recently enacted a local ordinance to regulate this type of algorithms. This ordinance prohibits the sale and use of algorithmic devices that help landlords set rent prices or manage occupancy levels for residential units. However, the ordinance is not a regulatory action to be taken by San Francisco's Housing Department. Instead, the ordinance allows any tenants or the San Francisco City Attorney's Office to file civil lawsuits against such practices and impose \$1,000 fines for violations plus recover damages.

Analysis: The Housing Element already sets forth over 100 priorities for the development of housing policies and programs. To invest time exploring, understanding, and convening all parties on this issue to provide a comprehensive policy review will require deprioritizing other directed work.

(Analysis continued on page 4.)

Analysis (Continued)

To further explore the proposed ordinance's policy implications, its potential to achieve its intended impact of the setting of rents by algorithmic tools by prohibiting "sale or use," a re-prioritization of work product already in development such as tenant preferences regulations, moderate-income housing production strategy, housing preservation policy, and the housing balance report. Any re-prioritization would also create cost through staff time and resources dedicated to exploring, understanding, and communicating with parties on all sides of this complex issue, including the convening of advocacy and interest groups for tenant and landlords as well property management firms and for-profit and non-profit organizations as well as medium-sized landlord's participating in the Housing Department's Rent Stabilization Program, and coordinating with the City Attorney's Office. It is estimated that approximately 500 hours of staff time (at 25 hours per week over a six-month period) would be needed to explore, understand, coalesce, and communicate a comprehensive recommendation on the proposed policy. This would necessitate deprioritizing and delaying other directed work.

Additionally, City of San José City Attorney's Office recently discussed the City and County of San Francisco's ordinance with the San Francisco City Attorney's Office. San Francisco's new ordinance is novel and untested, with limited enforcement capacity due to staffing, relegating it primarily to private enforcement action. If City enforcement is anticipated here, the San José City Attorney's Office will likely need additional dedicated staffing resources, including a litigation attorney, investigator, and analyst, to manage any potential workload. Additionally, any enforcement may be further complicated by a multitude of factors, including the proprietary nature of the technology and the current litigation against these companies by federal and state enforcing agencies and private class action lawsuits.

This workload analysis was coordinated with the City Attorney's Office.