



The City of San Diego

Staff Report

DATE ISSUED: February 27, 2025
TO: City Council
FROM: Council District 9
SUBJECT: Prohibition of Anti-Competitive Automated Rent Price-Fixing Ordinance

Primary Contact: Maya Rosas Phone: 619-236-6699

Secondary Contact: Molly Weber Phone: 619-236-6699

Council District(s): Citywide

OVERVIEW:

Complex, AI-driven price-fixing software is used across San Diego to suggest the highest rental pricing that a rental home can yield. The Department of Justice, California Attorney General Rob Bonta, and many Attorneys General across the United States have alleged in numerous complaints that this kind of software is a modern-day price-fixing service that directly and indirectly inflates rent prices, harming millions of Americans.

Councilmember Sean Elo-Rivera proposes to protect San Diegans from automated rent price-fixing by banning the sale, license, and use of automated rent-setting software that advises or recommends rental rates or occupancy levels.

PROPOSED ACTIONS:

Amend San Diego Municipal Code Chapter 9, Article 8 by adding new Division 11, sections 98.1101, 98.1102, 98.1103, and 98.1104, to adopt the proposed Prohibition of Anti-Competitive Automated Rent Price-Fixing Ordinance.

DISCUSSION OF ITEM:

Cost of Housing in San Diego

Exorbitant cost-of-living, including out-of-control housing costs are pushing many San Diegans out of their communities, driving others into homelessness, and making life far too expensive for working families. U.S. News and World Report ranked San Diego as the most expensive city to live in nationally for 2023-2024, with the cost of housing as a major contributor to this ranking.¹

¹ San Diego ranks as most expensive US city with LA and Santa Barbara in the top five (October 29, 2023). USA Today. <https://www.usatoday.com/story/news/nation/2023/10/27/report-ranks-san-diego-most-expensive-us-city-see-full-list/71351851007/>

The median income for a family of four in San Diego County was \$119,500 in 2024.² With San Diego families needing to make \$275,000³ a year to be able to afford a mortgage, renting is a requirement for many to remain housed. Yet the current average rent for all bedroom and property types in San Diego is \$3,000.⁴

The housing shortage is a root factor of the City's affordability crisis, and the City Council has continuously passed initiatives to increase housing supply and other ongoing factors that affect housing stability and affordability. However, a new factor, algorithmic price-fixing, has unfairly contributed to the inflated cost of housing, harming an untold number of San Diego families, as alleged by the Department of Justice.

Algorithmic Price-Fixing Software

In 2022, ProPublica published an article⁵ that put the national spotlight on the impacts of algorithmic price-fixing software on the cost of housing. It explained how a company called RealPage, based in Texas, uses its YieldStar software:

To arrive at a recommended rent, the software deploys an algorithm — a set of mathematical rules — to analyze a trove of data RealPage gathers from clients, including private information on what nearby competitors charge.

For tenants, the system upends the practice of negotiating with apartment building staff. RealPage discourages bargaining with renters and has even recommended that landlords in some cases accept a lower occupancy rate in order to raise rents and make more money.

One of the algorithm's developers told ProPublica that leasing agents had "too much empathy" compared to computer generated pricing.

Four United States Senators asked RealPage to provide them with information about their product, and, dissatisfied with their response, sent a letter to the Department of Justice raising their serious concerns in 2023.⁶ Multiple state Attorneys General filed lawsuits against RealPage and large rental property owners across the country, ultimately leading to the Department of Justice (DOJ) suing RealPage with eight state Attorneys General signing on in August.⁷ In January 2025, the DOJ amended its complaint to sue six of the nation's largest landlords for their participation on the alleged price-fixing scheme, announced a

² 2024 San Diego Median Income. San Diego Housing Commission. <https://sdhc.org/wp-content/uploads/2024/01/AMIIncomeLimits-2024.pdf>

³ San Diego among top 10 'impossibly unaffordable' cities: Report (June 17, 2024). NBC San Diego. <https://www.nbcsandiego.com/news/local/san-diego-impossibly-unaffordable-report/3543735/>

⁴ San Diego, CA rental market (March 22, 2025). Zillow Rentals. <https://www.zillow.com/rental-manager/market-trends/san-diego-ca/>

⁵ Rent Going Up? One Company's Algorithm Could Be Why (October 15,2022). Vogell, Heather; ProPublica <https://www.propublica.org/article/yieldstar-rent-increase-realpage-rent>

⁶ Senators Had Questions for the Maker of a Rent-Setting Algorithm. The Answers Were "Alarming." (March 21,2023). Vogell, Heather; ProPublica <https://www.propublica.org/article/yieldstar-rent-increase-realpage-warren-sanders>

⁷ Justice Department Sues RealPage for Algorithmic Pricing Scheme that Harms Millions of American Renters (August 23, 2024). U.S. Department of Justice <https://www.justice.gov/archives/opa/pr/justice-department-sues-realpage-algorithmic-pricing-scheme-harms-millions-american-renters>

proposed consent decree with a large landlord to resolve its claims, and announced the addition of two Attorneys General in the suit against RealPage and landlords.⁸

In December 2024, the White House Council of Economic Advisers released a report detailing the actual impacts of algorithmic price-fixing software on the cost of living nationally. The analysis “indicates that if price coordination was eliminated, there would be an economically meaningful decrease in price mark-ups for rental units using pricing algorithms.” It also estimates the average cost of price coordination for renters in rentals that utilize RealPage software at \$99 per month for the San Diego Metropolitan Statistical Area.⁹

Despite this, RealPage continues to offer their automated rent price-fixing software to San Diego rental providers. While the legal action taken by the DOJ and Attorneys General is important, San Diego is able to implement a policy prohibiting this practice while legal actions remain ongoing.

The San Francisco Board of Supervisors adopted a similar ban in September, 2024, and the Philadelphia City Council adopted a similar ordinance in October, 2024.

Anti-Competitive Automated Rent Price-Fixing Prohibition Ordinance

The proposed ordinance bans the sale, licensing, and use of an algorithmic device to set rental rates or occupancy levels for residential rental properties. Algorithmic devices are a software or product that uses or incorporates one or more algorithms to perform calculations of nonpublic competitor data concerning rental rates, occupancy levels, or other information regarding the leasing of residential rental property to advise, or recommend to a landlord, rental rates or occupancy levels.

The proposed ordinance does not ban the use of a software or product that publishes reports regarding rental rates or occupancy levels from existing information available to the general public in an aggregated manner or a software or product used to establish rental rates or income limits in accordance with local, state, or federal affordable housing program guidelines.

The proposed ordinance provides remedies for violations of the ban.

City of San Diego Strategic Plan:

This item directly relates to the City’s Strategic Plan’s Priority Area: Create Homes For All of Us by increasing access to housing and increasing affordability.

Fiscal Considerations:

N/A

Charter Section 225 Disclosure of Business Interests:

N/A

Environmental Impact:

This activity, the proposed Prohibition of Anti-Competitive Automated Rent Price-Fixing Ordinance, is not a project pursuant to CEQA Guidelines Section 15378(b)(5), as it is an organizational or administrative activity of government that will not result in any direct or reasonably foreseeable indirect

⁸ Justice Department Sues Six Large Landlords for Algorithmic Pricing Scheme that Harms Millions of American Renters (January 7, 2025). U.S. Department of Justice <https://www.justice.gov/archives/opa/pr/justice-department-sues-six-large-landlords-algorithmic-pricing-scheme-harms-millions>

⁹ The Cost of Anticompetitive Pricing Algorithms in Rental Housing (December 17, 2024). Council of Economic Advisers, The White House. <https://bidenwhitehouse.archives.gov/cea/written-materials/2024/12/17/the-cost-of-anticompetitive-pricing-algorithms-in-rental-housing/>

physical changes in the environment. As such, this activity is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(3).

Climate Action Plan Implementation:

N/A

Equal Opportunity Contracting Information (if applicable):

N/A

Previous Council and/or Committee Actions:

On October 30, 2024, the Rules Committee voted 4-1 to request the City Attorney's Office work with the Council District 9 Office on drafting an ordinance banning the sale and use of price fixing software and bring the proposed ordinance to the City Council.

Planning Commission Action:

N/A

Key Stakeholders and Community Outreach Efforts:

City of San Diego residents and housing providers.

Maya Rosas, Deputy Chief of Staff

Molly Weber, Chief of Staff

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 9, ARTICLE 8 OF
THE SAN DIEGO MUNICIPAL CODE BY ADDING NEW
DIVISION 11, SECTIONS 98.1101, 98.1102, 98.1103, AND
98.1104, RELATING TO PROHIBITING ANTI-COMPETITIVE
AUTOMATED RENT PRICE-FIXING.

RECITALS

The Council of the City of San Diego (Council) adopts this Ordinance based on the following:

A. The high cost of living and housing shortage in the City of San Diego (City) have contributed to the City's unaffordability. According to a March 2024 Zillow report, a family must earn \$275,000 a year to afford a home mortgage. According to an August 4, 2024, Times of San Diego article, the average rental rate for a two-bedroom residential dwelling unit in the City is \$2,489, almost 65% higher than the national median.

B. Landlords' use of algorithmic devices, which perform calculations of nonpublic competitor data concerning rental rates, occupancy levels, and other information, to set rental rates and occupancy levels has resulted in inflated rental rates and unfair rent increases and contributed to the City's unaffordability for families.

C. In response to the use of algorithmic devices to set rental rates and occupancy levels, in August 2024, the United States Department of Justice (DOJ) filed a lawsuit against RealPage, Inc. Eight Attorneys General, including California Attorney General Rob Bonta, joined the DOJ's lawsuit. The DOJ amended its lawsuit in January 2025 to add two Attorneys General and name landlords as defendants.

D. While the litigation is pending, software companies, such as RealPage, Inc., continue providing algorithmic devices to landlords in the City. City families cannot wait for the

DOJ lawsuit to run its course and, if successful, provide relief from inflated rental rates and unfair rent increases. The Council wishes to provide immediate relief to City families by prohibiting the sale, licensing, and use of algorithmic devices that use or incorporate nonpublic competitor data to advise a landlord on, or recommend to a landlord, rental rates or occupancy levels that may be achieved for residential rental property in the City.

E. On October 30, 2024, the Council’s Rules Committee requested the City Attorney’s Office work with Council District 9 staff to draft this Ordinance and for Council District 9 staff to bring this Ordinance to Council for adoption.

F. San Diego Municipal Code section 11.0205 titled “Validity of Code – Severability” shall apply to this Ordinance.

G. The provisions of Chapter 1, Article 2 of the San Diego Municipal Code, including the enforcement of judicial and administrative remedies, shall apply to this Ordinance.

H. The Office of the City Attorney prepared this Ordinance based on the information provided by Council staff, including information provided by affected third parties and verified by Council staff, with the understanding that this information is complete and accurate.

ACTION ITEMS

Be it ordained by the Council of the City of San Diego:

Section 1. Chapter 9, Article 8 of the San Diego Municipal Code is amended by adding new Division 11, sections 98.1101, 98.1102, 98.1103, and 98.1104, to read as follows:

Division 11: Prohibition of Anti-Competitive Automated Rent Price-Fixing

§98.1101 Purpose and Intent

The purpose and intent of this Division is to protect San Diegans from artificially inflated rental rates and unfair rent increases by prohibiting the sale, licensing,

and use of *algorithmic devices*. This Division also provides *tenants* with remedies for violations of this Division.

§98.1102 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Algorithmic device means a software or product that uses or incorporates one or more algorithms to perform calculations of *nonpublic competitor data* concerning rental rates, occupancy levels, or other information regarding the leasing of *residential rental property* to advise a *landlord* on, or recommend to a *landlord*, rental rates or occupancy levels that may be achieved for a *residential rental property* in the City of San Diego. *Algorithmic device* does not include either of the following:

- (a) A software or product used by a *person* to publish reports regarding rental rates or occupancy levels from aggregated historical *nonpublic competitor data* that is more than 90 days old, or from information available to the general public, and does not recommend rental rates or occupancy levels for future *residential rental property leases* or renewals.
- (b) A software or product used by a *person* to establish rental rates or income limits in accordance with local, state, or federal affordable housing program guidelines.

Landlord has the same meaning as in San Diego Municipal Code section 98.0702, as may be amended.

Lease has the same meaning as in San Diego Municipal Code section 98.0702, as may be amended.

Nonpublic competitor data means information that is not available to the general public, whether the information is attributable to a specific competitor or anonymized or whether the information is derived from or otherwise provided by another *person*. *Nonpublic competitor data* includes information about actual rental rates, rental rate changes, *residential rental property* supply levels, occupancy levels, or *lease* start and end dates.

Person has the same meaning as in San Diego Municipal Code section 11.0210, as may be amended.

Residential rental property has the same meaning as in San Diego Municipal Code section 98.0702, as may be amended.

Tenant has the same meaning as in San Diego Municipal Code section 98.0702, as may be amended.

§98.1103 Use and Sale of Algorithmic Devices Prohibited

- (a) It is unlawful for a *person* to sell, license, or otherwise provide an *algorithmic device* to a *landlord*.
- (b) It is unlawful for a *landlord* to use an *algorithmic device* to set rental rates or occupancy levels for *residential rental property*.

For each month a violation of section 98.1103(b) exists or continues, and for each *residential rental property* a *landlord* uses an *algorithmic device*, it shall constitute a separate and distinct violation.

§98.1104 Remedies

- (a) A *tenant* may seek injunctive relief, damages, or civil penalties of up to \$1,000 per violation of this Division, in a civil action against a *landlord*.
In an action brought under this Division, a prevailing *tenant* shall recover costs and reasonable attorney’s fees. A prevailing *tenant* includes a *tenant* granted an order for injunctive relief. A *lease* provision that limits a *tenant* from recovering attorney’s fees shall not be enforceable against a *tenant*’s claim for attorney’s fees that arise under this Division.
- (b) The remedies under section 98.1104 are cumulative and are in addition to any other remedies in this Division or at law, statute, or ordinance.

Section 2. The Council dispenses with a full reading of this Ordinance before its passage because a written copy of this Ordinance was made available to the Council and the public before the date of its passage.

Section 3. This Ordinance will take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: HEATHER FERBERT, City Attorney

By _____
Justin R. Bargar
Deputy City Attorney

JRB:HRM:nja
November 14, 2024
Or. Dept: Council District 9
Doc. No. 3877311

I certify that the Council of the City of San Diego adopted this Ordinance at a meeting held on _____.

DIANA J.S. FUENTES
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 9, ARTICLE 8 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING NEW DIVISION 11, SECTIONS 98.1101, 98.1102, 98.1103, AND 98.1104, RELATING TO PROHIBITING ANTI-COMPETITIVE AUTOMATED RENT PRICE-FIXING.

This Ordinance amends San Diego Municipal Code Chapter 9, Article 8 by adding Division 11 to prohibit the sale and licensing of algorithmic devices, as that term is defined in the Ordinance, that use or incorporate nonpublic competitor data to advise a landlord on, or recommend to a landlord, rental rates or occupancy levels that may be achieved for residential rental property in the City of San Diego.

This Ordinance also prohibits a landlord from using an algorithmic device to set rental rates or occupancy levels.

Tenants may seek certain remedies for violations of this Ordinance.

This Ordinance contains a notice that a full reading of this Ordinance is dispensed with before its passage, a written copy having been made available to the Council and the public before the day of its passage.

This Ordinance will take effect and be in force on the thirtieth day from and after its final passage.

A complete copy of this Ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

JRB:HRM:nja
November 14, 2024
Or. Dept: Council District 9
Doc. No. 3877313

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 9, ARTICLE 8 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING NEW DIVISION 11, SECTIONS 98.1101, 98.1102, 98.1103, AND 98.1104, RELATING TO PROHIBITING ANTI-COMPETITIVE AUTOMATED RENT PRICE-FIXING.

Division 11: Prohibition of Anti-Competitive Automated Rent Price-Fixing

§98.1101 **Purpose and Intent**

The purpose and intent of this Division is to protect San Diegans from artificially inflated rental rates and unfair rent increases by prohibiting the sale, licensing, and use of *algorithmic devices*. This Division also provides *tenants* with remedies for violations of this Division.

§98.1102 **Definitions**

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Algorithmic device means a software or product that uses or incorporates one or more algorithms to perform calculations of *nonpublic competitor data* concerning rental rates, occupancy levels, or other information regarding the leasing of *residential rental property* to advise a *landlord* on, or recommend to a *landlord*, rental rates or occupancy levels that may be achieved for a *residential rental*

property in the City of San Diego. Algorithmic device does not include either of the following:

- (a) A software or product used by a person to publish reports regarding rental rates or occupancy levels from aggregated historical nonpublic competitor data that is more than 90 days old, or from information available to the general public, and does not recommend rental rates or occupancy levels for future residential rental property leases or renewals.
- (b) A software or product used by a person to establish rental rates or income limits in accordance with local, state, or federal affordable housing program guidelines.

Landlord has the same meaning as in San Diego Municipal Code section 98.0702, as may be amended.

Lease has the same meaning as in San Diego Municipal Code section 98.0702, as may be amended.

Nonpublic competitor data means information that is not available to the general public, whether the information is attributable to a specific competitor or anonymized or whether the information is derived from or otherwise provided by another person. Nonpublic competitor data includes information about actual rental rates, rental rate changes, residential rental property supply levels, occupancy levels, or lease start and end dates.

Person has the same meaning as in San Diego Municipal Code section 11.0210, as may be amended.

Residential rental property has the same meaning as in San Diego Municipal Code section 98.0702, as may be amended.

Tenant has the same meaning as in San Diego Municipal Code section 98.0702, as may be amended.

§98.1103 **Use and Sale of Algorithmic Devices Prohibited**

(a) It is unlawful for a person to sell, license, or otherwise provide an algorithmic device to a landlord.

(b) It is unlawful for a landlord to use an algorithmic device to set rental rates or occupancy levels for residential rental property.

For each month a violation of section 98.1103(b) exists or continues, and for each residential rental property a landlord uses an algorithmic device, it shall constitute a separate and distinct violation.

§98.1104 **Remedies**

(a) A tenant may seek injunctive relief, damages, or civil penalties of up to \$1,000 per violation of this Division, in a civil action against a landlord.
In an action brought under this Division, a prevailing tenant shall recover costs and reasonable attorney's fees. A prevailing tenant includes a tenant granted an order for injunctive relief. A lease provision that limits a tenant from recovering attorney's fees shall not be enforceable against a tenant's claim for attorney's fees that arise under this Division.

(b) The remedies under section 98.1104 are cumulative and are in addition to any other remedies in this Division or at law, statute, or ordinance.

JRB:HRM:nja
November 14, 2024
Or. Dept: Council District 9
Doc. No. 3877315