



Office of the City Attorney

CONSENT CALENDAR  
June 24, 2025

To: Honorable Members of the City Council  
From: Farimah Brown, City Attorney (Author)  
Subject: Amendments to Ordinance Prohibiting the Sale or Use of Coordinated Pricing Algorithms (BMC 13.63) to Suspend Effective Date Until March 2026

RECOMMENDATION

Amend the Ordinance Prohibiting the Sale or Use of Coordinated Pricing Algorithms (BMC 13.63) to suspend the effective date until March 1, 2026.

BACKGROUND

On March 25, 2025, the Berkeley City Council adopted a second reading of an ordinance (Attachment 1) that prohibits the sale or use of coordinated pricing algorithms to set or recommend rents in Berkeley (BMC 13.63.) Pursuant to City Charter, Article XIV, Section 93, the ordinance became effective on April 24, 2025.

In early April 2025, RealPage, Inc. filed a lawsuit, temporary restraining order (“TRO”), and motion for preliminary injunction seeking to enjoin the ordinance on First Amendment grounds. *See RealPage, Inc. v. City of Berkeley*, 3:25-cv-03004-JSC (N.D. Cal.). The court denied RealPage’s motion for TRO due to the City’s agreement not to enforce the ordinance against RealPage pending RealPage’s motion for a preliminary injunction. The City later agreed to suspend enforcement of the ordinance against property owners under the same terms.

Under the Court’s order dated May 20, 2025, RealPage is scheduled to file its motion for preliminary injunction on June 20, 2025; the City’s response is due on August 8, 2025; and RealPage’s reply is due on August 22, 2025. RealPage has tentatively agreed to suspend these dates in light of this pending legislative action.

RATIONALE FOR RECOMMENDATION

The pending litigation has posed significant costs for the City. RealPage has informed the City Attorney’s Office that it will agree to a further extension of deadlines to facilitate a possible amicable resolution of the case only if the City takes action to amend, repeal, or suspend the ordinance’s effective date. Absent action by the City Council, the litigation will continue to drive up costs for the City.

The proposed amendment herein (Attachment 2) would suspend the effective date of the ordinance until March 1, 2026, in order to reduce ongoing legal costs and give the City Council time to consider options.

**FINANCIAL IMPLICATIONS**

The action could result in a pause of the litigation, and could help facilitate a resolution that may reduce the City's litigation costs in this matter.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

**CONTACT PERSON**

Farimah Brown 510-981-6998

**Attachments:**

1. Ordinance No. 7,956-N.S., Prohibition on the Sale or Use of Coordinated Pricing Algorithms To Set Rents or Manage Occupancy Levels for Residential Dwelling Units.
2. Proposed Amendments to Ordinance No. 7,956-N.S (redline)

ORDINANCE NO. 7,956-N.S.

ADDING CHAPTER 13.63 TO THE BERKELEY MUNICIPAL CODE PROHIBITING ON THE SALE OR USE OF COORDINATED PRICING ALGORITHMS TO SET RENTS OR MANAGE OCCUPANCY LEVELS FOR RESIDENTIAL DWELLING UNITS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code 13.63 is added to read as follows:

**Chapter 13.63**

**PROHIBITION ON THE SALE OR USE OF COORDINATED PRICING ALGORITHMS TO SET RENTS OR MANAGE OCCUPANCY LEVELS FOR RESIDENTIAL DWELLING UNITS**

**Sections:**

**13.63.010 Findings and Purpose**

**13.63.020 Definitions**

**13.63.030 Use and Sale of Coordinated Pricing Algorithms Prohibited**

**13.63.040 Remedies**

**13.63.050 Undertaking for the General Welfare**

**13.63.060 Severability**

**13.63.010 Findings and purpose.**

The Council hereby finds and determines that the adoption of this chapter is necessary to the promotion of the public health, safety, and welfare.

A. In recent years, a number of new software programs, often referred to as “coordinated pricing algorithms”, have threatened to destabilize rental housing markets in cities nationwide, including the City of Berkeley.

B. These programs enable landlords to indirectly coordinate with one another through the sharing of 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 U.S. cities now pool their data and pricing decisions using such software.

D. The software has contributed to double-digit rent increases (over the last nine years, median rents have increased 19% in the East Bay), 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 Berkeley landlords are not doing so either, and are contributing to these problems.

F. A 2022 class action lawsuit filed in the U.S. District Court in the Western District of Washington at Seattle (one of over 20 private class action lawsuits that have been consolidated into one case) accuses nearly 50 trade associations of serving as “conduits of the cartel” by providing a venue for RealPage and their property owners to conspire. The lawsuit further alleges that landlords use the software to agree on prices to set for rent, and to stagger their lease renewal dates so as to avoid any oversupplies in rental properties.

G. 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. In August 2024, The United States Department of Justice, alongside the attorneys general of California and seven other states, filed an antitrust lawsuit against RealPage, accusing the company of reducing competition among landlords and taking over the market for such algorithm-based rental software.

H. Instead of waiting for court processes which may take years to resolve, this ordinance prohibits the sale or use of coordinated pricing algorithms for the purpose of setting rents on residential dwelling units in the city of Berkeley, to bring immediate relief to Berkeley tenants, as well as to put landlords who have been using these algorithms on equal footing with those who are willing to adhere to fair standards for setting rental rates.

I. This Chapter 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 Chapter regulate the amount of rent that a landlord may charge. This Chapter solely regulates the use and sale of the coordinated pricing algorithms that analyze and share data, to prevent the harms described above.

### **13.63.020 Definitions.**

A. “Coordinated pricing algorithm” means any analytical or computation processes that use data to recommend or predict the price of consumer goods or services in direct or indirect coordination with one or more competitors, including through a third-party vendor such as a software program that uses one or more algorithms to perform calculations of competitor data concerning local or statewide rents or occupancy levels, for the purpose of advising landlords whether to leave their units vacant or on the amount of rent that landlords may obtain from tenants. “Coordinated pricing algorithm” includes a product that incorporates a coordinated pricing algorithm, 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 guidelines of a local government, the state, the federal government, or other political subdivision.

B. “Competitor data” means information, 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.

**13.63.030 Use and sale of coordinated pricing algorithms prohibited.**

A. It shall be unlawful to sell, license, or otherwise provide to city of Berkeley landlords any coordinated pricing algorithm that sets, recommends, or advises on rents or occupancy levels that may be achieved for residential dwelling units in the city of Berkeley.

B. It shall be unlawful for a landlord to use a coordinated pricing algorithm described in subsection A when setting rents or occupancy levels for residential dwelling units in the city of Berkeley. Each separate month that a violation exists or continues, and each separate residential dwelling unit for which the landlord used the coordinated pricing algorithm, shall constitute a separate and distinct violation.

**13.63.040 Remedies.**

A. The City Attorney may file a civil action for violations of section 13.63.030, 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.

B. A tenant may file a civil action for violations of section 13.63.030, 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 13.63.040 B.

**13.63.050 Undertaking for the general welfare.**

In enacting and implementing this Chapter 13.63, 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.

**13.63.060 Severability.**

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134

Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on March 11, 2025, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Blackaby, Kesarwani, Lunaparra, O’Keefe, Taplin, Tregub, and Ishii.

Noes: Humbert.

Absent: None.

At a regular meeting of the Council of the City of Berkeley held on March 25, 2025, this Ordinance was adopted by the following vote:

Ayes: Bartlett, Blackaby, Kesarwani, Lunaparra, O’Keefe, Taplin, Tregub, and Ishii.

Noes: Humbert.

Absent: None.

  
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Adena Ishii, Mayor

ATTEST:   
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Mark Numainville, City Clerk

Date signed: March 28, 2025

ORDINANCE NO. -N.S.

AMENDING CHAPTER 13.63 OF THE BERKELEY MUNICIPAL CODE PROHIBITING THE SALE OR USE OF COORDINATED PRICING ALGORITHMS TO SET RENTS OR MANAGE OCCUPANCY LEVELS FOR RESIDENTIAL DWELLING UNITS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code 13.63 is amended to read as follows:

### Chapter 13.63

## PROHIBITION ON THE SALE OR USE OF COORDINATED PRICING ALGORITHMS TO SET RENTS OR MANAGE OCCUPANCY LEVELS FOR RESIDENTIAL DWELLING UNITS

### Sections:

**13.63.010 Findings and Purpose**

**13.63.020 Definitions**

**13.63.030 Use and Sale of Coordinated Pricing Algorithms Prohibited**

**13.63.040 Remedies**

**13.63.050 Undertaking for the General Welfare**

**13.63.060 Severability**

**13.63.070 Effective Date**

### **13.63.010 Findings and purpose.**

The Council hereby finds and determines that the adoption of this chapter is necessary to the promotion of the public health, safety, and welfare.

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 the City of Berkeley.

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 U.S. cities now pool their data and pricing decisions using such software.

D. The software has contributed to double-digit rent increases (over the last nine years, median rents have increased 19% in the East Bay), 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 Berkeley landlords are not doing so either, and are contributing to these problems.

F. A 2022 class action lawsuit filed in the U.S. District Court in the Western District of Washington at Seattle (one of over 20 private class action lawsuits that have been consolidated into one case) accuses nearly 50 trade associations - including the East Bay Rental Housing Association and the Berkeley Property Owners Association – of serving as “conduits of the cartel” by providing a venue for RealPage and their property owners to conspire. The lawsuit further alleges that landlords use the software to agree on prices to set for rent, and to stagger their lease renewal dates so as to avoid any oversupplies in rental properties.

G. 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. In August 2024, The United States Department of Justice, alongside the attorneys general of California and seven other states, filed an antitrust lawsuit against RealPage, accusing the company of reducing competition among landlords and taking over the market for such algorithm-based rental software.

H. 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 the city of Berkeley, to bring immediate relief to Berkeley 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.

I. This Chapter 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 Chapter regulate the amount of rent that a landlord may charge. This Chapter solely regulates the use and sale of the algorithmic devices that analyze and share non-public data, to prevent the harms described above.

### **13.63.020 Definitions.**

A. “Coordinated pricing algorithm” means any analytical or computation processes that use data to recommend or predict the price of consumer goods or services in direct or indirect coordination with one or more competitors, including through a third-party vendor such as a software program that uses one or more algorithms to perform calculations of competitor data concerning local or statewide rents or occupancy levels, for the purpose of advising landlords whether to leave their units vacant or on the amount of rent that landlords may obtain from tenants. “Coordinated pricing algorithm” includes a product that incorporates a coordinated pricing algorithm, 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 guidelines of a local government, the state, the federal government, or other political subdivision.

B. "Competitor data" means information, 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.

**13.63.030 Use and sale of coordinated pricing algorithms prohibited.**

A. It shall be unlawful to sell, license, or otherwise provide to city of Berkeley landlords any coordinated pricing algorithm that sets, recommends, or advises on rents or occupancy levels that may be achieved for residential dwelling units in the city of Berkeley.

B. It shall be unlawful for a landlord to use a coordinated pricing algorithm described in subsection A when setting rents or occupancy levels for residential dwelling units in the city of Berkeley. Each separate month that a violation exists or continues, and each separate residential dwelling unit for which the landlord used the coordinated pricing algorithm, shall constitute a separate and distinct violation.

**13.63.040 Remedies.**

A. The City Attorney may file a civil action for violations of section 13.63.030, 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.

B. A tenant may file a civil action for violations of section 13.63.030, 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 13.63.040 B.

**13.63.050 Undertaking for the general welfare.**

In enacting and implementing this Chapter 13.63, 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.

**13.63.060 Severability.**

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be

affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

**13.63.070 Effective Date.**

The provisions of this Chapter shall not take effect until March 1, 2026.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.